

Supreme Court, U.S.
FILED

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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 REHEARING

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QUESTIONS PRESENTED

- A. What is the foundation of our constitution and constitutional law of age discrimination?**
- B. Petition involving unsettled questions of federal constitutional law which contained untrue, false evidences and even criminal actions is not worthy petition?**
- C. If a person committed perjury, who would receive penalty, who would not receive penalty?**
- D. Courts deny petitions without any explanation was Intelligence-based discrimination?**
- E. Nine questions listed in the petition for a writ of certiorari without any answers and comments?**

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ARGUMENT

I. Rule 44 Standard for Rehearing

Petitioner respectfully requests rehearing on her *Petition for Writ of Certiorari*, which was denied on November 15, 2021. Pursuant to Rule 44, this *Petition for Rehearing* is to arguments based on some unanswered constitutional questions, intervening circumstances of substantial and controlling effect and to other substantial grounds not previously presented.

II. Unanswered Constitutional Questions

A. What is the foundation of our constitution and constitutional law of age discrimination?

“The American Constitution is nothing more or less than Americans’ prevailing ideology. And this ideology—as any ideology comes from ideas about what is proper and improper, acceptable and unacceptable, desirable and undesirable, practical and impractical, noble and ignoble.” “The constitution is the actual legal framework of our society—and the actual legal framework in America today grants to government extraordinarily vast powers for intruding into the lives of peaceful people.”

The constitution only addressed our society's legal framework, however it did not address its foundation? You wouldn't build a skyscraper on a shaky foundation. You wouldn't even want to build your house on a shaky foundation. For a healthy society, without solid foundation, the framework "Constitution" can only be a game book for the powerful company/person. Petitioner's lawsuit experience proved that without doubt – age discrimination actions, coverup, crime of perjury, forge documents, and contempt court orders and “due process rights” were nothing but money, connection and game. The principle of society should be "truth, honesty, ethics, righteousness, virtue, fairness, goodness, Ten Commandments..."? Without these, the constitution is just a piece of document? That is why we have so many lawsuits that the legal system “could not handle”. We have the highest number of lawyers per capita and we

are one of top 5 most litigious countries by capita in the world. We would create even more lawsuits and problems when the proceeding did not address truth and rightness of lawsuit or the fundamental issues of many of problems in our society.

The Equal Protection Clause of the Fourteenth Amendment guarantees equal treatment under the law to all persons. Without foundation of constitution, how can we address the constitutional law of age discrimination and other issues? Without foundation, how we apply the "frame work" and ensure the equal protection to all persons? Allowing or excusing criminal actions such as perjury, forging document, contempt court order in the court proceedings would not be classified as Constitutional questions the courts including this court would consider, review, hearing or argue?

B. Petition involving unsettled questions of federal constitutional law which contained untrue, false evidences and even criminal actions is not worthy petition?

The Supreme Court is not a court of error? It does not intervene simply to correct injustices and misapplications of the law. *See S. Ct. R. 10* ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.").

Instead of seeking merely to correct erroneous decisions, the Court is looking, Chief Justice Rehnquist has written, for cases "involving unsettled questions of federal constitutional or statutory law of general interest." Rehnquist, *The Supreme Court: How it Was, How it Is* 269 (1987). Selecting these is inevitably "rather subjective" and involves "intuition" as well as "legal judgment." *Id.* at 265. Indeed, Justice Harlan thought "the question whether a case is 'certworthy'" to be "more a matter of 'feel' than of precisely ascertainable rules." Harlan, *Manning the Dikes* , 13 Rec. of the N.Y.C. Bar Ass'n 541, 549 (1958).

Intuition plays a role, but it is a patterned kind of intuition: Most cases in which certiorari is granted fall into one of three well-established categories (discussed at length and in all their variations in the Supreme Court practitioner's bible,

Stern, Gressman, Shapiro and Geller, Supreme Court Practice §§ 4.3-4.15 (7th ed. 1993)). These categories are:

- **Cases raising a federal law question on which a conflict has developed among the federal circuit or state supreme courts**

Comparing with the similar cases, the lower courts' decision conflict with decisions of one or more federal courts of appeals or state courts on an important issue of federal law of age discrimination:

United States District Court, W.D. Michigan, Southern Division. Taglia v. Pabst Brewing Co., 611 F.Supp. 1 (1983) Dismissed 55-year-old brewing company employee brought age discrimination suit against the brewing company. Brewing company moved for summary judgment. The District Court, Enslen, J., held that: (1) plaintiff was not required to show, as part of prima facie case under Age Discrimination in Employment Act, that he was replaced by younger employee outside of protected class which includes all persons between age 40 and age 70; (2) genuine issues of material fact existed regarding brewing company's intent and underlying motivation in replacing plaintiff, precluding summary judgment on Age Discrimination in Employment Act claim; and (3) genuine issue of material fact existed as to whether age was determining factor in brewing company's dismissal of the employee,

More cases compared in conflicted with my case:

US district court, M.D. Tennessee, Nashville Division, Ligon v. Triangle Pacific Corp., 935 F.Supp. 936 (1996)

United States District Court, D. Oregon. Sanders v. Dania Inc., Not Reported in F.Supp.2d (2001)

United States District Court, S.D. New York. Steinbauer v. Retirement Living Pub. Co., Inc., Not Reported in F.Supp. (1991)

United States District Court, D. Oregon. Beal v. Prime Equipment Co., a Texas Corp., Not Reported in F.Supp.2d (2000)

United States District Court, D. Kansas. Boyce v. Newman Memorial County Hosp., Not Reported in F.Supp. (1992)

United States District Court, S.D. Florida. Haaf v. Flagler Construction Equipment, LLC, Slip Copy (2011)

United States Court of Appeal, The tenth Circuit, Denison v. Swaco Geograph Co., 941 F.2d at 1420–21. MacDonald v. Eastern Wyoming Mental Health Center, 941 F.2d 1115, 1119

United States Court of Appeal, The 2nd Circuit, Powell v. Syracuse University, 580 F.2d 1150

United States Court of Appeal, The 7th Circuit, Flowers v. Crouch–Walker Corp., 552 F.2d 1277, 1283. La Montage V. American Convenience Prods., Inc., 750 Fed. 1405, 1413-14

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United States Court of Appeal, The 6th Circuit, Cooley v. Carmike Cinemas, Inc., 25 F.3d 1325 (1994)

United States Court of Appeal, The 5th Circuit, Normand v. Research Institute of America, Inc., 927 F.2d 857 (1991)

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Reeves v. General Foods Corp., 682 F. 2d 515 (1982)

Bienkowski v. American Airlines, Inc., 851 F.2d 1503 (1988).

Supreme Court of New Jersey, Zive v. Stanley Roberts, Inc., 182 N.J. 436 (2005)

- **The court below decided an important federal question in a way that conflicts with rulings of the Supreme Court**

Supreme Court set up the case McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802–04 (1973) as benchmark case for age discrimination. Plaintiff provided evidence that 1) he was a member of the protected class, 2) he was discharged, 3) he was qualified for the job, and 4) he was replaced by a younger worker outside the protected class.

United States Court of Appeal, The 6th Circuit, Blackwell v. Sun Elec. Corp., 696 F.2d 1176 (1983) The United States District Court for the Eastern District of Tennessee, Robert L. Taylor, Chief Judge, entered judgment in favor of plaintiff in an age discrimination suit, and employer appealed. The Court of

Appeals, Keith, Circuit Judge, held that plaintiff, who established that he was qualified for his job as a salesman, that he was discharged at age 64 and replaced by a younger worker outside the protected class and that his employer refused to expand sales territory for plaintiff but expanded the territory for the younger salesman who replaced him, established *prima facie* case of age discrimination;

United States Court of Appeals, Eighth Circuit. Rinehart v. City of Independence, Mo., 35 F.3d 1263 (1994) Terminated police chief brought age discrimination claim against city under Age Discrimination in Employment Act (ADEA) and Missouri Human Rights Act (MHRA). The United States District Court for the Western District of Missouri, Joseph E. Stevens, J., granted summary judgment for city. Police chief appealed. The Court of Appeals, Hansen, Circuit Judge, held that police chief was required only to show that he was replaced by someone younger, not that he was replaced by someone outside the protected class of workers or that age was factor in termination decision, in order to make out *prima facie* case of age discrimination, where he was replaced by someone 19 years younger than he in non-reduction-in-force case.

Several courts have held that an ADEA plaintiff need not prove that he or she was replaced by a younger employee in order to establish a *prima facie* case. *See, e.g.*, Loeb v. Textron, 600 F.2d 1003, 1013 (1st Cir.1979); Douglas v. Anderson, 656 F.2d 528 (9th Cir.1981). They reason that such an employer might hire an older worker in order to thwart an age discrimination suit if this were a requirement. Since the plaintiff in this case was replaced by an employee outside the protected class, we need not consider this issue.

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.

Comparing with those similar age discrimination cases mentioned above, Petitioner Gu provided even more convince evidence including evidence reflecting company's motivation, business plan and actions and "effectiveness"

related to old employees including hire a young engineer to replace Gu with almost identical job description as Gu's.

- **The court below decided a question of federal law that is so important that the Supreme Court should pass upon it even absent a conflict**

Age discrimination is a very important issue in our society. "This is a critically important time to reconsider the permissibility of age discrimination. The first members of the baby boom generation will reach traditional retirement age in 2011." Over 10,000 age discrimination cases have been filed in US. There are over 40 discrimination cases have been brought to against INVISTA and its parent company Koch Industrials. Supreme Court has heard over 117 age discrimination cases. This case could be very important as it could be the first such kind of case granted to the party who committed perjury as well as other ~~criminal~~ and misconduct acts.

United States Court of Appeal, The 11th Circuit. *Lambert v. Worldwide Marketing Technologies Corporation*, --- Fed.Appx. ---- (2017) Angela Lambert appeals pro se the dismissal of her complaint against her former employer, Worldwide Marketing Technologies Corporation, and its owners, Claudina Pennell, and Daniel Pennell. The district court dismissed Lambert's complaint as a sanction for refusing to comply with an order to produce her computer for inspection and for attempting to deceive a magistrate judge.

Supreme Court of the United States. *U.S. v. Norris*, 300 U.S. 564 (1937) 'Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, shall willfully and contrary to such oath state or subscribe any material matter which he does not believe to be true, is guilty of **perjury**, and shall be fined not more than \$2,000 and imprisoned not more than five years.' R.S. s 5392, now 18 U.S.C. s 231 (18 U.S.C.A. s 231).

- **The court below "so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power."**

Analyzing and comparing with all cases mentioned above, my case meets all those four categories of certwirth petition. The issue of Courts allows one party commit wrongdoing (change other party's documents), not following the law (not server to other party per rule 29) and even commit federal crimes (forge documents, contempt court order and perjury 18 U.S.C. § 1621, 1622, 1623 and CRM 1741-1767.) to win the case is not only none comparable case could be found but also a constitutional question to be heard in Supreme Court?

United States Court of Appeals, Seventh Circuit. Gordon v. United Airlines, Inc., 246 F.3d 878 (2001) The summary judgment standard is supposed to track the standard for sufficiency of evidence at trial. If a sensible jury could find in favor of the party opposing the motion, then summary judgment must be denied. That is a universally applicable standard; there is no room for a thumb on the scale against summary judgment in any class of cases. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986), holds that no special standard is appropriate when state of mind is at issue. See also Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 595, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986).

Supreme Court of the United States. U.S. v. Norris, 300 U.S. 564 (1937) George W. Norris was convicted of **perjury** in the District Court for the District of Nebraska. The judgment was reversed and the case remanded for a new trial by the Circuit Court of Appeals (86 F.(2d) 379), and the United States brings certiorari. Judgment of Circuit Court of Appeals reversed and judgment of District Court affirmed.

C. If a person committed perjury, who would receive penalty, who would not receive penalty?

During the under-oath deposition, testimony, declaration, or affidavit, one would state "I declares under penalty of perjury (under the laws of the United States of America) that the foregoing is true and correct." If a person committed perjury, who would receive penalty, who would not receive penalty? What kind of penalty he or she would receive?

In *St. Mary's Honor Center v. Hicks*, 509 U.S. 502 (1993), “Undoubtedly some employers (or at least their employees) will be lying. But even if we could readily identify these perjurers, what an extraordinary notion, that we “exempt them from responsibility for their lies” unless we enter Title VII judgments for the plaintiffs! Title VII is not a cause of action for **perjury**; we have other civil and criminal remedies for that.” Because decision of Court of Appeals reversed and case remanded, Defendant’s perjury was excused without penalty?

in 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.”

In my case, Defendant/respondent not only committed perjury (and other crimes and misconducts) without any penalty, but also award the judgment orders, instead of penalty!???

D. Courts deny petitions without any explanation was Intelligence-based discrimination?

Courts deny petitions without any explanation was normal, not worth to explain, not enough resource, or violate petitioner’s due process rights per Fourteenth Amendment or discrimination by knowledge, skills or intelligence? Intelligence-based discrimination is a form of social injustice deeply entrenched in the modern society and impacting people's lives every day. Intelligence discrimination should be addressed the same way as race, gender or age discrimination and legislation should be enacted to ban unfair treatment because of intelligence, or perception of intelligence.

Only handful certs out few thousands were heard in Supreme Court each year because not enough resource or not worth to review or hearing. "Justice Brennan routinely decided that a case was not certworthy by looking at the "Questions Presented" on the first page of the petition — and reading no farther. Justice Brennan could decide so quickly, he explained in a 1973 law review article, because 60% of paid petitions he saw were "utterly without merit." The Chief Justice, in a more recent article, has chided that 2000 petitions each year are so implausible that "no one of the nine [Justices] would have the least interest in granting them."

Who and how to decide "without merit", "implausible", and "least interest"? By Nine Justices or their clerks? Based on feeling, truth, facts and evidence? With the highest number of lawyers per capita and top 5 most litigious countries by capita in the world, we should have enough resource in the legal ecosystem. However, we cannot present any explanation on the court decision? Which could result in even more lawsuits and other "actions"?

Most of my motions, petitions were denied without any explanation, including my Petition of Writ of Certiorari and most like this Petition for Rehearing. I was told that it was normal, not worth to explain, not enough resource? I believe that it was violate petitioner's due process rights per Fourteenth Amendment and it was a **discrimination** by knowledge, skills or intelligence.

E. Nine questions listed in the petition for a writ of certiorari without any answers and comments?

Following questions are listed in the petition for a writ of certiorari for this court to review. The details arguments and supports are listed on the petition,

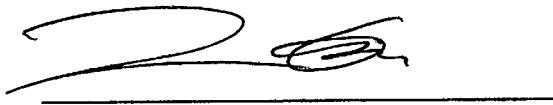
1. Whether the Fifth Circuit erred issued orders to claim that Plaintiff/Appellant's claims are barred by Res Judicata.
2. Whether the Fifth Circuit fail to reverse district court denied due process and allowed fault, misconducts and crime of perjury, forgery and contempt court orders in the lawsuit,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

CONCLUSION

This petition involves many unsettled questions of federal constitutional age discrimination law which contained issues of untrue, false evidences and even criminal actions. Based on rule 10, governing review on certiorari, this petition meets all the requirements and should be certwothy petition. Petitioner respectfully requests that this Court Grant Petitioner rehearing, considering this case in the reference of McDonnell Douglas Corp. v. Green. St. Mary's Honor Center v. Hicks as well as other 30 cases cited.

Respectfully submitted,



Fan Gu

Date: November 30, 2021

Certificate of Counsel

I hereby certify that this petition for rehearing is presented in good faith and not for delay.

A handwritten signature in black ink, appearing to read "Fan Gu", is written over a horizontal line.

Fan Gu