NO. 21-6709

* * *

In the Supreme Court of The United States

* * *

Suran Wije, *PETITIONER*

v.

United States of America, *RESPONDENT*

* * *

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, NO. 20-50070

* * *

PETITION FOR WRIT OF CERTIORARI

* * *

Suran Wije
8532 N Lamar Blvd Apt 5229
Austin, TX 78753
(512) 577-9453, (No Fax), suran3@hotmail.com
Unrepresented or Pro Se Litigant

QUESTION PRESENTED

Respondent, the United States of America (U.S.), pledged "global competitiveness" and "equal access" to education for *all* American students; nevertheless, for decades the U.S. allowed an entire generation of students with invisible disabilities—including petitioner—to be segregated and denied a legal education[1]. Petitioner Wije, alternatively, then took all the credit hours for another master's degree, earned an "A" in all its coursework (except one with grading fraud[2]), and paid all the tuition plus fees. Respondent U.S. knew (or should have known) that—despite a decade of more segregated operations—petitioner was the first and only male of color permitted to integrate that flagship graduate program, perhaps, as a token gesture due to an imminent accreditation review; nonetheless, when petitioner was again denied another second graduate degree, respondent—in a repeating "pattern-or-practice"—still did nothing[3].

QUESTION: An exception to the Thirteenth Amendment[4] permitted slavery to continue for an additional 80 years; likewise, will another exception or immunity to the Fifth Amendment[5] allow reinvented segregation to also continue within the United States?

---

[1] Please see the United States Department of Education's (USDE) "Overview and Mission Statement," **https://www2.ed.gov/about/landing.jhtml** and especially **https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201304.html** . Respondent granted LSAC.org a monopoly for law school admissions. Then, USDE ignored discriminatory "flagging," which not only violated HIPAA but also enabled de facto segregation (*DFEH v. LSAC Inc.*).

[2] An excerpt from an earlier pleading detailed how the university professor's grading scam functioned: "change the question (instructions) to match the answer," **http://svj1.com/twu/** (please see before and after Exhibits 3, 4, and 5).

[3] Student loan debt cannot be discharged through bankruptcy, and the debt may even be garnished from one's social security checks; therefore, petitioner is now in a six-figure, financial aid, *debt bondage* to respondent for an expensive master's degree he rightfully earned but was denied because of longitudinal "deliberate indifference" to constitutional violations. Furthermore, since *DFEH v. LSAC Inc.*, is applicable to petitioner, respondent can now capitalize on its past failures: denying both petitioner and an entire generation of American students with invisible disabilities equal access to legal education directly results in an indigent pro se's ignorance of the law.

[4] The phrase "except as a punishment for crime" within the Thirteenth Amendment was the exception that enabled a system of peonage or *debt bondage* slavery to thrive for another 80 years after the Emancipation Proclamation in 1862. **Please view omitted history**, *Slavery by Another Name*, **https://www.pbs.org/show/slavery-another-name/** (1 hour, 25 minutes).

[5] Both the Fourteenth Amendment (for states) and the Fifth Amendment (for federal) contain these exact 11 words: "[no one shall be] deprived of life, liberty or property without due process of law." Equal protection is a substantive component of due process: "Equal protection analysis in the Fifth Amendment area is the same as that under the Fourteenth Amendment" (*Buckley v. Valeo*, 424 U.S. 1, 93 (1976); *Weinberger v. Wiesenfeld*, 420 U.S. 636, 638 n.2 (1975); *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 214–18 (1995)).

LIST OF PARTIES

The following constitutes a list of all parties with their names and addresses:

Petitioner:
Suran Wije

Counsel:
Suran Wije, Pro se
8532 N Lamar Blvd Apt 5229
Austin, TX 78753
(512) 577-9453, suran3@hotmail.com
Unrepresented or Pro Se Litigant

Respondent:
United States of America

Counsel:
Mr. Brian H. Fletcher
Acting Solicitor General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

RELATED CASES

In federal appellate practice, the record on appeal is abbreviated ROA.

- United States Court of Appeals for the Fifth Circuit: No. 20-50070. The appeal was **dismissed as frivolous** without ever addressing the *Bivens* action on August 23, 2021. The **judgement** is located at Appendix Tab 1. (Because of two appeals to this Court with overlapping deadlines, Justice Samuel A. Alito granted a filing extension to December 15, 2021.)

- United States District Court for the Western District of Texas: No. 1:19-CV-660. ROA.20-50070.126-33 shows the **Report and Recommendation of Dismissal Without Leave to Amend** on August 14, 2019; ROA.20-50070.209-10 documents the **De Novo Review Dismissal Order** on December 3, 2019; and, the December 3, 2019 **Final Judgement** is located at ROA.20-50070.211. Both the order and final judgement are also found at Appendix Tab 2.

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

No "nongovernmental corporations" are involved, as this suit is against the United States for both short-and-long term deprivation of constitutional rights "under color of federal law."

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

Cases

Statutes and other authorities

BIVENS ELEMENTS, IMMUNITIES, AND EXCEPTIONS

BIVENS ELEMENTS: "The elements of a *Bivens* claim are the same elements as an analogous 42 U.S.C. § 1983 claim except that a federal actor is required instead of a state actor" (*Bieneman v. Chicago*, 864 F.2d 463, 469 (7th Cir. 1988). Therefore, do the issues and facts of this lawsuit indicate a violation of constitutional rights similar to the Section 1983 claim in *Wije v. Burns* et. al? The mechanism by which our U.S. Constitution's guaranteed rights like due process of law and equal protection under the law are enforced is through 42 U.S.C. § 1983, which allows state officials (or federal under *Bivens*) to be sued in their individual capacity (state/federal government not suable person), *Brandon v. Holt*, 469 U.S. 464 (1985). To prove the elements of a *Bivens* claim, a plaintiff must establish that

(a) the defendant violated a federal constitutional right of the plaintiff;

(b) the right was clearly established (and not excused by qualified immunity);

(c) the defendant was a federal actor by virtue of acting under color of federal law; and

(d) the defendant was personally involved in the alleged violation (*Patterson v. United States*, 999 F. Supp. 2d 300).

As an aside, the defenses for a *Bivens* action are absolute and qualified immunity while the defenses for a Federal Tort Claims Act (FTCA) are the discretionary function and intentional torts exceptions; however, having fallen into an anticipatory pleading trap already in *Wije v. Burns* et. al and out of an abundance of caution, petitioner hypothetically applied the discretionary function exception within the "Reasons for Granting the Petition" section to a *Bivens* action, also, to neutralize any unknown emerging and evolving trends.

Respondent U.S., collectively, refers to federal actors, investigators, and leaders at the Office for Civil Rights (OCR) and elsewhere within USDE's operations management leadership team. The "Question Presented" section above with footnotes enumerates some of petitioner's federal constitutional rights violated by respondent: race with sex discrimination in school segregation, ongoing retaliation with debt-bondage, no due process or equal protection, Fifth Amendment violations, and Fourteenth Amendment via U.S. Bill of Rights violations. Any reasonable federal official would understand that deliberate indifference to nearly 10 years of racist school segregation (*Bolling v. Sharpe*, 347 U.S. 497 (1954)) and approximately 90 years of sex discrimination at petitioner's beloved alma mater, TWU.edu , (*Davis v. Passman*, 442 U.S. 228 (1979)) would violate these clearly established constitutional rights as well as the equal protection element of the Fifth Amendment's due process clause for the constitutionally treasonous[6] betrayal of ongoing retaliation (ROA.20-50070.201-4, Exhibit J: Retaliation Unenforced) with debt-bondage. Respondent is employed by the federal government (ROA.20-50070.199-200, Exhibit I: 40+ Files Accessed and Investigator Agreement on Retaliation) to enforce constitutional rights, hence, they acted under the color of federal law, since they engaged in federal action. Lastly, respondent was personally involved, because it gathered facts, processed documents (ROA.20-50070.199-200, Exhibit I), and mysteriously called petitioner—without even an appointment—(ROA.20-50070.207, Exhibit Z: 1st Affidavit.

---

[6] All civil rights laws fall apart when retaliation is ignored, because Americans become too afraid to come forward (Exhibit J: Anti-Retaliation Warning, **https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201304.html**). During the over ten-year course of this ordeal, that is exactly what actually occurred (please see the Facebook.com communication at the end of Exhibit J, p. E38, ROA.20-50070.204, **http://svj1.com/petition/ExhibitJ.htm**)! Also related, ROA.20-50070.192-6, Exhibit G: Feminists Politicizing Education, **http://svj1.com/petition/ExhibitG.pdf** and ROA.20-50070.206, Exhibit Z: 1st Affidavit, #2 Current Climate, **https://www.amazon.com/Red-Pill-Cassie-Jaye/dp/B06XGXFCZX/** .

#6 Inculpatory Evidence) but only after petitioner's lawsuit was imminent or filed.

Similar SCOTUS case precedents—like *Bolling* (for race) and *Davis* (for sex)—defeat the doctrine of qualified immunity (*Hoyt v. Cooks*, 672 F.3d 972, 977 (11th Cir. 2012)), which shields federal agents from liability (*Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). Qualified immunity may also be overcome by citing a "broader, clearly established principle [that] should control the novel facts in [a] situation." *Mercado v. City of Orlando*, 407 F.3d 1152, 1159 (11th Cir. 2005) as well as by showing that an "official's conduct 'was so far beyond the hazy border between excessive and acceptable force [or the aforementioned pattern-or-practice of deliberate indifference spanning generations] that [the official] had to know he was violating the Constitution even without caselaw on point.'" *Priester v. City of Riviera Beach*, 208 F.3d 919, 926 (11th Cir. 2000) (alteration in original) (quoting *Smith v. Mattox*, 127 F.3d 1416, 1419 (11th Cir. 1997) (per curiam)). Additionally, SCOTUS has recently held that an FTCA statutory exception dismissal may not preclude a *Bivens* action (*Simmons v. Himmelreich*, 136 S. Ct. 1843, 1849-50 (2016)); also, an adverse FTCA judgment reversal removes a *Bivens* bar (*Gasho v. United States*, 39 F.3d 1420 (1994)).

More seriously, however, because the constitutionally treasonous, dual-betrayal of ongoing retaliation with debt-bondage forever destroys both students' lifelong learning lives and their careers, the statute of limitations—if challenged—may be tolled or renewed until that Fifth Amendment continuing violation ends (statutory/common-law discovery rule, equitable estoppel, equitable tolling, and civil rights continuing violations in education, *Palmer v. Board of Education*, 46 F.3d 682 (7th Cir. 1995)). Unlike other students' normal life milestones—such as graduation celebrations, bankable master's-degreed employment, getting married, buying a house, or starting a family—petitioner was intentionally and longitudinally "deprived of life, liberty, or property, without due process of law" by both state and federal governments (ROA.20-50070.178-9, note, unethical legal trickery from Title VI to Title VII). Accordingly, the underlined elements above—sustained by the documentary evidence of numerous exhibits and directly linked

to the legal injuries of federally protected rights—cogently indicate the intent necessary for a prima facie *Bivens* claim in respondent's individual capacity (ROA.20-50070.70-4, First Amended Complaint, #6 - #8 *and* ROA.20-50070.161-5, Background in Second Amended Complaint, #1 - #3).

Alleged overtime pay fraud, segregated staff meetings, de facto blacklisting, and bribes masquerading as tax-deductible charitable donations are described in *Wije v. Burns* et. al (No. 21-6153, **https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/21-6153.html**) as innovative and pernicious tactics to redesigned and resurrect segregation. An amended excerpt of its absolute and qualified immunities analysis is applicable to this suit and included next.

ABSOLUTE IMMUNITY: Upon graduating college, (past) plaintiff (as distinguished from present petitioner) could not afford to buy a house but could afford a unit within a condominium complex. To transition from a renter to an owner, plaintiff purchased and remodeled a condo. However, as a novice owner, plaintiff hired a referral company that guaranteed to send only licensed, insured, and background-checked contractors. Unfortunately, the visiting contractor destroyed plaintiff's condo on the first day and went on vacation on a tour bus in Mexico on the second day. Unable to afford a construction law attorney but still eligible for limited student legal services, plaintiff had his draft original petition reviewed by a team of lawyers to correctly state a claim and sued unrepresented or pro se.

The county court judge insisted on a bench trial and dismissed the suit for failure to state a claim—without any explanation. Plaintiff proved that defendant sent over an incompetent and dangerous contractor who was not licensed and who had served time in prison for assaulting an armed police officer! The judge was unmoved. Plaintiff also proved that defendant had spoiled or falsified a key piece of evidence—the remodeling

contract—and submitted it to the court as exonerating evidence despite its fraudulent redactions. The judge was still unmoved and a findings of fact was never granted. Plaintiff was ordered to pay the legal fees of defendant, which approached or exceeded six-figures! Since the judge was an elected official, like a politician, and the parent company of defendant was Sam's Club/Walmart, plaintiff left that experience believing that if the judge wanted to get reelected, he had no choice but to rule in favor of a wealthy and powerful corporation (*Suran Wije v. The Home Service Store, Inc.*, 2005, Travis County #268579). When money equals speech, the weight of money—not evidence—tips the scales of justice and a democracy becomes an oligarchy. Judges, prosecutors, legislators, and executive officials are protected from lawsuits by absolute immunity for their official duties, but the respondent of this *Bivens* action is not.

QUALIFIED IMMUNITY: Good faith immunity, also called qualified immunity, arose out of a whistleblower case, *Harlow v. Fitzgerald*, 457 U.S. 800 (1982); interestingly, petitioner Wije also suffers (appendix, Tab 5 in *Wije v. Burns* et. al) from internal-only whistleblowing while trying to help his State of Texas and beloved alma mater avoid a costly security breach (Tab 4 also in *Wije v. Burns* et. al). Courts have interpreted *Harlow* to mean that—by default—*all* government workers are immune from constitutional liability.

Imagine paying insurance premiums (or federal taxes) to your insurance company for decades, but then your car is struck from behind and totally destroyed. Yet, the insurance company utilizes unreasonable technicalities to avoid accountability, for example, by telling you that your car was not on the required road (or jurisdiction), and that it was not struck by a precisely similar car that had struck another car on that very same road sometime in the past (or a "clearly established" car).

Next, consider that the insurance company (or federal judiciary) does not even bother to investigate the scene of your accident; now, your car cannot be included in the list of past clearly established cars eligible for insurance claim repairs. That is what

occurred in *Pearson v. Callahan* (555 U.S. 223, 2009), which causes "constitutional stagnation" or a blockage of the accumulation of new and different cars eligible for claim repairs. You have paid your insurance premiums or federal taxes for a lifetime but dishearteningly realize that the often-advertised promises of "**Equal Justice Under Law,**" **https://www.supremecourt.gov/about/constitutional.aspx** , do not apply to you!

Surprisingly, Congress did not create the doctrine of qualified immunity, it is not found in the U.S. Constitution, and it was never a defense to a Section 1983 action: qualified immunity is the ill-fated result of judicial policymaking (**Institute for Justice**, 2020). In our vertically integrated nation of "We the People," now from all over the world, government thrived without qualified immunity before 1982, and in *Hope v. Pelzer* (536 U.S. 730, 2002) and *Taylor v. Riojas* (No. 19–1261, 2020), the Supreme Court of the United States cabined qualified immunity. Consequently, this Court should again pronounce against illiberal democracy (Fareed Zakaria, 2021) and that the resurrection of "Segregation now! Segregation tomorrow! [and] Segregation forever!" within the hearts and minds of some public servants is an obvious violation of all Americans' constitutional rights (*Rivas-Villegas v. Cortesluna* (20-1539) (per curiam), citing "*White [v. Pauly]*, 580 U.S., at ___ (slip op., at 6) (alterations and internal quotation marks omitted)") (Clark Neily, 2021; **https://www.cato.org/blog/conservative-case-against-qualified-immunity**).

OPINIONS BELOW

Nature of the case:	This suit hopes to recover constitutional rights lost, potentially, for an entire lifetime due to de facto—not de jure—segregation financed by all taxpayers' dollars.
Disposition:	The district court ruled in favor of defendant-respondent by dismissing without leave to amend. The appeal too was dismissed as frivolous without ever addressing the *Bivens* action.
Status of opinion:	"Pursuant to 5th Circuit Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Circuit Rule 47.5.4." (please see appendix Tab 1, unnumbered page 1, footnote with asterisk)

JURISDICTION

The date on which the United States Court of Appeals for the Fifth Circuit decided this case was August 23, 2021. A copy of that decision appears at appendix Tab 1. No petition for rehearing was timely filed in this case. Because of two appeals to this Court with overlapping deadlines, an extension of time to file the petition for a writ of certiorari was granted to and including December 15, 2021 on October 26, 2021 in Application No. 21A108. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- Title VI of the Civil Rights Act of 1964

- Equal protection and due process of the Fifth Amendment (please see footnote 5, page ii)

STATEMENT OF THE CASE

Petitioner, Suran Wije, brought a constitutional rights violation action against his beloved alma mater, TWU.edu , and USDE who admitted wrongdoing (ROA.20-50070.207, Exhibit Z: 1st Affidavit. #6 Inculpatory Evidence). This drastic action was taken after numerous unsuccessful internal appeals with the university and external appeals with USDE. Consequently, a frightening new precedent has been established in U.S. higher education where a student can take all the graded credit hours for a college degree; pay all the expensive tuition and fees; stay up late until 3 a.m. writing term papers and earning "A's" in all the courses (except one with grading fraud[2]); and amass six-figures in toxic, bankruptcy non-dischargeable, student loan debt; nonetheless, the student can still be told by the unaccountably discriminating and retaliating university that s/he is "not a good fit" to get that degree s/he had already earned—rightfully—by any objective standard. The district court dismissed without leave to amend. The appeals court also dismissed as frivolous without ever addressing the *Bivens* action. Petitioner now asks the Supreme Court of the United States whether affirmative defenses like immunity enable the crushing of Americans' inalienable and equal rights like liberty within the Fifth Amendment.

REASONS FOR GRANTING THE PETITION

Qualified immunity (and the discretionary function exception), which do not operate alone inside a vacuum, should be assessed and cabined from the perspective or wishes of the three branches of our federal government: legislative (Congress), executive (POTUS), and judicial (SCOTUS).

- Congress: Did the U.S. Legislature intend to allow short-and-long term segregation with debt bondage retaliation in publicly financed education via qualified immunity and the discretionary function exception? No. Neither immunity nor exception should shield from liability a "constitutional question beyond debate" like redesigned segregation (*Rivas-Villegas v. Cortesluna* (20-1539) (per curiam), citing "*White [v. Pauly]*, 580 U.S., at ___ (slip op., at 6) (alterations and internal quotation marks omitted)").

- POTUS: The President of the United States' (POTUS) Cabinet has 15 executive departments, including USDE, which made this solemn pledge to students: **https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201304.html** (please see link's footnote 1). Thus, "a failure to effectuate policy choices already made [like anti-discrimination and anti-retaliation] will not be protected under the discretionary function exception (*Marlys Bear Medicine v. United States ex rel. Secretary of the Department of Interior,* 241 F.3d 1208, 1215 (9th Cir. 2001))."

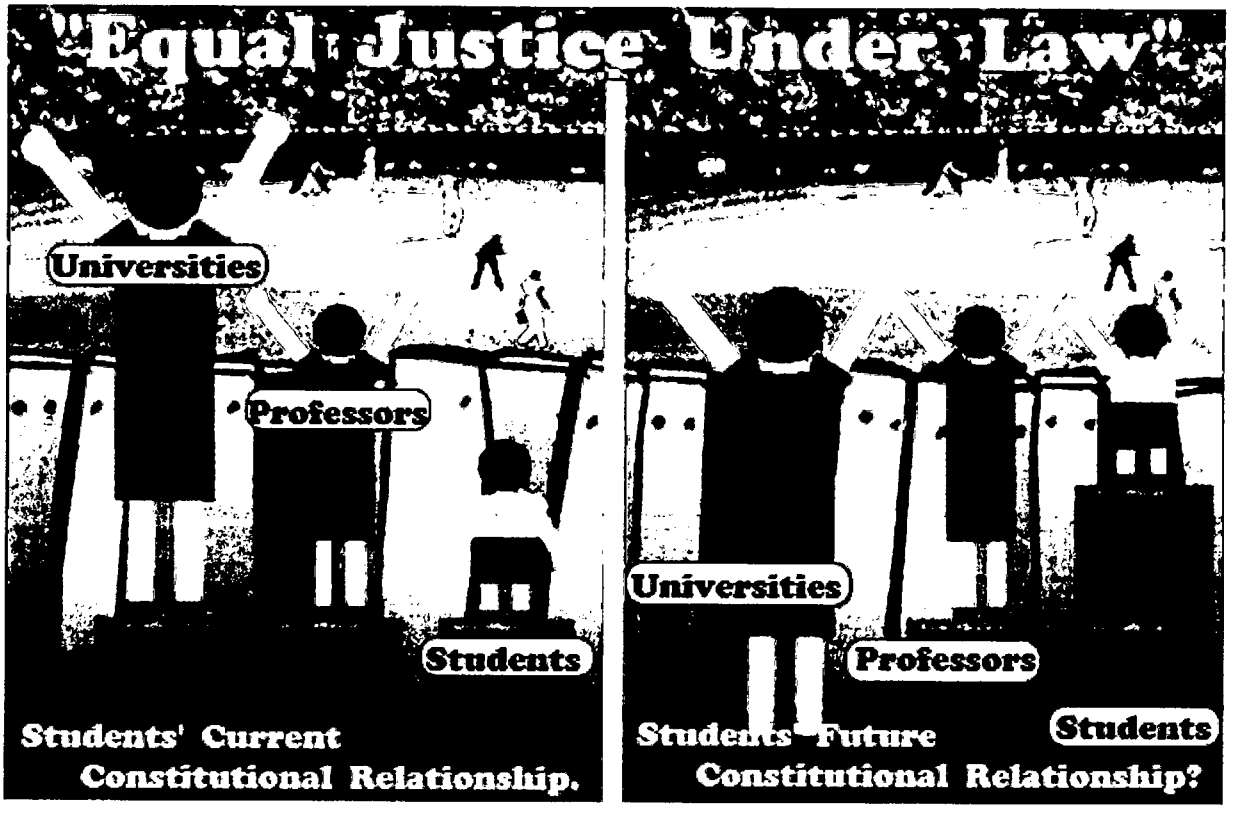
- SCOTUS: The Supreme Court of the United States (SCOTUS) maintains a separation of powers by avoiding judicial second-guessing of social, economic, and political decisions by government officials; yet, "When a suit charges an agency with failing to act in accord with a specific mandatory directive [such as Title VI of the Civil Rights Act of 1964 and the Fifth Amendment as linked earlier above], the discretionary function exception does not apply" (*Berkovitz v. United States*, 486 U.S. 544 (1988)).

There is no judgement or choice when the USDE admits to ignoring discrimination and retaliation (ROA.20-50070.207, Exhibit Z: 1st Affidavit. #6 Inculpatory Evidence). There is only the alleged implicit bias of its employees preventing swift action—not once but twice during petitioner's lifelong learning pursuits. Having fallen into an anticipatory pleading trap already in *Wije v. Burns* et. al and out of an abundance of caution, petitioner hypothetically applied the discretionary function exception to a *Bivens* action, also, to neutralize any unknown emerging and evolving trends. While it may be an interesting intellectual exercise comparing and contrasting exception and immunity defenses from the perspective or wishes of the three branches of our federal government, it should be ignored as the discretionary function exception is not a defense to a *Bivens* action.

A more cogent reason for granting the petition is that severely cabining qualified immunity will help reduce public corruption like (in this matter) alleged grading fraud, short-and-long term segregation, (in *Wije v. Burns*, et. al) overtime pay fraud, segregated staff meetings, de facto blacklisting, and bribes masquerading as tax-deductible charitable donations. Moreover, giving tenured university professors with guaranteed lifetime employment a free legal defense at public expense only prolongs and promotes anti-constitutional behaviors as they will then give themselves pay raises, promotions, and even awards, **http://svj1.com/twu/Exhibit13_Award.htm** (Exhibit 13), while continuing to politically coerce and bully weak and vulnerable students, **http://svj1.com/petition/ExhibitJ.htm** (Exhibit J), even after a lawsuit has been filed against them.

From elementary school to college, we are taught that our Constitution is the supreme law of the United States (U.S.) of America. What is written in stone on the courthouse building of the Supreme Court of the United States—"Equal Justice Under Law,"—faithfully reminds us that no one is above (or below) that supreme law. Consequently, as a citizen-owner or taxpaying-shareholder, every American has a responsibility to defend and protect the U.S. Constitution, since that also safeguards our

fragile democracy[7]. Likewise, students, alumni, and taxpayers are the true owners of a publicly-funded university, while powerful and protected professors are its esteemed stewards. When we discover constitutional violations—such as racism, sexism, and retaliation—as well as fraud, waste, abuse, and dishonorably corrupt grading practices by tenured college professors with guaranteed lifetime employment, we also have a duty to defend our alma mater.



Since the collective well-being of all U.S. pupils and the long-term prosperity of our republic (ROA.20-50070.208, #7 "it should not take another 40 years") depend on swift "Equal Justice Under Law"—even for debt-bondaged, voiceless students—this suit is brought as a civic-duty, *management consulting service* to defend, protect, and hopefully strengthen our U.S. Constitution for all Americans—independent of their

geography or socioeconomic status. For these reasons, this case should be reversed and remanded to the trial court for further consideration and a jury trial.

---

[7] As a first-generation immigrant or naturalized U.S. citizen, petitioner strongly believes that democracy is always difficult, dangerous, and time-consuming work . . . , yet if we are too complacent or too cowardly to meet its never-ending demands, we do not get another country! Petitioner feels guilty that he could not fight for our military, but by fighting for our U.S. Constitution or *E Pluribus Unum*, petitioner hopes to be worthy of his citizenship.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

/s/ Suran Wije December 15, 2021
8532 N. Lamar Blvd. Apt. 5229 Austin, TX 78753
512-577-9453 suran3@hotmail.com