

AUG 14 2021

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ORIGINAL

No. 21-5696

IN THE SUPREME COURT OF THE UNITED STATES

FAN GU — PETITIONER

vs.

INVISTA S.A.R.L — RESPONDENT(S)

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Fifth Circuit erred issued orders to claim that Plaintiff/Appellant's claims are barred by Res Judicata.
2. Whether the Fifth Circuit fail to reverse district court denied due process and allowed fault, misconducts and crime of perjury, forgery and contempt court orders in the lawsuit, discriminated Plaintiff in court proceedings.
3. Whether the Fifth Circuit court fail to reverse district court denied new party The Lycra Company as defendant and new trial.
4. Whether the Fifth Circuit court fail to reverse district court erred denied Plaintiff's Motion for Default Judgment.
5. Whether the Fifth Circuit court fail to reverse district court allowed fraudulent scheme, crimes, civil rights violation, discrimination Plaintiff Pro se happened.
6. Whether the Fifth Circuit court fail to reverse district court used inadmissible evidence to issue final judgment order and abused of discretion.
7. Whether the Fifth Circuit Exceeded Its Powers and Acted as a Trier of Fact by Determining Relevance of Unproduced, Unreviewed Evidence
8. Whether the Fifth Circuit did not follow McDonnel Douglas Framework and Decision in Previous Case Created a Direct and Substantial Circuit Split Regarding Age Discrimination Cases
9. Whether the Fifth Circuits's Decision Countenances Crimes and Begs For This Court's Supervisory Powers

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Fan Gu, Plaintiff-Appellant- PETITIONER

INVISTA S.A.R.L., Defendant-Appellee- RESPONDENT

Koch Industries, Inc. Defendant INVISTA S.A.R.L is wholly-owned by Koch Industries, Inc. a privately-owned company

The Lycra Company LLC, New party. The company is an independently managed, wholly owned subsidiary of Shandong Ruyi Investment Holding, a public traded company. *

INVISTA S.A.R.L. is represented by Shauna Johnson Clark, Heather Sherrod, and Andrew Yeh, Norton Rose Fulbright US LLP

Note: * On January 31, 2019, INVISTA sold its apparel and textile business, including the LaPorte, Texas facility where Mr. Gu previously worked to The Lycra Company LLC. As part of sale, the buyer assumed the associated debts, obligations, and liabilities of INVISTA's apparel and textile business. The Lycra Company LLC should be new defendant.

Related Cases

4:15-CV-00240, 16-20463, 17-6143

4:19-CV-00562, 20-20027

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IN THE SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix 1 to the petition and is

reported at _____ ; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix 2 to the petition and is

reported at _____ ; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported _____ at ; or,
 has been designated for publication but is not yet reported; or, is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____ ; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

[x] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was February 10, 2021

[] No petition for rehearing was timely filed in my case.

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: March 8, 2021, and a copy of the order denying rehearing appears at Appendix 3.

[] An extension of time to file the petition for a writ of certiorari The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[] For cases from state courts:

The date on which the highest state court decided my case was _____ . A copy of that decision appears at Appendix _____ .

[] A timely petition for rehearing was thereafter denied on the following date:

_____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including (date) on _____ (date) in _____

Application No. _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides in relevant part:

... nor shall any state ... deny to any person within its jurisdiction equal protection of the laws.

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a)(1) provides in relevant part:

...[i]t shall be an unlawful practice for an employer ... 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.

The Age Discrimination in Employment Act of 1967 ("ADEA"), 29 U.S.C. 623 (a)(1) provides in relevant part:

It shall be unlawful for an employer ... to fail or refuse to hire or to discharge any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individuals' age.

42 U.S.C. § 1981 provides in relevant part:

... all persons ... shall have the same right to make and enforce contracts ... enjoyed by white citizens.

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

STATEMENT OF THE CASE

On February 19, 2019, Plaintiff Fan Gu filed lawsuit 4:19-cv-00562, to reopen the age discrimination case and seek relief from Civil judgments per FRCP 60(b) as prior judgment was not on the merits and fraudulent scheme happened in the previous case 4:15-cv-00240.

Defendant did not response the lawsuit on timely manner and was default on April 15, 2019. Plaintiff moved for a default judgment, The District court ordered to have the default hearing on June 5, 2019, Defendant INVISTA S.A.R.L filed two motions on May 30, 2019 to ask Court to excuse of default as the new party, The Lycra Company did not response the summon, deny Plaintiff's motion for entry of default judgment and dismiss the case, Plaintiff filed motion against Defendant's motions on June 3, 2019 to summit evidences and dispute Defendant excuse evidence (Declaration from Mr. Chuck Blocksig's declaration) and Res Judicata statement, The Court "rushed" and "vacated" default hearing without notified Plaintiff, and erred entering the order denied entry of default judgment, on June 4, 2019, just few hours before the scheduled default judgment hearing. The District court did not review, examine and verify Mr. Blocksig's declaration, nor have any evidences to show Defendant INVISTA had excusable reasons for default. At the date, the District court even did not know who was the "buyer" and if INVISTA ever "promptly forward a copy of the Complaint to the buyer".

Pursuant to Rule 15 of the Federal Rules of Civil Procedure, Plaintiff filed Motion to Amend Complaints on June 17, 2019 to add civil rights violation and discrimination Pro Se as additional claims. Judge Peter Bray granted the motion to amend the complaints, On July 1, 2019, Plaintiff amended his complaint and added three complaints into to the case, including age discrimination, perjury, violations of firth, eighth and fourteenth amendment rights, and discrimination Plaintiff Pro se.

On August 15, 2019, the district court issued Memorandum and Recommendations with Judge Peter Bray's signature on it. Judge Peter Bray denied Plaintiff's motion, to verify the memo and signature since there were not only lots of mistakes and false statements in the document, but also showed identical signatures with two other orders. The three identical signatures were difference with Judge Peter Bray's "normal" signatures on Court files. No one in the world can sign his/her name exactly the same way twice. Mr. Jason Marchand, Judge Bray's case manager confirmed with Plaintiff that Judge

Bray did sign the documents and no stamps or electronic signature used. The district clerk also confirmed that there is no regulation and rule in district court for using stamps or electronic signature. The signatures of Judge Bray were forged based on comments from two experts of document examiners Plaintiff consulted. The Memorandum and Recommendations did not address or comment on any of Plaintiff's evidences of fraudulent scheme happened, including crime of perjury, forge documents, and contempt court order. It did not address or commend on any exception to the Res Judicata rule based upon the principle that a fraudulent scheme happened, no opportunity to be heard, trials and due process were denied. It did not make any comment regarding due process and claim of discrimination Plaintiff Pro se.

On August 30, 2019, Judge David Hittner adopted Judge Peter Bray's Memorandum and Recommendations, denied Plaintiff's motions and erred issuing the order to dismiss the case with prejudice.

After submission of the appeal on the parties' briefs, a panel of Fifth Circuit held that "Because Gu's entire appeal lacks an arguable legal basis for granting relief, we Deny leave to proceed IFP and DISMISS the appeal as frivolous."

Gu brought a Petition for Panel Rehearing. Once again, the Panel issued the order to deny Gu's request for rehearing on March 23, 2021.

In reaching above conclusions, District Court and Fifth Circuit Panel did not discuss any Gu's evidences and arguments.

REASONS FOR GRANTING THE PETITION

A panel of Fifth Circuit fail to exam all the arguments and evidences Gu provided and did not address any of Gu's arguments as followings,

- The Fifth Circuit court fail to reverse district court erred issued orders to claim that Plaintiff/Appellant's claims are barred by Res Judicata.
- The Fifth Circuit court fail to reverse district court denied due process and allowed fault, misconducts and crime of perjury, forgery and

- contempt court orders in the lawsuit, discriminated Plaintiff in court proceedings.
- The Fifth Circuit court fail to reverse district court denied new party The Lycra Company as defendant and new trial.
- The Fifth Circuit court fail to reverse district court erred denied Plaintiff's Motion for Default Judgment.
- The Fifth Circuit court fail to reverse district court allowed fraudulent scheme, crimes, civil rights violation, discrimination Plaintiff Pro se happened.
- The Fifth Circuit court fail to reverse district court used inadmissible evidence to issue final judgment order and abused of discretion.
- The Fifth Circuit Exceeded Its Powers and Acted as a Trier of Fact by Determining Relevance of Unproduced, Unreviewed Evidence
- The Fifth Circuit did not follow McDonnel Douglas Framework and Decision in Previous Case Created a Direct and Substantial Circuit Split Regarding Age Discrimination Cases
- Fifth Circuit's Decision Countenances Crimes and Begs For This Court's Supervisory Powers

Arguments of Reasons For Granting the Petition

I. Plaintiff/Appellant's claims are not barred by Res Judicata

A. Plaintiff/Appellant's Claims are not Barred by Res Judicata Rule

In his Memorandum and Recommendations, ROA. 253-254, Judge Bray states: “[A]n action is barred by the doctrine of res judicata if: 1) the parties are identical in both actions; 2) the prior judgment was rendered by a court of competent jurisdiction; 3) the prior judgment was final on the merits; and 4) the cases involve the same cause of action.” *Travelers Ins. Co. v. St. Jude Hosp. of Kenner, La., Inc.*, 37 F.3d 193, 195 (5th Cir. 1994). Cases involve the same cause of action when the plaintiff bases the claims on the same nucleus of operative facts. *In re Howe*, 913 F.2d 1138, 1144 (5th Cir. 1990).

Using the standard Judge Peter Brays stated above, Plaintiff/Appellant's claims should not be barred by Res Judicata:

1) There is a new party involved in this case.

According to Invista's reason for default judgment by Mr. Chuck Blockside's declaration, ROA 55-56: "On January 31, 2019, INVISTA sold its apparel and textile business, including the LaPorte, Texas facility where Mr. Gu previously worked, in a stock transaction to an unrelated third party. As part of the sale, the buyer assumed the associated debts, obligations, and liabilities".

Based on the sale agreement, the buyer, The Lycra Company LLC has to be the new party and New Defendant. The company is an independently managed, wholly owned subsidiary of Shandong Ruyi Investment Holding, a public traded company.

As the parties are different and not identical in both present and previous lawsuits, Plaintiff did not sue the same party in both actions.

2) Cases filed at different State and Federal Courts

Plaintiff has filed the previous case, 4:15-cv-240 in Texas State court due to INVISTA's La Porte site control center is in Texas. The case should not be moved to Federal Court as Plaintiff previous argued and disputed by appealing at 5th Circuit court for this jurisdiction issue. Plaintiff filed current suit in federal court.

3) The prior judgment was not on the merits.

The key and only evidence Defendant used in the Summary Judgment order was the white board event on October 24, 2013. Plaintiff provided photo evidence, to prove this Defendant's key evidence was false and inadmissible. Defendant witness Grant Pittman even refused to answer any question related to this photo evidence during his deposition. After deposition, Mr. Pittman made his declaration under oath and stated that all the evidence/statement were true, from which he committed perjury. This Defendant's key evidence and other evidences were inadmissible evidence per Federal Rules of Evidence. Based on Rule 56, Summary Judgment should not be granted if there is genuine dispute, the movant is not entitled to judgment as a matter of law. Not only the summary judgment should not be granted, but also Defendant's witnesses committed perjury and misconducts should be punished.

4) Current case involves the different cause of action.

The previous case had one age discrimination action. In current case, it contained four causes of action against Defendant:

- a) Age discrimination under 29 U.S.C. § 623(a)(1),
- b) Perjury under 18 U.S.C. §§ 1621-23,
- c) Violations of his First, Eighth, and Fourteenth Amendment rights, and
- d) Discriminated Plaintiff pro se.

Based on the standard and facts stated above, current case involved new party, filed in different courts, no merits judgment issued and involved three more actions. Therefore, current case should not be barred by the doctrine of Res Judicata.

B. The Exception for the Res Judicata Rule

As the Supreme Court explained more than 65 years ago in *Lawlor v. National Screen Service Corp.*, 349 U.S. 322 (1955), res judicata does not bar a suit, even if it involves the same course of wrongful conduct as alleged earlier, so long as the suit alleges new facts or a worsening of the earlier conditions.

The Res Judicata should not bar a suit if the current complain raises new facts that do not arise out of the same “Transaction or Occurrence” and the new complain raises claims that could not have been raised in the prior litigation, *State of Ohio ex rel. Susan Boggs, et al. v. City of Cleveland*, 655 F.3d 516 (6th Cir. 2011)

In current lawsuit, Plaintiff has stated and argued many times that current lawsuit is not a case of Res Judicata in his Motions ROA. 67, 79,198, 222.

1) Principle that a fraudulent scheme happened

In current case, the only repeat claim of age discrimination should be exception to the Res Judicata rule based upon the principle that a fraudulent scheme happened.

“The exception to this rule (Res Judicata), however, is based upon the principle that a fraudulent scheme which is greater in scope than the issues that were determined in the action or proceeding may become the basis of an action”. 37 N.Y.2d at 217, 333 N.E.2d at 167, 371 N.Y.S.2d at 889 (quoting *Burbrooke Mfg. Co. v. St. George Textile Corp.*, 283 A.D. 640, 641-44, 129 N.Y.S.2d 588, 589 (1954)).

In the previous case, Defendant has been using false "performance" evidence as pretext to terminate Plaintiff, despite Plaintiff has provided many evidences to prove he was qualified the job and had a good performance, see Plaintiff's Opposition to Motion for Summary Judgment for details (Gu I, Dkt. 41). Defendant INVISTA worked "closely" with Judge Hittner and acted as judge function as state actor by denying due process for Plaintiff by various tricks including committed misconducts (ex parte communication) and even crimes (perjury, forgery and contempt court orders), which were prohibited by law and violated Plaintiff's constitution rights. The order not only did not review and discuss any of Plaintiff's 48 contended facts and arguments listed in joint pre-trial order and all the objections listed on Plaintiff's motion against Summary Judgment but also failed to review and examine the only key false inadmissible statement (as evidence) provided by Defendant in Mr. Grant declaration (committed perjury) with Plaintiff's photo evidence and other 44 false statements evidences without hearing or trail. Fifth Circuit Court and Supreme Court did not review the disputes and examine the key photo evidence in the record as comparison with Defendant's false inadmissible statements and erred affirmed the Fifth Circuit court fail to reverse district court decision by using the false and inadmissible "evidence" and allowed the fraudulent scheme happened in the previous lawsuit.

2) Opportunity to be heard, trials and due process denied

For Res Judicata to be binding, several factors must be met including whether the parties were given full and fair opportunity to be heard on the issues. In addition, in matters involving due process, cases that appear to be res judicata can be re-litigated.

The policy of finality of judgments underlying the rule does not apply since the second action is based on an issue, namely, the existence of a fraudulent scheme broader than that decided in the first action. Since collateral estoppel does not apply to issues yet to be litigated, we would expect the common law to have developed this exception.

Similarly, if the trier of fact relied on a witness's testimony in reaching its decision, then it necessarily determined the essential issue of fact that the witness did not commit perjury. When insufficient evidence to the contrary is

introduced by the opposing party at trial or on direct attack, the issue whether a party has misrepresented facts is finally adjudicated.

The procedural safeguards associated with trials generally ensure that perjury, if it occurs, will be discovered and brought to the court's attention.

First, in no investigation does a "party" have as ample an opportunity to cross-examine another "party" as he would have in a court. Certainly, Plaintiff in previous case, for example, had no opportunity for cross-examination because no hearing or trial allowed and occurred. Cross-examination is crucial to uncovering any fraud or misrepresentation in the testimony. Without an effective opportunity to cross-examine witnesses, Plaintiff was at a serious disadvantage in trying to uncover misleading statements or fraud documents and statements created by perjury and forgery.

Effective cross-examination requires adequate discovery procedures. However, the Fifth Circuit court fail to reverse district court denied Plaintiff's right to complete discovery, including Grant Pittman's deposition, compel defendant to submit full requested documents, such as Ron Ellerbeck's performance review report, evidences and authentication of exhibits listed by Defendant in pre-trial order including all Grant Pittman's email notes.

The advent of the liberal pre-trial discovery provisions of the Federal Rules of Civil Procedure has been widely recognized as a major innovation contributing toward increased equity. Without discovery, a party will often be powerless to determine whether an adverse party is misrepresenting or omitting material facts in its presentation.

These observations were considered by the limited application for the doctrine of res judicata to administrative agency actions. Res judicata applies only when the agency "is acting in a judicial capacity, and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate. *United States v. Utah Constr. & Mining Co.*, 384 U.S. 394, 422 (1966).)

The rule against civil actions for perjury is closely related to the doctrines and policies of res judicata and collateral estoppel. Significantly, courts have recognized that the rule against civil actions for perjury assumes that the injured party had a fair and full opportunity to present its case in the proceeding where the perjury occurred. For example, the Supreme Court in *United States v. Throckmorton*, 98 U.S. 61 (1878).

The rule against civil actions for perjury is grounded in the policy of the finality of judgments, and the doctrines of Res Judicata and collateral estoppel. In deciding whether to apply the rule, the best guide is the established body of precedents regulating the application of those related doctrines. The justification for the use of those doctrines diminishes as the opportunity for a full and fair determination of the facts in question wanes.

In the previous case 4:15-cv-00240, Plaintiff had no opportunity to complete the discover proceedings due to Defendant's contempt court order to refuse some key document production, refuse answer questions during depositions. There was no completed discovery, no chance to cross-examine witnesses, and even worst, the Summary Judgement was drafted by Defendant which not only contained false inadmissible evidence and statements but also not be served to Plaintiff. It did not address any of Plaintiff's 48 contented facts and questions listed in joint pre-trail order!

To support reopen the case, Plaintiff had newly discovered and yet to be discovered evidence that could not have been discovered before. Plaintiff has submitted the new evidences to support the case and claims in court filing. However, the Fifth Circuit court fail to reverse district court erred to deny all of Plaintiff's motions without any explanations.

In summary of all mentioned above, current case should not be barred by the doctrine of Res Judicata.

II. Due Process denied and Discrimination in Court Proceedings

The Fifth Circuit court fail to reverse district court allow frauds, faults or crimes of perjury, forgery, contempt court order and discrimination of Plaintiff Pro se at civil court proceeding happened without subject to adequate judicial review, correction, sanction and punishment.

In the current as well as previous case, Defendant has been trying many ways to delay the case proceedings, contempt court order to submit production documents, refuse answer deposition questions, forge documents, provide false statements during depositions and declarations, committed fraud and perjury, constructed faulty court orders to not only obstruct justice but also deny Plaintiff's rights under the First, Eighth and Fourteenth Amendments of the United States Constitution. Plaintiff was denied the fundamental

constitutional right of equal access to due process and equality under the courts and even punished for filing valid and legitimate motions.

1) There is no due process in the case

Due process is essentially based on the concept of "fundamental fairness". For example, in 1934, the United States Supreme Court held that due process is violated "if a practice or rule offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental", *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934). As construed by the courts, it includes an individual's right to be adequately notified of charges or proceedings, the opportunity to be heard at these proceedings, and that the person or panel making the final decision over the proceedings be impartial in regard to the matter before them. *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970).

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides:

[N]or shall any State deprive any person of life, liberty, or property, without due process of law ...

The Supreme Court of the United States has repeatedly addressed whether the Due Process Clause of the Fourteenth Amendment is violated when prosecutors knowingly use false testimony in a criminal trial. In 1935, the Supreme Court briefly wrote in *Mooney v. Holohan*, 294 U.S. 103 (1935) that prosecutors violate the Due Process Clause if they knowingly present perjured testimony.

Fifth Circuit court fail to reverse district court vacated the default judgment hearing scheduled on June 5, 2019, cancelled initial conference, ROA. 156, issued the order denying Motion for Hearing ROA. 176. There is no hearing, no trial nor conference and Judges make orders solely based on defendant's false inadmissible declaration as evidence. All of Plaintiff's arguments and motions were denied.

Plaintiff had no opportunity to complete or start discovery proceeding, no hearing and no chance to cross-examine witnesses, and even worst, the Summary Judgement was drafted by Defendant in previous case which not be served to Plaintiff (it is misconduct of ex parte communication). The Fifth Circuit court fail to reverse district court ignored and did not address any of Plaintiff's 48 contented facts and questions listed in joint pre-trail order! The

only “factual evidence” listed in Summary Judgment was false statement which Defendant witness Mr. Grant Pittman refused to answer the related questions comparing with Plaintiff’s photo evidence during his deposition. After deposition, Mr. Pittman made his declaration under oath that all the evidence/statement were true. Plaintiff’s photo and other evidences in court file would prove Mr. Pittman’s declaration had many false statements including the only “factual evidence” used in summary judgment order, and Mr. Pittman committed perjury. Plaintiff received court notice of Summary Judgment just two days before the scheduled pre-trail hearing. No trial nor hearing was granted in Fifth Circuit and Supreme Court appeals. Both courts erred affirm lower court order or dismiss the appeals without reviewing the faulty court proceedings, genuine dispute on material facts and even used false and inadmissible evidence to affirm or dismiss the appeals. Almost every Plaintiff’s motion was denied without explanation. Evidences of no due process and discrimination against Plaintiff Pro Se were listed and could be reviewed in detail from Plaintiff’s Motion to Amend Claim, ROA. 112-116.

- 2) Fifth Circuit court fail to reverse district court allowed misconducts, faults, crimes of perjury, forgery, contempt court order during the court proceedings without correction and punishment

Plaintiff averred there should be evidences and documents from FBI/US Attorney investigations to substantiate his allegations that Defendant fraudulently procured a favorable court decision. Plaintiff submitted his evidence regarding fraud and crime and arguments in motions to District court many times. However, Fifth Circuit court fail to reverse district court denied all the motions Plaintiff filed and refused to investigate, review and resolve any outstanding issues of facts, including genuine disputes of material facts, frauds, misconducts and crimes committed by Defendants.

The Fifth Circuit court fail to reverse district court ruling countenances fraud, crimes and denies judicial review despite unresolved allegations and evidence regarding fraud and crime. Plaintiff repeatedly averred there is evidence that demands review to resolve the issue of fraud and punish crime of discrimination, perjury, forge documents and contempt court order. Plaintiff has searched hundreds age discrimination cases preceded at US Supreme

Courts reported in Westlaw database and find no single case involved perjury, forge document and contempt court order allowed in court proceedings!

Plaintiff has filed a motion, ROA. 259 on August 20, 2019 to request the court validate and confirm Judge Bray's order/memos for forged documents as there are three documents shows exactly signatures and many mistakes and false statements in the memo. Mr. Jason Marchand confirmed with Plaintiff that Judge did sign the documents and no stamps or electronic signature used. The district clerk also confirmed that there is no regulation and rule in district court for using stamps or electronic signature. The motion was denied by the Order denying Motion to Verify and Confirm Judge Peter Bray's Orders and Signatures without any explanation, ROA. 281.

Plaintiff has filed motion to request the court to investigate the crime of perjury and forgery in the lawsuit, ROA. 364. The court issued order, ROA. 369 denied it without any explanation.

Fifth Circuit court fail to reverse district court issued Order denying Motion to Vacate ROA. 317, Order denying Motion for New Trail ROA. 356, Order denying Motion for Leave to file Motion to Reconsider for New Evidences ROA. 377, without any explanation.

Plaintiff has reported a forged court order/memo complaint to FBI/DOJ Houston for investigation and charge the crime!

Napue v. Illinois, 360 U.S. 264 (1959), was a United States Supreme Court case in which the Court held that the knowing use of false testimony by a prosecutor in a criminal case violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

In both current and previous cases, the Fifth Circuit court fail to reverse district court held that the knowing use of false inadmissible statement as evidence violated the Due Process Clause of the Fourteenth Amendment of US Constitution.

3) Plaintiff's Motion to compel and sanctions were denied but punished for filing proper motions

Pursuant to FRCP Rule 37 (a) and Rule 26 (a), Plaintiff filed motion to move for an order to compel Defendant INVISTA S.A.R.L to disclosure and sanctions, ROA, 131. Defendant has not disclosed the name of third party until June 25, 2019. On January 31, 2019, INVISTA sold its apparel and textile

business, including the LaPorte, Texas facility where Plaintiff previously worked to a third party. "As part of sales, the third party assumed the associated debts, obligations, and liabilities of INVISTA's apparel and textile business". However, Defendant has not disclosed any details information regarding the party and agreement per FRCP rule 5, 25 and 26.

The Fifth Circuit court fail to reverse district court issued Order for Conference and Disclosure of Interested Parties on June 5, 2019, ROA. 84. The order required Counsel shall file with the clerk within fifteen days from receipt the order a certificate list all persons, associations of persons, firms, partnerships, corporations, affiliates, parent corporations, or other entities that are financially interested in the outcome of this litigation. As of June 24, 2019, Defendant has not filed any disclosure of interested parties. Failure to comply with the order, ROA. 84, should result in sanctions, including dismissal of the action and assessment of fee and cost.

Not sanctioned and punished Defendant, the Fifth Circuit court fail to reverse district court Judge Peter Bray erred entering an order to grant INVISTA's motion for Sanctions against Plaintiff in part, ROA.357. Plaintiff has filed all his motions in good faith and should not be sanctioned per FRCP 11. A court should not impose sanctions on a party for filing valid and legitimate motions. Judge Bray's order did not list any reason and the sanction and order was not justified. Instead of punishing crimes and misconducts, the Fifth Circuit court fail to reverse district court let them prevail in the court proceedings. It is very disgraceful and unacceptable, from which the justices were not served!

III. The Lycra Company LLC Should be Defendant for New Trail

As mentioned above and court filing, The Lycra Company LLC would "assumed the associated debts, obligations, and liabilities of INVISTA's apparel and textile business" and "would respond the defend the lawsuit", ROA.55.

It is important to have the proper parties named in a civil lawsuit. Courts require that civil lawsuits be brought by "the real party in interest", which means that the party suing is legally entitled to seek the relief requested. Since INVISTA sold its business to the new party, the buyer assumed the associated

all debts, obligations, and liabilities of INVISTA's business, therefore, INVISTA would have no good standing in this case.

There is no motion filed or order entered to approve or authorize INVISTA to represent the new party The Lycra Company LLC as Defendant. Accordingly, Plaintiff has filed the 2nd Amended Complaint, ROA. 282 per FRCP 25 and Motion for Joinder of the Parties, ROA. 314-315 per FRCP 19, to change Defendant from INVISTA S.A.R. L. to The Lycra Company LLC or add as the Defendant (third party). However, Plaintiff's motion was denied and stroked per orders issued by Judge David Hittner, ROA. 292, 317.

Because the new Defendant of The Lycra Company, not INVISTA, has the ultimate legal responsibility for the lawsuit per the sales agreement, all the court orders should be vacated or reversed and new trial should be granted.

IV. Motion for Default Judgment Should be Granted

The Court erred entering order denied entry of default judgment, ROA. 75 on June 4, 2019. Plaintiff files Motion to request the Court vacate Order of Entry Default Judgment, ROA. 85 on June 11, 2019 under the authority of Federal Rule of Civil Procedure 59, 60. There is no admissible evidence showed Defendant had excusable cause to not response the court summons, court preceding and filed the Court for Transfer of Interest with the time limit and committed Default. In support, Plaintiff has respectfully files the motion to oppose Defendant's motion to response in opposition Motion for default judgment. The highlights for Plaintiff's objection are followings,

1) Defendant does not have good standing on this case

Based on Mr. Blockside's declaration statement #4, "On January 31, 2019, INVISTA sold its apparel and textile business, including the LaPorte, Texas facility where Mr. Gu previously worked in a stock transition to an unrelated party. As part of the sale, the Buyer assumed the associated debts, obligations, and liabilities of Defendant's related business." This is false and contradicting statement. Based on the news issued by INVISTA, the La Porte facility was an asset sale not stock sale. An unrelated third party could not assume liabilities. Furthermore, Defendant did not file or serve any motion to inform Court, Plaintiff and update new interest party per FRCP Rule 5 and 25. INVISTA does not have good standing on this lawsuit.

2) There is no evidence shows that INVISTA promptly forwarded a copy of the Complaint to the Buyer

No supporting to Mr. Blocksidge's statement, INVISTA did not provide any serve or forward evidence to show the court when, who and what method used to forward the complaint to the Buyer. Based on contacts and information source from the Lycra Company, it did not know the current lawsuit nor received any summon and court documents from INVISTA.

3) Almost every statement in Mr. Blocksidge's declaration were false

Mr. Blocksidge's declaration contained at least 4 and up to 6 false statements. The Fifth Circuit court fail to reverse district court ignored Plaintiff's dispute and did not verify, confirm and investigate those statements even after Plaintiff filed motion, ROA. 67 to against the declaration before the default judgment order, ROA. 75 issued.

A declaration must be based on the declarant's personal knowledge. The personal knowledge requirement for a declarant is minimal. Plaintiff and Mr. Blocksidge did not know each other in the past nor had any interaction with each other. Mr. Blocksidge did not have personal knowledge for the related matters including Plaintiff's hiring and job. Hearsay statements in a declaration would be inadmissible. The declaration must set out facts that would be admissible in evidence at trial. Based on the facts listed above, Mr. Blocksidge's declaration did not show that he was competent to testify on the matters stated in the declaration. His declaration was invalid and fault from which he committed crime of perjury. Plaintiff's motion listed details of Mr. Blocksidge's false statements in his declaration, ROA. 67.

4) Defendant did not respond the lawsuit in timely manner

Defendant was informed the lawsuit as early as February 8, 2019. Default date is April 15, 2019. Defendant filed motion to response ROA.44 on May 30, 2019, more than 110 days, which contained false statements, unacceptable reason and fault declaration without evidence to back up.

5) Defendant's untimeliness offended and discriminated Plaintiff Pro Se

Defendant's untimeliness delayed lawsuit and court proceeding including not serve Plaintiff, not summitted required filings, and made false statements under oath offended and discriminated Plaintiff Pro se.

6) The lawsuit is not a case of Res Judicata

This case is not Res Judicata as argued above. Plaintiff have provided many arguments about Res Judicata and reasons for re-open the case as above section mentioned. To support reopen the case, besides fraud or misconduct and even crime, Plaintiff had provided newly discovered and yet to be discovered evidence that could not have been discovered before, see details in Exhibit 4 of Dkt. 21 (ROA. 96-99)

7) **Statutes of limitation is not an issue to object**

The previous lawsuit filed in December 2014, and appeal proceeding was moving to US Supreme Court, which denied hearing writ of certiorari in February 2018. Plaintiff filed this lawsuit to reopen the case in February 2019. There are no statutes of limitation for reopen the case less than one year.

8) **The default cut off defendant's right to file a motion to dismiss**

Plaintiff filed the lawsuit and timely served to Defendant. Defendant fails to answer the complaint or file a motion to dismiss beyond the time limit set forth in the summons, the defendant is in default on April 15, 2019. The Default cut off Defendant's right to file a motion or appear in the lawsuit unless Defendant has a good explanation for why it failed to respond on time. Assume new party would response the suit was not good explanation at all. Therefore, the Defendant's motions to dismiss Dkt. 16, and 41 (ROA. 58, 187) are invalid and must be denied.

Furthermore, as of today, Defendant has not provided any information and evidence to prove it has good standing on this lawsuit, and has authority to file motions, ROA. 58, 187 to dismiss the case. The reasons Defendant provides to explain the reasons for default were proved to be false. Mr. Chuck Blocksidge, Associate General Counsel, committed perjury per his Declaration dated on May 30, 2019, ROA. 55-56. Besides filing motions to object this in the District court, Plaintiff has also filed the perjury complaint to FBI/DOJ for investigation and charge the crime!

In summary, there is no admissible evidence showed defend INVISTA has excusable cause to not response the court summons, response court preceding and filed the Court for Transfer of Interest, according to FRCP Rule 5 and 25. Comparing with Plaintiff's admissible evidences, Mr. Blocksidge has made at least four false statements in his declaration dated on May 30, 2019 and two false and contradicting statements to be verified and cross examined. Based on facts and evidences provided in documents this case, Plaintiff respectfully requests this Court vacate and reverse the order of deny entry of

default judgement, ROA. 75 and reschedule the default hearing to cross exam any related evidence Defendant could present if it is able to. If Defendant cannot provide any admissible evidences to explain the cause of default and cannot establish good standing, the court should issue Default Final Judgment and grant it all relief, to which Plaintiff is entitled per FRCP rule 55.

V. Fraudulent scheme, crimes, civil rights violation, discrimination Plaintiff Pro se

1) Fraudulent scheme and crimes happened and reported

Plaintiff has been reporting and complaining that fraudulent scheme, crimes, civil rights violation and discrimination Plaintiff Pro se happened and allowed in current and previous lawsuits many times in the District court. However, the Fifth Circuit court fail to reverse district court ignored the complains and did not investigate any of those complains, furthermore and worse, the court even did not acknowledge the issues exist and questioned Plaintiff ever raised or filed objection. Judge Peter Bray made following false statements in his Memorandum and Recommendations:

“The same is true of Gu’s perjury and constitutional claims. These claims are nothing more than complaints about how Invista litigated Gu I. Gu does not explain why he could not raise questions about false testimony or documents during the pendency of Gu I. Nor does Gu explain why he could not have filed objections based on lack of access to the court when he believed the problem arose.” ROA. 245-246.

Judge Bray’s above statements are false and disgraced because he should know these complains as he reviewed all the court filings and granted Plaintiff motion to amended claims on June 28, 2019, ROA. 112, 156, unless those above statements were not written by him. Plaintiff has been raising the false testimony, forge documents and contempt court orders many times and even reported to FBI and DOJ for investigations.

2) Crimes of Perjury, Forgery and Contempt Court Orders Committed by Defendant

Perjury, forge documents and contempt court order are serious crimes. Plaintiff has filed the claims in FBI and DOJ Houston per 18 U.S.C. § 1621-1623. In this case, Plaintiff has amended complaints and claims upon which relief should be granted and criminal prosecution handled by FBI/US attorney office and court.

Houston woman Amy Fisher was indicted and committed perjury on Nov. 17, 2014, during her deposition and trial testimony related to the civil trial of Lipinski et. al. v. Meritage Co., Civil Action No. H-10-CV-605. The judge ordered FBI/DOJ investigation and Ms. Fisher was convicted for perjury and punished.

As mentioned above many times, Plaintiff has filed the motions and complaints regarding the crime of Perjury (Mr. Blockside's false statements), forgery court documents including Judge Bray's signatures and contempt court order by refusing and delaying court filings, see details in Plaintiff's court filings. The Fifth Circuit court fail to reverse district court refused to acknowledge, review, investigate, correct and punish those fraudulent schemes, faults, and crimes.

3) Civil Rights Violation and Due Process Clause

Plaintiff has provided detailed arguments in his Motion to amend claims, ROA. 112 which granted by Judge Bray on June 28, 2019, ROA. 156. "In United States law, a state actor is a person who is acting on behalf of a governmental body, and is therefore subject to regulation under the United States Bill of Rights, including the First, Fifth and Fourteenth Amendments, which prohibit the federal and state governments from violating certain rights and freedoms."

In the previous case, Defendant has been using false "performance" evidence as pretext to terminate Plaintiff, despite Plaintiff has provided many evidences to prove he was qualified the job and had a good performance, see Plaintiff's Opposition to Motion for Summary Judgment for details (Gu I, Dkt. 41). Defendant INVISTA worked "closely" with Judge Hittner and acted as judge function as state actor by denying due process for Plaintiff by various ways including committed misconducts and even crimes, which violated Plaintiff's constitution rights.

In current lawsuit, Defendant provided a false declaration as an evidence to have judge Hittner issued the order, ROA. 75 to deny Plaintiff's motion for default judgment, ROA. 41. By the further discovery, Plaintiff would provide more evidences to prove Defendant's state actor role in current and previous cases.

As mentioned before, the buyer (new party) The Lycra Company is a public trade company, and it "assumed the associated debts, obligations, and liabilities of INVISTA's apparel and textile business". Therefore, INVISTA's representation of new party should be considered as a state actor. The new

Defendant is public traded company in this suit and should liable under constitutional claims.

The Due Process Clause of the Fourteenth Amendment is exactly like a similar provision in the Fifth Amendment. The due process clause is part of the 14th amendment which guarantees that no state may deny basic rights to the people.

The Fifth and Fourteenth Amendments to the United States Constitution each contain a due process clause. Due process deals with the administration of justice and thus the due process clause acts as a safeguard from arbitrary denial of life, liberty, or property by the government outside the sanction of law. The Supreme Court of the United States interprets the clauses broadly, concluding that these clauses provide three protections: procedural due process (in civil and criminal proceedings); substantive due process, a prohibition against vague laws; and as the vehicle for the incorporation of the Bill of Rights.

Plaintiff was denied the fundamental constitutional right of equal access to due process and equality under all of the Courts. One due process right that Pro Se litigants clearly have: the right to a meaningful opportunity to be heard. Denying the due process to Plaintiff Pro se violated his rights under the First, Eighth and Fourteenth Amendments of the United States Constitution.

4) Discrimination Plaintiff Pro Se by Defendant

Judge Bray's Memo and Recommendation did not address Plaintiff's claim of Discrimination Plaintiff Pro Se even he granted Plaintiff's request to add the claim on his order, ROA.156.

Defendant has been continuously discriminating plaintiff pro se by providing false statements in motions, reply, and depositions (Pittman, Huffman, Zens, Egbers) and declarations (Pittman, Blockside). Defendant did not follow court proceedings (Rule 5, 25, 26), and did not response to court in timely manner, committed default, refuse to disclose key information and did not serve Plaintiff Pro se when it files motions in the court at current lawsuit. Defendant's actions and behaviors are showed as that it is upper class party in the courts and it can manipulate court proceedings even committed crime of perjury, forgery and contempt court orders without received any sanctions and punishments.

VI. The Fifth Circuit court fail to reverse district court used inadmissible evidence to issue final judgment order and abuse of discretion

Where a trial court must exercise discretion in deciding a question, it must do so in a way that is not clearly against logic and the evidence. An improvident exercise of discretion is an error of law and grounds for reversing a decision on appeal. The traditional standard of appellate review for evidence-related questions arising during trial is the "abuse of discretion"

Most judicial determinations are made based on evidence introduced at legal proceedings. Evidence may consist of oral testimony, written testimony, videotapes and sound recordings, documentary evidence such as exhibits and business records, and a host of other materials, including voice exemplars, handwriting samples, and blood tests.

Before such materials may be introduced into the record at a legal proceeding, the trial court must determine that they satisfy certain criteria governing the admissibility of evidence.

An appellate court would find that a trial court abused its discretion if it used an evidence without proof that it was authentic. *Apter v. Ross*, 781 N.E.2d 744 (Ind.App. 2003).

Evidence that is formally presented before the trier of fact (i.e., the judge or jury) to consider in deciding the case. The trial court judge determines whether the evidence may be proffered. To be admissible in court, the evidence must be relevant (i.e., material and having probative value) and not outweighed by countervailing considerations (e.g., the evidence is unfairly prejudicial, confusing, a waste of time, privileged, or based on hearsay).

A declaration is generally inadmissible at trial. The facts asserted to in the declaration are admissible only if they are testified to by the declarant at trial, *Johnson v. Weld County.*, 594 F.3d 1202, 1210 (10th Cir. 2010)

In both current and previous lawsuits, the Fifth Circuit court fail to reverse district court judge David Hittner chose declarations from Mr. Chuck Blockside and Grant Pittman as sole "factual evidences" without reviewing, proofing, testified and cross examining by Plaintiff or experts to establish authenticity and admissible evidences. By using those two inadmissible declarations, Judge Hittner issued final orders for both current and previous lawsuits.

Per Rule 56(a), issuance of summary judgment can be based only upon the court's finding that, both:

- 1) there exists no disputed genuine issue of material fact between the parties requiring a trial to resolve; and
- 2) in applying the law to the (undisputed) facts, one party is clearly entitled by law to judgment.

The judge had no discretion at summary judgment time: all fact-finding is done by the jury at trial, not by the judge at summary judgment (the judge only looks for the existence of disputed "facts" to be "found").

Since Plaintiff disputed both declarations which are genuine material issues/facts and no trial nor hearing were conducted at the courts, both of Judge Hittner's orders are not valid based on FRCP rule 56 because of inadmissible evidences.

Judge Hittner's orders not compliance with federal laws. He has not only not followed the law but also abused his discretion. By doing these, he has also discriminated Plaintiff Pro se by ignoring, refusing review and correcting even after Plaintiff filed many motions along with factual evidences, ROA. 72-73, 91-95, 152. including admissible documents which would prove false and inadmissible evidences have been used to issue orders, ROA.75, 294, 295. The orders must be vacated and reversed.

Fifth Circuit court fail to reverse district court and judges did not allow Plaintiff complete deposition on key witness Grant Pittman, denying Plaintiff from hearing, trials, cross-exam Defendant's false and inadmissible statements/evidences including both declarations of Grant Pittman and Chuck Blockside. The District Judges made false statements on the facts and evidences. Plaintiff did not get a fair trial, nor hearing to present his evidences and arguments including the photo evidences which is admissible and non-disputed evidence Defendant never disputed.

Plaintiff/Appellant strongly and respectfully request Appeal Court to review and investigate all the issues ascended in this case, have a hearing and oral argument for the truth and resolution to reverse the District court orders and punish all the persons who committed crimes of perjury, forgery and contempt court orders.

The public policy interest of ensuring pro se litigants receive a fair hearing was addressed by this Court in *Haines v. Kerner*, 404 U.S. 519, 520-

21 (1971) when it held that pro se litigants' pleadings should be held to a less stringent standard than formal pleadings drafted by lawyers and should be liberally construed by the courts. The Eighth Circuit further addressed this issue in *Bramlet v. Wilson*, 495 F.2d 714 (8th Cir. 1974) when it held if there is any theory entitling a pro se litigant to relief – even a theory not considered or known to the pro se litigant – the court cannot dismiss.

The Fifth Circuit, however, affirmed the district court's erred order in spite of Petitioner's averment that there were evidences that would demonstrate Respondents fraudulently procured the order with participation of their attorneys.

This case arises against the backdrop of a well-developed body of law regarding Res Judicata, due process, default judgment, fraudulent scheme, crimes, civil right violation, discrimination Plaintiff Pro se and dismissal involving unresolved issues of material fact.

The Fifth Circuit's actions so far depart from the accepted course of judicial proceedings and sanction such a departure from the lower court regarding all the arguments and evidences mentioned above. Petitioner fully articulated there was unreviewed evidence from discovery requiring a court order to obtain that would prove Respondents committed fraud or crime at court proceeding.

VII. The Fifth Circuit Exceeded Its Powers and Acted as a Trier of Fact by Determining Relevance of Unproduced, Unreviewed Evidence

The Fifth Circuit failed to acknowledge unresolved issues of fact regarding Respondents' alleged fraud – and then exceeded its powers by acting as a trier of fact, determining the substance of evidence no court has ever reviewed and took the "word" of an individual alleged to have committed perjury and forge documents is of significant concern.

Considering that documents submitted to the courts are supposed to be truthful under penalty of perjury, it begs the question of why the district court and the Fifth Circuit took no action regarding allegations on INVISTA providing false documents and its witnesses committed perjury in deposition and declarations.

The Fifth Circuit's actions are irreconcilable with its role in the judicial system, depart from the usual course of judicial proceedings and beg for this Court's supervisory powers to review.

A. The Fifth Circuit Failed to Liberally Construe Petitioner's Pleadings as a Pro Se Litigant, as Required by Haines.

Petitioner is a pro se litigant before district court and Fifth Circuit. The district court and Fifth Circuit were required to construe Petitioner's pleadings liberally. They didn't.

Petitioner clearly stated district court judgments must be denied due to fraudulent scheme, crimes, civil rights violation, unresolved issues of material fact and most of INVISTA's claims and evidences were false. Yet district court and Fifth Circuit held Petitioner to an erroneous standard, not let him complete his discovery process by denying or not response Petitioner's motion to compel and sanction INVISTA. District court and Fifth Circuit has not even examined or mentioned Petitioner's claims, evidences and undisputable evidences. Instead, Fifth Circuit just declared that Petitioner's "entire appeal lacks an arguable legal basis for grant relief" without mentioning any argument and evidence in appeal documents nor any hearing or trial.

The holding below is contrary to and inexplicably ignored this Court's ruling in *Haines v. Kerner*. The district court and Fifth Circuit have effectively created a "Members-Only" access to the judicial system in their holdings by demanding a pro se litigant produce the same pleading as an experienced lawyer. This violates the law and spirit of Haines.

As this Court held, "[t]he only issue now before us is petitioner's contention that the District Court erred in dismissing his pro se complaint without allowing him to present evidence....[a]llegations such as those asserted by petitioner, however in artfully pleaded, are sufficient to call for the opportunity to offer supporting evidence." *Haines*, 404 U.S. at 519.

Petitioner may have in artfully pleaded his allegations. Yet his pleadings were sufficient for district court and Fifth Circuit to determine there were unresolved issues of fact and unreviewed evidence to resolve those issues.

In *Haines*, this Court held a pro se litigant was "entitled to an opportunity to offer proof" and remanded for further proceedings. *Id.* at 521. Inexplicably, despite Petitioner's statement that, if given the opportunity through some evidence produced with a court order, he could offer proof of his

allegations, the district court and Fifth Circuit refused him the very opportunity this Court has determined is due a pro se litigant.

The Fifth Circuit's decision ignores and contradicts precedent regarding how pro se litigants' pleadings are treated by courts and calls for review.

B. The Lower Courts Were Required to Liberally Construe Petitioner's Pleadings and Deny Judgment if There Was Any Legal Theory Under Which Petitioner Could Prevail.

The Fifth Circuit's holding diverges from well-established precedent and is at tension with holdings of this Court and Circuit courts.

"A pro se litigant's pleadings are to be construed liberally and held to a less stringent standard than the formal pleadings drafted by lawyers." Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991).

The Eighth Circuit has held "[a] complaint should not be dismissed merely because a plaintiff's allegations do not support the particular legal theory he advances, for the court is under a duty to examine the complaint to determine if the allegations provide for relief on any possible theory. Bramlet, 495 F.2d at 714.

The district court was required to consider Petitioner's allegations of unresolved or contested issues of fact. The district court and Fifth Circuit were required to determine if Petitioner's allegations of issues of fraud would allow for sanction on Respondent. They did not. The lower courts' actions violate Petitioner's constitutionally protected due process rights.

C. The Fifth Circuit's Decision Creates Tiers of Access to the Judicial System and Negatively Impacts Pro Se Litigants.

This case presents the important question of whether access to justice is contingent on the presence of legal representation. The number of Americans representing themselves in legal proceedings is high and continues to rise.

The Fifth Circuit's holding advocates that those with access to the best legal representation money can buy should prevail - but not based on the merits. This is unconscionable. Our justice system is not a country club. Access and due process are constitutional rights per Fourteenth Amendment, not platinum credit card benefits for the affluent.

The district court and Fifth Circuit were aware of evidence Petitioner couldn't obtain without court order which Petitioner averred would prove Respondent committed fraud and crime.

Rather than ensuring Petitioner's pleadings were liberally construed and every opportunity for a full and fair hearing was given, the lower courts were all too eager to dispose of this case and find for Respondents – not on the merits, but because Petitioner couldn't afford legal representation and didn't speak the court's "legalese."

However, "[j]udges are charged with ascertaining the truth, not just playing referee... A lawsuit is not a game, where the party with the cleverest lawyer prevails regardless of the merits." John Greacen, "Ethical Issues for Judges in Handling Cases With Self-Represented Litigants." Judicial Council of California (2007) quoting *Gamet v. Blanchard*, 91 Cal. App. 4th 1276 (2001).

VIII. The Fifth Circuit Did Not Follow McDonnel Douglas Framework and Decision in Previous Case Created a Direct and Substantial Circuit Split Regarding Age Discrimination Cases

The McDonnell Douglas framework that the Court inexplicably casts aside today was summarized neatly in *Burdine*, 450 U.S., at 252 110 S.Ct., at 1093. "First, the plaintiff has the burden of proving by the preponderance of the evidence a *prima facie* case of discrimination. Second, if the plaintiff succeeds in proving the *prima facie* case, the burden shifts to the defendant to articulate some legitimate, nondiscriminatory reason for the employee's rejection. Third, should the defendant carry this burden, the plaintiff must then have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination." 450 U.S., at 252–253, 101 S.Ct., at 1093 (citations and internal quotation marks omitted).

Based on *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-05 (1973) framework, the District Court found that Gu met his initial burden in establishing a *prima facie* case against INVISTA for age-based employment discrimination: 1) Gu was over age of 40, 2) Gu had a good performance, 3) Gu was terminated, and 4) INVISTA was favor young employee at the similar situations.

As a result, the burden then shifted to INVISTA who stated that its nonretaliatory reason for terminating Gu's employment was not due to his age, but rather due to "as a result of failing to meet expectation" without explanation of "expectation" (Termination letter dated on November 6, 2013). All the arguments and evidences can be found in previous case 4:15-CV-00240, No. 16-20463 and No. 17-6143 documents and similar cases, see *Bryant v. Compass Group USA, Inc.*, 413 F.3d 471, 478 (5th Cir. 2005) (quoting *Okoye v. Univ. of Tex. Houston Health Sci. Ctr.*, 245 F.3d 507, 514 (5th Cir. 2001)). *Wallace v. Methodist Hosp. Sys.*, 271 F.3d 212, 220 (5th Cir. 2001). *Sandstad v. CB Richard Ellis, Inc.*, 309 F.3d 893, 901 (5th Cir. 2002). *Dotson v. Gulf*, 2006 WL 44071, at *7 (S.D. Tex. 2 Jan. 9, 2006) (citing *Okoye*, 245 F.3d at 514-15). *Wallace v. Methodist Hosp. Sys.*, 271 F.3d 212, 220 (5th Cir. 2001). *Salazar v. Cargill Meat Solutions Corp.*, 5th Cir., No. 15-10097 (Oct. 8, 2015), *Reeves v. General Foods Corp.*, 682 F. 2d 515 (1982), *Bienkowski v. American Airlines, Inc.*, 851 F.2d 1503 (1988).

IV. Fifth Circuits's Decision Countenances Crimes and Begs For This Court's Supervisory Powers

A denial of review emboldens and insulates discrimination participants considering fraudulent testimony as a means to prevail. Denial or delay multiplies the irreparable harm the Fifth Circuit's decision legitimizes. Millions of Americans are bound by law and orders. The judicial system must ensure these individuals' due process rights aren't violated by the courts' countenance of fraud at proceedings.

At minimum, Respondents' activity includes perjured testimony, tempering evidence, obstruction of justice, contempt court order. Individually, or collectively, they're enough to warrant criminal prosecution, as Petitioner argued to the Fifth Circuit. See, e.g., regarding perjury and spoliation of evidence, *Rozier v. Ford Motor Co.*, 578 F.2d 871 (5th Cir. 1978), *Karppinen v. Karl Kiefer Machine*, 187 F.2d 32 (2nd Cir. 1951), *Newark Stereotypers Union No. 18 v. Newark Morning Ledger Co.*, 397 F.2d 594, 598 (3rd Cir. 1968), *Stridiron v. Stridiron*, 698 F.2d 204 (3rd Cir. 1983).

The Respondents' actions are serious of crimes. The Fifth Circuit's actions demonstrate bad law, bad policy. This court's supervisory powers and review are truly needed.

For Petitioner, everything is on the line. Petitioner has sought relief and had his due process rights abridged and violated by the lower courts.

As a practical matter, a denial of review insulates Respondents from any liability or consequences from an elaborate strategy of fraud or crime executed at courts by Respondents, their attorneys and counsels constituting not just crime, but crime upon the court. Respondents have become emboldened that they've gotten away with crime and continue to commit further crimes in the case proceeding. The Fifth Circuit has communicated parties can commit wrongdoing, suppress discoverable documents, forge documents, contempt court order and perjury. Party with money and power can do anything and win any case in any courts. Individual rights, constitutional rights, law and order were no contest to the money and power. If it is true as this case proceeding in district and Circuit, there is no chance for pro se litigant to win in any court level which represent a "black hole" (or fault) in our legal system which has no checkpoint until this Court. Respondents' behavior should have been shocking and unacceptable to the lower courts. Inexplicably, they have tolerated and condoned crimes.

Perjury, tampering with evidences and Contempt of Court Order are very serious crimes. At the Houston Woman case, Amy Fisher committed perjury on Nov. 17, 2014, during her deposition and trial testimony related to the civil trial of Lipinski et. al. v. Meritage Co., Civil Action No. H-10-CV-605, United States V. Amy Fisher, 15CR 227. When Amy Fisher was indicted for Perjury, former US attorney Kenneth Magidson stated that "The integrity of the judicial system requires truthfulness from all witnesses in legal matters in order for justice to prevail." "When perjury allegations are referred to us, we work closely with investigators to determine whether to seek federal criminal charges. We do not take allegations of perjury lightly in any proceeding - civil or criminal - and will pursue those that attempt to undermine the reliability of our legal processes."

Further delay multiplies irreparable harm to Americans bound by civil or criminal actions. Immediate review is manifestly appropriate in light of the circuit split or inconsistent on the issue of judicial review of Judgment awards, involving allegations of criminal procurement, violation of Petitioner's due

process rights as a pro se litigant, premature summary judgment in spite of unresolved issues of material fact, district court's departure from usual judicial proceedings and the Fifth Circuit's sanctioning of such a departure.

CONCLUSION

For the all forgoing reasons above, Petitioner respectfully request that this Court grant the petition for a writ of certiorari and keep the integrity of our judicial system from fraudulent schemes and crimes in order for justice to prevail.

Respectfully submitted,



Date: Aug. 9, 2021