ORIGINAL

No. 20-181

7/28/20

IN THE
UNITED STATES SUPREME COURT

DANIEL L. MILES, ON OWN BEHALF AND ON BEHALF OF OTHERS AS A CLASS,

Petitioner,

v.

KRISTINE L. SVINICKI, SUCCESSOR TO STEPHEN G.BURNS, SUCCESSOR TO ALLISON M. McFARLANE, SUCCESSOR TO GREGORY B. JACZKO, SUCCESSOR TO DALE E. KLEIN, SUCCESSOR TO NILS J. DIAZ, CHAIRMAN, U.S. NUCLEAR REGULATORY COMMISSION,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

Daniel L. Miles,
Petitioner, Class Agent and
Private Attorney General
17 North Taft Ave.
Hillside, IL 60162
(708) 449-0379

QUESTION(S) PRESENTED

1. Whether the Seventh Circuit panel majority's decision, rendered on February 28, 2020, affirming the judgment of the District Court conflicts with the Thirteenth and Fifth Amendments of the United States Constitution and U.S. Supreme Court's decisions.

2. Whether the first section of the Thirteenth Amendment to the United States Constitution, by its own unaided force and effect, nullified District Court Judge Charles R. Norgle's arbitrary dismissal of the case, and his arbitrary denial of class certification and dismissal of class action complaint, for having the effect of upholding Respondent's ongoing discriminatory hiring and promotion policies (or customs having the force of law) inflicting involuntary servitude on members of the Black male class, including Petitioner as a member.

3. Whether Respondent's ongoing discriminatory hiring and promotion policies (or customs having the force of law) inflicting involuntary servitude on members of the Black male class, including Petitioner as a member, have deprived and continue to deprive said class members of their Thirteenth Amendment right to be free from involuntary servitude without due process of law under the Due Process Clause of the Fifth Amendment to the United States Constitution.

4. Whether the requirements of Rule 23(a) and (b) of the Federal Rules of Civil Procedure are satisfied as alleged in Count 1 of Petitioner's amended complaint filed October 1, 2018, in the District Court.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Regulations

U.S. Constitution

TABLE OF APPENDICES

Appendix

Page

DECISIONS BELOW

On April 29, 2020, The Court of Appeals for the Seventh Circuit denied *en banc* rehearing. Appendix (App. at 1a). On February 28, 2020, the Court of Appeals for the Seventh Circuit granted Defendant-Appellee's motion for summary affirmance and affirmed the judgment of the District Court. (App. at 2a). Petitioner believes that the decision of the United States Court of Appeals for the Seventh Circuit is unpublished.

On September 25, 2019, the District Court judge arbitrarily dismissed the case. On April 25, 2019, the District Court judge arbitrarily denied class action certification and dismissed class action complaint. Petitioner believes that the decision of the United States District Court for the Northern District of Illinois, Eastern Division is unpublished.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254(1). The Court of Appeals for the Seventh Circuit had jurisdiction under 28 U.S.C. § 1291. The District Court for the Northern District of Illinois, Eastern Division, had jurisdiction pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) et seq., as amended, the Civil Rights Act of 1991, the first section of the Thirteenth Amendment to the United States Constitution, section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791, and pursuant to 28 U.S.C. § 1331, which conferred original jurisdiction on the District Court in a civil action arising under the Constitution or laws of the United States, 28 U.S.C. § 1343, 28 U.S.C. § 2201, and 28 U.S.C. § 2202, 42 U.S.C. § 1988, 42 U.S.C. § 1981, 42 U.S.C. § 1981a, 42 U.S.C. § 1985(3), 42 U.S.C. § 1986, 18 U.S.C. § 1593, 18 U.S.C. § 1594, and 18 U.S.C. § 1595. Plaintiff, herein Petitioner, brought ongoing class action complaint on his own behalf and on behalf of others as a class defined in Plaintiff's amended complaint filed October 1, 2018, in the District Court, and as a private attorney general on behalf of the general public (or public interest). Venue was proper in the judicial district pursuant to 42 U.S.C. § 2000-5(f)(3) and 28 U.S. C. § 1391.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The United States Constitution, Thirteenth Amendment's first section provides:

> Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

The United States Constitution, Fifth Amendment's fourth clause, commonly referred to as the "due process" clause, provides:

> No person shall ... be deprived of life, liberty or property, without due process of law.

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000(e) *et seq.*, in part provides:

SEC. 2000e-2. *[Section 703]*

(a) 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

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

*****

SEC. 2000e-16. *[Section 717]*

(a) All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5 *[United States Code]*, in executive agencies *[other than the General Accounting Office]* as defined in section 105 of title 5 *[United States Code]* (including employees and applicants for employment who are

paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of the legislative and judicial branches of the Federal Government having positions in the competitive service, and in the Library of Congress shall be made free from any discrimination based on race, color, religion, sex, or national origin.

*****

(e) Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the "Constitution and statutes..."

Rule 23 of the Federal Rules of Civil Procedure, in relevant part, provides:

Rule 23. Class Actions

(a) Prerequisites. One or more members of a class may sue or be sued as representative

parties on behalf of all members only if:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

(b) Types of Class Actions. A class action may be maintained if Rule 23(a) is satisfied and if:

*****

(2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or

(3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:

(A) the class members' interests in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already begun by or against class members;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) the likely difficulties in managing a class action.

(c) Certification Order; Notice to Class Members; Judgment; Issues Classes; Subclasses.

(1) Certification Order.

(A) *Time to Issue.* At an early practicable time after a person sues or is sued as a class representative, the court must determine by order whether to certify the action as a class action.

(B) *Defining the Class; Appointing Class Counsel.* An order that certifies a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 23(g).

*****

(g) Class Counsel.

(1) Appointing Class Counsel. Unless a statute provides otherwise, a court that certifies a class must appoint class counsel. In appointing class counsel, the court:

(A) must consider:

(i) the work counsel has done in identifying or investigating potential claims in the action;

(ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;

(iii) counsel's knowledge of the applicable law; and

(iv) the resources that counsel will commit to representing the class;

(B) may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class;

(C) may order potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorney's fees and nontaxable costs;

(D) may include in the appointing order provisions about the award of attorney's fees or nontaxable costs under Rule 23(h); and

(E) may make further orders in connection with the appointment.

(2) Standard for Appointing Class Counsel. When one applicant seeks appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under Rule 23(g)(1) and (4). If more than one adequate applicant seeks appointment, the court must appoint the applicant best able to represent the interests of the class.

(3) Interim Counsel. The court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.

BACKGROUND AND STATEMENT OF CASE

The Underlying Proceedings in the District Court

On July 2, 2018, Plaintiff, herein Petitioner, filed a civil complaint consisting of four causes of action against Defendant, herein Respondent, in the U.S. District Court for The Northern District of Illinois, Eastern Division. The case was assigned to Judge Charles R. Norgle, Sr. (hereinafter referred to as "Judge Norgle"). The first cause of action (Count 1) alleged a class claim of an ongoing pattern or practice of retaliatory discrimination based on opposition brought under Title VII of the Civil Rights Act of 1964, as amended. The class claim included not only an ongoing class action complaint of race and sex discrimination in hiring and promotion policies, but also an ongoing pattern or practice of involuntary servitude violating the first section of the Thirteenth Amendment to the United States Constitution and other laws and depriving class members of their Thirteenth Amendment right to be free from involuntary servitude. The class claim also included a written motion for class certification pursuant to Rule 23 of the Federal Rules of Civil Procedure. The second cause of action (Count 2) alleged an individual claim of disability discrimination brought under section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791. The third cause of action (Count 3) alleged an individual claim of retaliatory disability discrimination based on opposition brought under section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791. The fourth cause of action (Count 4) alleged an individual claim of race and sex discrimination in the application of NRC 10 C.F.R. 10 process brought under Title VII of the Civil Rights Act of 1964, as amended.

On July 17, 2018, Judge Norgle dismissed the first cause of action (Count 1) pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), denied Plaintiff's in forma pauperis application and financial affidavit, and denied Plaintiff's motion for attorney representation.

On July 26, 2018, Plaintiff filed a motion for leave to amend complaint.

On August 2, 2018, Judge Norgle denied Plaintiff's motion for leave to amend complaint since, according to the Judge, Plaintiff had neither paid the filing fee nor submitted an amended motion for leave to proceed in forma pauperis.

On August 8, 2018, Plaintiff filed a motion for reconsideration of denial of leave to amend complaint, including an amended motion for leave to proceed in forma pauperis and an application for appointment of counsel.

On August 16, 2018, Judge Norgle ordered "Defendants" to respond to Plaintiff's motion for reconsideration, and such response was due on or before August 31, 2018. Plaintiff's reply was due on or before September 7, 2018. Defendant did not respond to Plaintiff's motion for reconsideration.

On August 27, 2018, Judge Norgle issued an order that denied Plaintiff's amended in forma pauperis application and financial affidavit. Plaintiff's motion for reconsideration of denial of leave to amend complaint pursuant to Rule 15 of the Federal Rules of Civil Procedure was denied as moot. The order stated that Plaintiff must pay the requisite fee if he wished to pursue this case. Plaintiff's motion for attorney representation was also denied. As indicated in the order, Judge Norgle's reason for the denial of Plaintiff's amended in forma pauperis application and financial affidavit was because Plaintiff failed to answer question 4 of such application and affidavit. Strangely, Judge Norgle did not indicate in his previous orders that Plaintiff had failed to answer question 4 of such application and affidavit. Nonetheless, Plaintiff believed that Judge Norgle gave an incorrect or misleading representation of Plaintiff's amended in forma pauperis application and financial affidavit in order to deny Plaintiff's motion for reconsideration of denial of leave to amend complaint. Plaintiff sought to file an amended complaint to clarify the allegations made, or to cure a defect, in the original complaint regarding the first cause of action (Count 1) dismissed by Judge Norgle. Plaintiff believed that, since the dismissal of the first cause of action (Count 1), Judge Norgle was vehemently opposed to Plaintiff filing the amended complaint and desired to compel Plaintiff to litigate only the alleged individual causes of action and not the alleged class cause of action (Count 1) against Defendant.

On September 11, 2018, Plaintiff paid the requisite filing fee after having received funds from the Nuclear Regulatory Commission ("NRC") for unused vacation time. Plaintiff then filed a motion for reconsideration of denial of leave to amend complaint.

On September 13, 2018, Judge Norgle entered an order that said, verbatim, in part: "the motion for reconsideration is taken under advisement. The court will issue an order."

Rather than continue to wait for Judge Norgle to decide whether he would grant Plaintiff's motion for reconsideration of denial of leave to amend complaint, on September 24, 2018, Plaintiff requested the Clerk's Office to stamp date each summons and to issue the stamped summons and the complaint filed July 2, 2018, to Plaintiff to be served on Defendant. After having received notice that the stamped summons and the complaint filed July 2, 2018, were properly served on Defendant, on October 1, 2018, Plaintiff filed an amended complaint. (App. at 59a). Pursuant to Rule15 (a)(1)(A) of the Federal Rules of Civil Procedure, Plaintiff did not need permission nor consent prior to filing an amended complaint.

On November 27, 2018, Defendant filed an answer to Plaintiff's amended complaint, and Plaintiff thereafter filed a response to Defendant's answer on December 19, 2018. Due to a partial shutdown of the federal government, proceedings in Judge Norgle's court did not resume until March 6, 2019. On March 6, 2019, Judge Norgle entered an order setting a status hearing for March 26, 2019.

On March 26, 2019, the scheduled status hearing was held without Plaintiff being present. Plaintiff was not present at the hearing due to his obligation to serve as a juror in a criminal trial in a criminal court of Cook County on March 26, 2019. For that reason, Plaintiff requested of Judge Norgle to continue the hearing on another date. During or after the status hearing, Judge Norgle entered an order that said, verbatim: "Status hearing held on 3/26/2019. Status hearing is continued to 4/24/2019 at 10:00 a.m. Plaintiff shall appear."

On April 24, 2019, the scheduled status hearing was held with only Plaintiff being present and not Defendant's counsel of record. After saying good morning to each other, Judge Norgle started the hearing by asking Plaintiff whether he was represented by an attorney. Plaintiff responded "no" to the Judge's question. Speaking to Plaintiff in a raised tone of voice, Judge Norgle repeatedly asked whether Plaintiff was an attorney. Although feeling intimidated, Plaintiff responded to the Judge's question by stating "I'm a Private Attorney General." Judge Norgle also repeatedly asked Plaintiff, "What did defendant do to you?" Plaintiff responded to the Judge's question by referring the Judge to the allegations in Plaintiff's filed complaint. Sensing that Judge Norgle wanted to focus only on Plaintiff's individual allegation(s), Plaintiff reminded the Judge that Plaintiff filed a

class action complaint. Judge Norgle responded to Plaintiff's statement by stating that one must be an attorney in order to file a class action complaint. Despite Judge Norgle's response to Plaintiff's statement, Plaintiff asked the Judge whether he would certify Plaintiff's class action complaint (pursuant to Fed. R. Civ. P. 23). Judge Norgle responded to Plaintiff's question with "no, class action complaint is dismissed." Plaintiff believed that the denial of class certification and dismissal of Plaintiff's class action complaint amounted to a decision by Judge Norgle. Judge Norgle did not inform Plaintiff that the requirements of Fed. R. Civ. P. 23 were not satisfied as alleged in the first cause of action (Count 1) of Plaintiff's amended complaint filed October 1, 2018. Nor did Judge Norgle state in his order dated April 24, 2019 or April 25, 2019, that the requirements of Fed. R. Civ. P. 23 were not satisfied as alleged in the first cause of action (Count 1) of Plaintiff's amended complaint filed October 1, 2018. In essence, Plaintiff believed that Judge Norgle arbitrarily denied class certification and dismissed class action complaint (Count 1) in order to exert pressure on Plaintiff to proceed with the individual causes of action and to refrain from proceeding with the class cause of action. See paragraph 9 of Plaintiff's amended complaint filed October 1, 2018, regarding 18 U.S.C. § 1589(c)(1). In addition, Plaintiff believed that 18 U.S.C. § 1512 (witness tampering statute) made it unlawful to prevent testimony of witnesses such as Plaintiff and potential class members. See paragraph 33 of Plaintiff's amended complaint filed October 1, 2018, regarding "testimonies from class members." Plaintiff had no doubt that 18 U.S.C. § 1512 protected actual as well as potential witnesses in civil and criminal proceedings.

On June 7, 2019, Plaintiff filed a motion for recusal or disqualification of Judge Norgle for bias or partiality pursuant to 28 U. S. C. § 455 and Marshall v Jerrico Inc., 446 US 238, 242 (1980). The filed motion was scheduled for a June 14, 2019 hearing before Judge Norgle.

On June 14, 2019, the scheduled hearing was held regarding Plaintiff's motion for recusal or disqualification of Judge Norgle. Judge Norgle did not rule on Plaintiff's motion but indicated that the motion was taken under advisement.

On June 17, 2019, Judge Norgle denied Plaintiff's motion for recusal or disqualification. Judge Norgle's Order denying Plaintiff's motion for recusal or disqualification was not entered until June 19, 2019.

Seizing upon the opportunity of Plaintiff being compelled to proceed as "pro se" in the case, Defendant filed, on August 9, 2019, a motion to compel responses to discovery. On August 12, 2019, Plaintiff filed a response to Defendant's motion to compel responses to discovery.

On August 15, 2019, Judge Norgle granted Defendant's motion to compel responses to discovery and scheduled a status hearing for September 25, 2019.

On September 20, 2019, Defendant filed a second motion to compel responses to discovery. On September 23, 2019, Plaintiff filed a second response to Defendant's second motion to compel responses to discovery.

On September 25, 2019, during the scheduled status hearing, Judge Norgle dismissed case and stated so in the final judgment without making any of class determinations (numerosity, commonality, typicality, adequacy of representation, predominance of common issues, etc.) pursuant to Fed. R. Civ. P. 23. (App. at 4a). An appeal to the Seventh Circuit Court of Appeals followed. Plaintiff appealed Judge Norgle's Order denying class action certification and dismissing class complaint, and his final judgment of dismissal of case.

The Underlying Proceedings in the Court of Appeals

On December 31, 2019, Plaintiff-Appellant, herein Petitioner, timely filed his primary brief in the office of the Clerk of the Court of Appeals for the Seventh Circuit and argued that:

1) the first section of the Thirteenth Amendment to the United States Constitution, by its own unaided force and effect, nullified Judge Norgle's arbitrary dismissal of the case, and his arbitrary denial of class certification and dismissal of class action complaint, for having the effect of upholding Defendant's ongoing discriminatory hiring and promotion policies (or customs having the force of law) inflicting involuntary servitude on members of the Black male class, including Plaintiff-Appellant as a member;
2) Defendant's ongoing discriminatory hiring and promotion policies (or customs having the force of law) inflicting involuntary servitude on members of the Black male class, including Plaintiff-Appellant as a member, have deprived and continue to deprive said class members of their Thirteenth Amendment right to

be free from involuntary servitude without due process of law under the Due Process Clause of the Fifth Amendment to the United States Constitution; and

3) the requirements of Rule 23(a) and (b) of the Federal Rules of Civil Procedure are satisfied as alleged in Count 1 of Plaintiff-Appellant's amended complaint filed October 1, 2018.

On January 27, 2020, Defendant-Appellee, herein Respondent, filed a motion for extension of time to file brief in the Court of Appeals for the Seventh Circuit. In said motion, Defendant-Appellee requested a five-week extension of time, from January 30, 2020 to March 5, 2020.

In an order dated January 27, 2020, the Seventh Circuit Court of Appeals granted Defendant-Appellee's motion for extension of time to file brief. Defendant-Appellee's brief was due March 5, 2020, and Plaintiff-Appellant's reply brief was due March 26, 2020.

On February 19, 2020, Defendant-Appellee filed a motion for summary affirmance or to reset briefing schedule.

In an order dated February 28, 2020, a Seventh Circuit panel majority granted Defendant-Appellee's motion for summary affirmance and affirmed the judgment of the District Court.

Plaintiff-Appellant believed that Defendant-Appellee's motion for summary affirmance or to reset briefing schedule was nothing more than a motion for help, aid, or support. In other words, Defendant-Appellee's motion for summary affirmance or to reset briefing schedule was nothing more than an invitation for a Seventh Circuit panel majority to cooperate with Defendant-Appellee. Based on their decision rendered on February 28, 2020, it was obvious that the Seventh Circuit panel majority accepted said invitation. The Seventh Circuit panel consisted of Chief Judge Diane P. Wood, Judge Frank H. Easterbrook, and Judge Amy J. St. Eve.

On April 13, 2020, Plaintiff-Appellant filed a petition for rehearing en banc, arguing that

(1) the Seventh Circuit panel majority's decision affirmed the District Court's judgment that had been made null and void by the Thirteenth and Fifth

Amendments of the United States Constitution and U.S. Supreme Court's decisions, and

(2) the Seventh Circuit panel majority did not have the legal authority to overrule the execution of the Thirteenth Amendment's ban on involuntary servitude, nor did the Seventh Circuit panel majority have the legal authority to overrule the Fifth Amendment's ban on deprivation of Thirteenth Amendment right to be free from involuntary servitude without due process of law.

On Appeal 29, 2020 Plaintiff-Appellant's Petition for Rehearing En Banc was denied.

REASON FOR GRANTING THE PETITION

1. This case meets every criterion for certiorari review. The Seventh Circuit panel majority's decision of affirmance of the judgment of the District Court, as well as the District Court judge's final judgment of dismissal of the case, including the District Court judge's arbitrary denial of class certification and dismissal of class action complaint, conflicts with the Thirteenth and Fifth Amendments of the United States Constitution and U.S. Supreme Court's decisions.

First and foremost, Petitioner demonstrated in written motions and responses filed in the District Court that the first section of the Thirteenth Amendment to the United States Constitution nullified Judge Norgle's judgment for having the effect of upholding Respondent's ongoing discriminatory hiring and promotion policies (or customs having the force of law) inflicting involuntary servitude on members of the Black male class, including Petitioner as a member. The Thirteenth Amendment's first section bans slavery and involuntary servitude and "is self-executing." *Civil Rights Cases*, 109 U.S. 3, 20 (1883). "Slavery is the state of entire legal subjection of one person to the will of another, and freedom is the total absence of such subjection from a person." *Congressional Globe, 39th Cong.*, 1st Sess., p. 934 (1866). Although implied in the definition of slavery, involuntary servitude is "the condition of one who is compelled by force, coercion, or imprisonment, and against his will, to labor for [or to serve] another, whether he is paid or not." *Black's Law Dictionary*, 4th Edition, 1968, p. 961. Self-executing means, among others, "effective immediately without the need of intervening court action." *West's Encyclopedia of American Law*, 2nd Edition, Volume 13 (Dictionary and Indexes), 2008.

By reason of the *Supremacy Clause*, Article VI, Clause 2 of the United States Constitution, the first section of the Thirteenth Amendment nullifies immediately anything which is contrary to its mandate or directive. The "[Thirteenth Amendment] is ... a prohibition against the ... enforcement of any law inflicting ... involuntary servitude ...." *United States v. Cruikshank*, 25 F. Cas. 707, 711 (1 Woods, 308) (C.C.D. La. 1874) (No. 14,897).

Petitioner also demonstrated in his petition for rehearing en banc (App. at 5a) filed, April 13, 2020, in the Court of Appeals that Judge Norgle's judgment was procured in violation of Thirteenth Amendment right to be free from involuntary servitude and Fifth Amendment right not to be deprived of Thirteenth Amendment right to be free from involuntary servitude without due process of law. Such violation constituted a jurisdictional defect and rendered Judge Norgle's judgment null and void. With respect to void judgment, in *In re Sawyer et al.*, 124 U.S. 200, 220 (1888), Justice Gray quoted from *Elliott v. Lessee of Piersol*, 26 U.S. (1 Pet.) 328 (1828), the following:

> "Where a court has jurisdiction, it has a right to decide any question which occurs in the cause, and whether its decision be correct or otherwise, its judgments, until reversed, are regarded as binding in every other court. But if it act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void, and form no bar to a remedy sought in opposition to them, even prior to a reversal."

Elliott, 26 U.S. at 329. "[A]ll its proceedings in the exercise of the jurisdiction which it assumed are null and void." *In re Sawyer et al.*, 124 U.S. at 221.

Since the filing of Petitioner's initial and amended complaints, Petitioner has sought class action certification and appointment of interim or class counsel (other than Petitioner) pursuant to Fed. R. Civ. P. 23(a), (b)(2) and/or (b)(3), and (g). The truth of this is evidenced from the language of said complaints. Without doubt, the class allegations alleged in Petitioner's complaints are factual and meritorious and thus warrant class action certification and appointment of interim or class counsel. Rather than class action certification and thus appointment of interim or class counsel, Judge Norgle allowed, by his action, the continuation of Respondent's ongoing discriminatory hiring and promotion

policies (or customs having the force of law) inflicting involuntary servitude on members of the Black male class, including Petitioner as a member.

Furthermore, and with respect to judgment and due process of law, the 5th Circuit Court stated in *Bass v. Hoagland*, 172 F.2d 205 (5th Cir.) (1949):

> "We believe that a judgment, whether in a civil or criminal case, reached without due process of law is without jurisdiction and void . . . because the United States is forbidden by the fundamental law to take either life, liberty or property without due process of law, and its courts are included in this prohibition."

Bass, 172 F.2d at 209, *cert. denied*, 338 U.S. 816, 70 S. Ct. 57, 94 L. Ed. 494 (1949). "A judgment is void if the court that rendered it . . . acted in a manner inconsistent with due process. *Margoles v. Johns*, 660 F.2d 291 (7th Cir. 1981), *cert. denied*, 455 U.S. 909, 102 S.Ct. 1256, 71 L.Ed.2d 447 (1982); *In re Four Seasons Securities Laws Litigation*, 502 F.2d 834 (10th Cir.1974), *cert. denied*, 419 U.S. 1034, 95 S.Ct. 516, 42 L.Ed.2d 309 (1975).

In *Abbott v. Latshaw*, 164 F.3d 141 (3d Cir. 1998), the court said: "It is elementary that procedural due process is implicated only where someone has claimed that there has been a taking or deprivation of a legally protected liberty or property interest." *Abbott*, 164 F.3d at 146 (citing *Board of Regents v. Roth*, 408 U.S. 564, 569 (1972)). Petitioner has no doubt that there is "liberty interest to be free from involuntary servitude" within the meaning of the Due Process Clause of the Fifth Amendment to the United States Constitution. See, e.g., *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923); *United States v. Kozminski*, 487 U.S. 931 (1988). A fundamental right or liberty interest is one that is "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty." *Seegmiller v. Laverkin City*, 528 F.3d 762, 767 (10th Cir. 2008) (quoting *Chavez v. Martinez*, 538 U.S. 760, 775 (2003)). Indeed, the Thirteenth Amendment right to be free from involuntary servitude is a protected liberty interest under the Due Process Clause of the Fifth Amendment.

The Due Process Clause of the Fifth Amendment "is a restraint on the legislative as well as on the executive and judicial powers of the government ...." *Murray v. Land & Imp. Co.*, 59 U.S. 272, 276 (1856). The Due Process Clause "is intended to prevent government officials from abusing their power, or employing it as an instrument of

oppression." *Cummings v. McIntire,* 271 F.3d 341, 346 (1st Cir. 2001); *County of Sacramento v. Lewis Collins,* 523 U.S. 833, 840 (1998); *DeShaney v. Winnebago County Dept. of Social Servs.,* 489 U. S. 189, 196 (1989). "Due process of law is process due according to the law of the land." *Walker v. Sauvinet,* 92 U.S. 90, 93 (1876). Due process of law "is not confined to judicial proceedings, but extends to every case which may deprive a citizen of life, liberty, or property, whether the proceeding be judicial, administrative, or executive in its nature." *Ulman v. Mayor, etc. of Baltimore,* 72 Md 587, 593, 20 A 141, 142 (1890), *aff'd,* 165 U.S. 719 (1897).

As indicated in the order dated February 28, 2020, the Seventh Circuit panel majority's decision "affirmed" the judgment of the District Court. Petitioner has demonstrated in the preceding paragraphs that the judgment of the District Court had been made null and void by the Thirteenth and Fifth Amendments of the United States Constitution and U.S. Supreme Court's decisions. It has been held that the affirmance by an appellate court of a void judgment imparts to it no validity: "[T]he affirmance of a void judgment upon appeal imparts no validity to the judgment, but is itself void by reason of the nullity of the judgment appealed from." *Pioneer Land Co. v. Maddux,* 109 Cal. 633, 642 (1895) (emphasis added). Petitioner believes that the court's holding in *Pioneer Land Co. v. Maddux* with respect to affirmance of a void judgement is equally applicable to the Seventh Circuit panel majority's decision, rendered on February 28, 2020, affirming the judgment of the District Court.

In addition to the preceding paragraph, the word "affirm" means "to ratify or confirm a former law or judgment." *Black's Law Dictionary,* 2nd Edition, 1910, p. 47. Without doubt, the Seventh Circuit panel majority's decision sent a clear message to Respondent that Respondent's ongoing discriminatory hiring and promotion policies (or customs having the force of law) inflicting involuntary servitude on members of the Black male class are ratified and confirmed.

Petitioner believes that the first section of the Thirteenth Amendment to the United States Constitution nullified the Seventh Circuit panel majority's decision for having the effect of upholding Respondent's ongoing discriminatory hiring and promotion policies (or customs having the force of law) inflicting involuntary servitude on members of the Black male class.

"A law repugnant to the Constitution is void, and courts, as well as other departments, are bound by that instrument." *Marbury v. Madison*, 5 U.S. (2 Cranch) 137, 180 (1803). *See Brookfield Const Co. v. Stuart*, 234 F. Supp. 94, 99 (U.S. Dist. Ct., D. of C., 1964) ("An officer who acts in violation of the United States Constitution ceases to represent the government.").

As the Supreme Court stated in City of Mobile v. Bolden, 446 U. S. 55, 76 (1980): "It is of course true that a law that impinges upon a fundamental right explicitly or implicitly secured by the Constitution is presumptively unconstitutional." See Petitioner's brief filed December 31, 2019, regarding the Thirteenth and Fifth Amendments of the United States Constitution.

Petitioner also believes that, in regard to their decision rendered on February 28, 2020, the Seventh Circuit panel majority did not have the legal authority to overrule the execution of the Thirteenth Amendment's ban on involuntary servitude, nor did the Seventh Circuit panel majority have the legal authority to overrule the Fifth Amendment's ban on deprivation of Thirteenth Amendment right to be free from involuntary servitude without due process of law. Indeed, Article VI of the Constitution makes the Constitution the "supreme Law of the Land." *See the Supremacy Clause*, Article VI, Clause 2 of the United States Constitution.

"Any judge [or officer of the government] who does not comply with his [or her] oath to the Constitution of the United States wars against that Constitution and engages in acts in violation of the supreme law of the land. The judge [or officer] is engaged in acts of treason." *Cooper v. Aaron,* 358 U.S. 1, 78 S. Ct. 1401 (1958).

> "No man [or woman] in this country is so high that he [or she] is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law and are bound to obey it. It is the only supreme power in our system of government, and every man [or woman] who, by accepting office participates in its functions, is only the more strongly bound to submit to that supremacy, and to observe the limitations it imposes on the exercise of the authority which it gives." *U.S. v. Lee,* 106 U.S. 196, 220 (1882).

This country is the United States of America, and not the Confederate States of America as one group of people clandestinely thinks it is. Based on its background history, the Confederate States of America believed in the right of one group of people to enslave another and to hold another in involuntary servitude.

As similarly asserted in paragraph 20 of Petitioner's amended complaint filed October 1, 2018, the term Respondent identified in the above caption refers to a combination of persons united (or joined) as one in their official and individual capacity. Each member becomes or acts as the agent of every other member. "[T]he agreement was a tacit understanding, created by a long course of conduct and executed in the same way. Not the form or manner in which the understanding is made, but the fact of its existence and the further one of making it effective by overt conduct are the crucial matters." *Direct Sales Co. v. United States*, 319 U.S. 703, 714 (1943) (emphasizing "prolonged cooperation"). The act of one partner may be the act of all. *See United States v. Dalzotto*, 603 F.2d 642, 644 (7th Cir. 1979) (the agreement may be shown by "concert of action, all the parties working together understandingly with a single design for the accomplishment of a common purpose.").

Conclusion

In view of the foregoing, it is clear that "members of Black male class, including Petitioner, had and have been, and, as a result of the Seventh Circuit panel majority's decision of affirmance, are being continually and purposefully subjected to and held in involuntary servitude in contravention of the Thirteenth Amendment's first section, and occurring concurrently, the deprivation of the Thirteenth Amendment right to be free from involuntary servitude without due process of law in contravention of the Fifth Amendment's Due Process Clause."

Petitioner respectfully requests of this Court (1) to grant this petition for a writ of certiorari, (2) to reverse the Seventh Circuit panel majority's decision, (3) to reverse Judge Norgle's arbitrary dismissal of the case, and his arbitrary denial of class certification and dismissal of the class action complaint (Count 1), (4) to certify the first cause of action (Count 1) of Petitioner's amended complaint filed October 1, 2018, as a class action for an ongoing pattern or practice of retaliatory discrimination based on opposition to unlawful discriminatory hiring and promotion policies in violation of Title VII, a class action for an

ongoing pattern or practice of race and sex discrimination in hiring and promotion policies in violation of Title VII, and/or a class action for declaratory and injunctive relief under 28 U.S.C. § 2201 and 28 U.S.C. § 2202 for violation of the first section of the Thirteenth Amendment and the Due Process Clause of Fifth Amendment of the United States Constitution, (5) to appoint Class Counsel other than Petitioner pursuant to Fed. R. Civ. P 23(g) as requested in Petitioner's amended complaint filed October 1, 2018, (6) to reinstate Counts 2, 3, and 4 of Petitioner's amended complaint filed October 1, 2018, and (7) to assign a different District Judge to preside over the case.

Respectfully submitted,

Daniel L. Miles

Daniel L. Miles
Petitioner, Class Agent and
Private Attorney General
17 North Taft Ave.
Hillside, IL 60162
Telephone: (708) 449-0379
E-mail: dlmiles@comcast.net

Date: July 28, 2020

OFFICIAL SEAL
JENNIFER MUNGER
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:10/16/23