

No. 21-90

Supreme Court, U.S.
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IN THE
Supreme Court of the United States

Abel Belmonte
Petitioner,

v.
City of Dallas
Respondent.

On Petition for a Writ of Certiorari to the
United States Northern District of Texas and
US Court of Appeals for the 5th Circuit

PETITION FOR A WRIT OF CERTIORARI

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SUPREME COURT, U.S.

(i)

QUESTIONS PRESENTED

1. Whether under the 14 amendment and in addition to title 7 and 42 U.S.C. §200e-16(a) (race, color, religion, sex or national origin) a claim on, and/or could be brought against the City of Dallas in claiming it has sovereign immunity?
2. Whether the Judiciary has authority to overrule the 14th amendment in addition to title 7 and 42 U.S.C. §200e-16(a) (race, color, religion, sex or national origin) on, and/or basis of sovereign immunity?

(ii)

PARTIES TO THE PROCEEDING

Abel Belmonte was the petitioner.

The respondent is The City of Dallas.

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1. The decisions of the North District Court of Texas and 5 th circuit Court of Appeals. Whether the courts ruled in favor of Defendant on basis of sovereign immunity when it conflicts with most importantly plaintiff's 14 th amendment right in addition to discrimination under title 7 and statutes.	
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United States Court of Appeals for the Fifth Circuit of Appeals for the Fifth Circuit
Appeal from the United States District Court for the Northern District of Texas USDC
No. 3:19-CV-2656 filed 5.04.21 Doc 35 on Northern District of Texas
Order of the United States Court of Appeals for the Fifth Circuit
COURT ORDER granting jurisdictional review to dismiss appeal lack of jurisdiction [
9547362-2]. Mandate issue date is 05.04.21 Entered 04.12.21. Case Number 0:2021cr10163

United States Court of Appeals for the Fifth Circuit Appeal from the United States
District Court for the Northern District of Texas USDC No. 3:19-CV-2656 Filed 4.12.21

In the United States District Court for Northern District of Texas Dallas Division
Findings Conclusions, and Recommendation of the Recommendation of the United
States Magistrate Judge Filed 6.03.20 Doc 18

Order of the Texas Northern District Court
Order Accepting Findings, Conclusions And recommendations of the United States
Magistrate Judge Filed 07.07.20 Doc 21

Order of the Texas Northern District Court
ORDER ACCEPTING 30 FINDINGS, CONCLUSIONS, AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE Filed 02.09.21(ENTERED 5.11.21)
Case number 3:19-cv-02656-G-BK Doc 30

Order of the Texas Northern District Court
Order Accepting 36 Findings, Conclusions, and Recommendation of the United States
Magistrate Judge Filed 5.10.21 Doc 36

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Petition For Writ of Certiorari

The case presents the Court with an opportunity to continue providing Coherence and clarity of our constitution of the United States of America. Regarding plaintiff's violation of his 14th amendment. Defendant has been claiming Sovereign immunity against in what plaintiff believes to be one of his most important argument is his 14 th amendment. In which under the 14th amendment plaintiff is protected. Under 14 amendment, Defendants practices and/or policies violated plaintiffs 14 amendment right, under the equal protection clause. Also abridged the privilege or immunity of plaintiff. He did not have the liberty of going home when he had to stay, because he was a

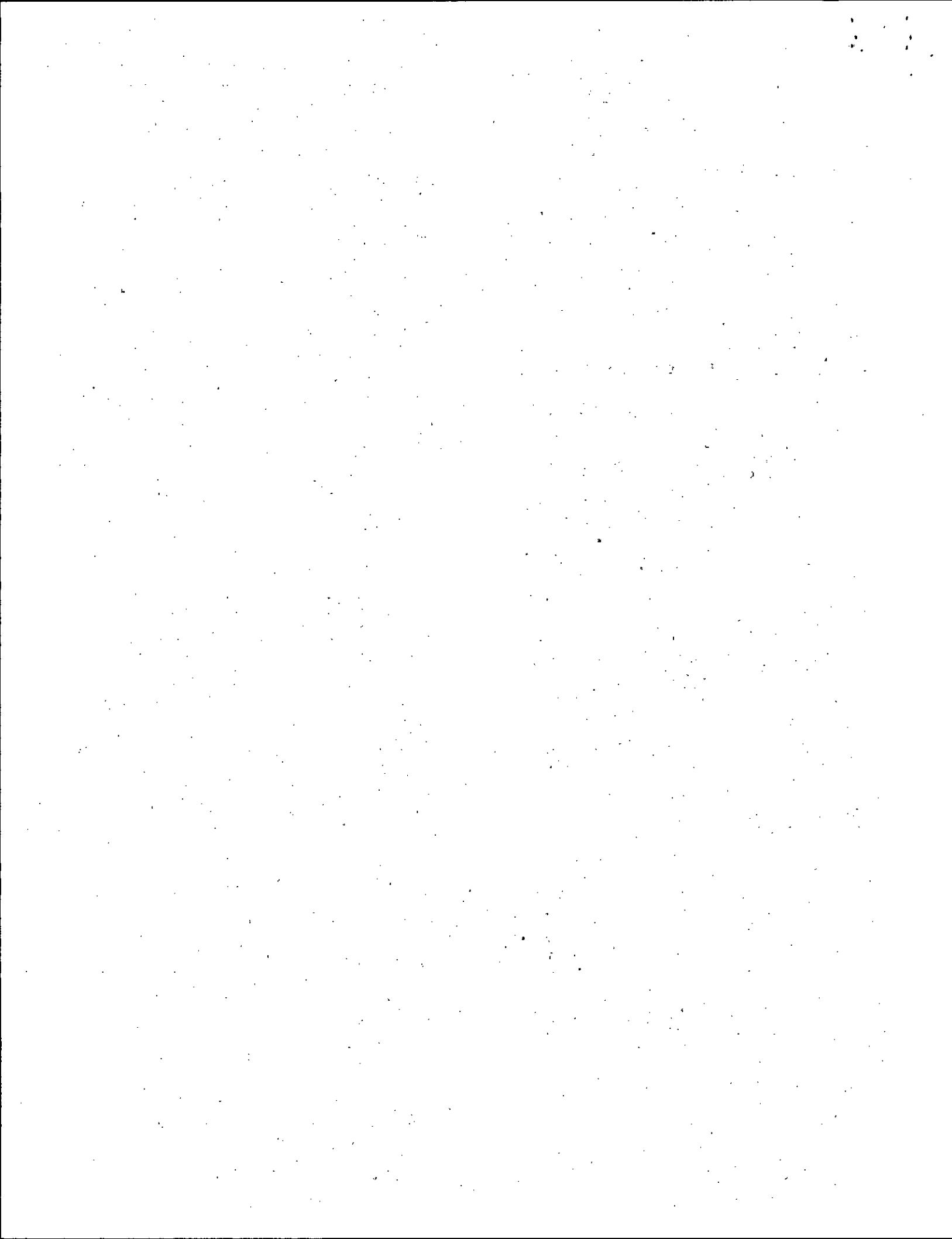
Spanish Speaker even though he was not being paid for it and at times, would not have been his turn to stay but had to stay because he was Spanish Speaker. In which both lower courts have undermined. In addition, to the Unacceptable discrimination in the workplace in our country, plaintiff seeks clarity and coherence from this court. Plaintiff ask respectfully for the United States Supreme Court, to address his claim, because plaintiff's claim rises out of a Federal question and therefore believes, it is proper for this court to hear his case. Plaintiff believes in addition that this is also a problem all over the country, including both the public and private sector and should be addressed. Plaintiff believes he won't be the last victim of these circumstances of discrimination in the work place in our country. If this is left unaddressed. It is not just an issue for those who, speak Spanish, but it is an issue in all languages that help our country. There is a saying in the city I live in, where we say together, we do it better. I believe today we can do it, better in our country with the help of the United States supreme court Justices. Plaintiff asks respectfully the United States Supreme court to Reverse the Northern District Court of Texas Findings, Conclusions, and Recommendations. In addition to the Reverse and/ or address the United States 5th circuit court of appeals for the proper jurisdiction for this case. Since this case is rising out of Federal claim of the Law.

Statement of the case

Plaintiff would like to include the following racial injustices that the Defendant City of Dallas policy and/or practices has and/or had in the workplace. During the time plaintiff worked there, plaintiff was hired with a token of integration in which Martin Luther King Jr. and Malcolm X would perhaps, consider what the issues are in the Defendant's work environment. The Defendant city of Dallas has and/ or has what plaintiff refers to the New Jim Crow laws. Instead of separate but equal. Plaintiff suffered together but treated differently. Plaintiff was never paid for his language skills for Approximately 9 years. In addition, plaintiff was forced to stay on the same shift in certain years because of his Race and/or National origin, and was not able to move to a different shift. In addition, plaintiff would have to stay over every time if a Spanish speaker was needed on the next shift and plaintiff was the only Spanish speaker on his shift. If plaintiff was not Mexican, Mexican-American or of Mexican decent and was Anglo American. This would have never occurred. In addition, plaintiff also has Mexican citizenship. Plaintiff's ancestors were from a different origin. Also, if it was not because of plaintiff's race, name and/or color, and ethnic background, the situations would not have occurred to plaintiff. In addition,

defendant knowingly continued to discriminate plaintiff threw out the years. Hypothetically, or possibly what if plaintiff failed the Spanish test by the city of Dallas. Plaintiff was never given his Spanish test scores. Perhaps, plaintiff failed the Spanish test given by the city of Dallas. Therefore, perhaps maybe Defendant is trying to cover itself from the bigger picture. There is absolutely without a doubt that defendant discriminated plaintiff based on how he looks or what his name is and/or what his ethnic background. This didn't occur to other similar situated ethnic groups. Plaintiff also had to keep up with everyone else's activity even though it was very time consuming to translate specially in situations where the prisoners wore intoxicated. It made it much harder on plaintiff to please the Defendants expectations and keep up with everyone else's activity. If a co-worker did not speak Spanish, plaintiff would have to stop with the booking process of his prisoner and go translate for a co-worker, supervisor, or an internal customer (police), (fire department). And this would put more pressure on plaintiff to work faster to keep up with everybody else's activity. These situations occurred very often year after year. Defendant created a hostile work environment for plaintiff and was so outrageous to plaintiff that this is still occurring in our country after the 1964 civil rights act. Plaintiff believed the country

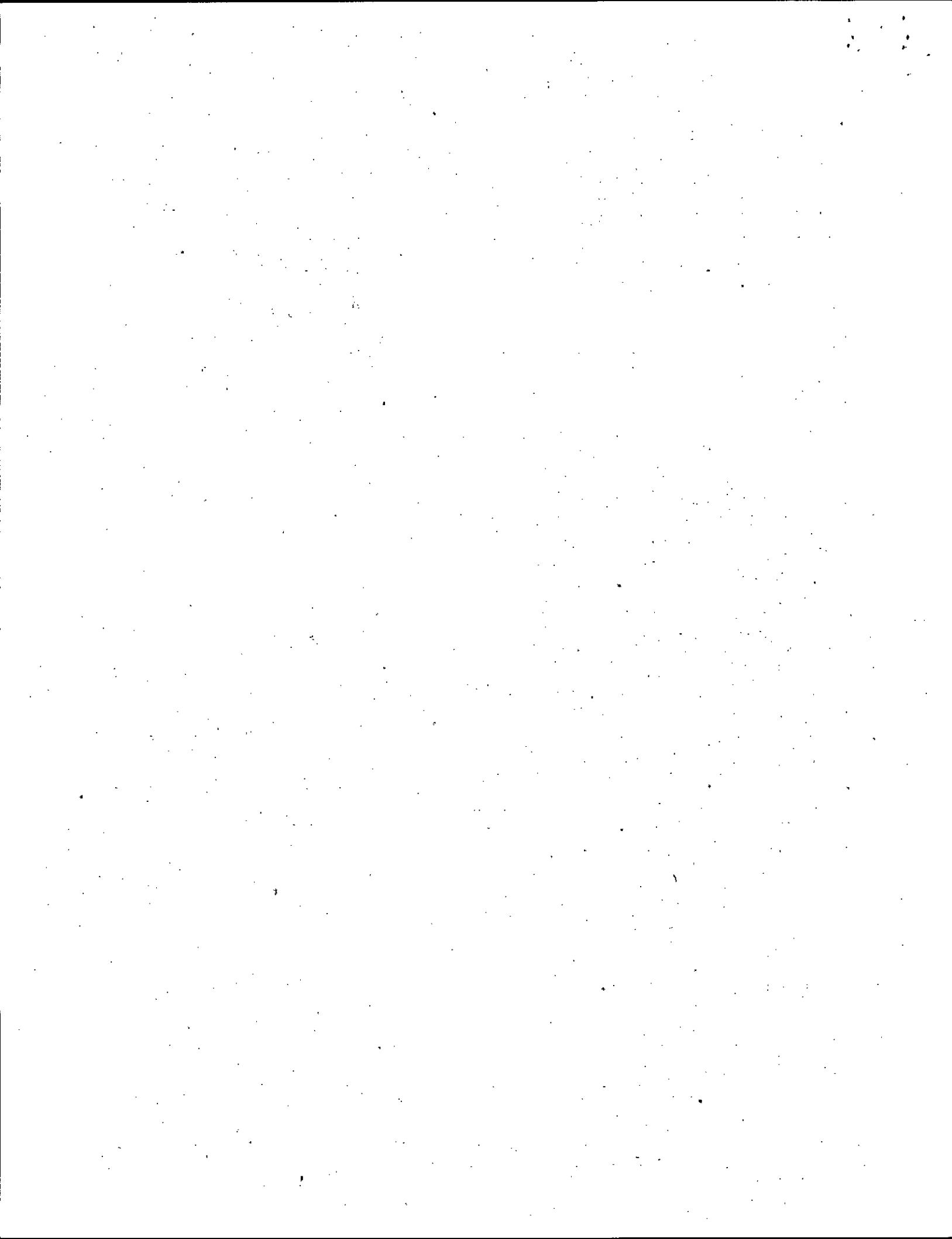
had changed completely while attending school when he was kid. Plaintiff believed that our country as Dr. Martin Luther king describes in his I have a dream speech, "that this country will live up to its true meaning of its creed". However, plaintiff sees we are far from that right now. If the defendant city of Dallas can not live up to its true meaning in racial justice in the workplace. Unfortunately, that reflects our nation and therefore our nation is not living up to its true meaning of its creed. In which Defendant has not even offered plaintiff an apology. Defendant's City of Dallas practices and/or policies treated plaintiff more harshly because of plaintiffs' race, color and national origin. Plaintiff recalls a year in which plaintiff wanted to go to another shift other that was not the night shift 11pm-7am that plaintiff was currently in that year, because it would have accommodated plaintiff's schedule in attending college. That would interfere with plaintiff's way of sleeping. Defendants practices were interfering with plaintiff's lively hood. In addition, in plaintiffs' earlier years and believed to the end it was a much busier work shift in the night shift ,11-7am, that plaintiff was in. Also, more than any other shift at the time. However, Defendant did not allow plaintiff to go to a different shift because he was a Spanish speaker. Plaintiff also recalls a year when a supervisor wrote a comment in his



evaluation in regard to his working speed. Plaintiff believes he recalls that year he had the second most book ins of prisoners in the entire jail and not just his shift. The person that had the most book ins had less entered police reports in the system. Speaking Spanish was time consuming as mentioned before plaintiff had to stop what he was doing to translate, and plaintiff would be put in a situation to play catch up to keep up with the non-Spanish speakers. Plaintiff was never compensated for it or given a higher evaluation because of plaintiff's Spanish skills.

Defendant created plaintiffs work environment very hostile and much harder on plaintiffs protected class. In addition, hypothetically, if plaintiff would have received his Spanish Pay. Defendants acts consisted of desperate impact, desperate treatment, and has an adverse effect on plaintiff. These circumstance that defendant put plaintiff, created an extremely and outrageous hostile work environment especially considering the discrimination occurred for approximately 9 years.

Defendants, practices interfered with plaintiff's lively hood. Defendants practices discriminated plaintiff based of race and national origin discrimination. Plaintiff is part of a



protected class in which Hispanic, Mexican, Mexican American and because of this, Defendants practices treated him less favorable. Therefore, Defendant committed disparate treatment acts against plaintiff.

As mentioned before Defendant new about the discrimination because plaintiff informed its superiors. In addition, see. Disparate impact theory. As described in Disparate Impact Discrimination American Oddity of Internationally Accepted Concept." This theory of discrimination or adverse impact discrimination refers to the disproportionate exclusion of individuals on a protected basis, such as race or gender. Also includes on for selection in plaintiffs' case he was treated less favorable. There was disproportionate treatment on plaintiffs' group in other words because of his race and/or national origin. Also mentions an aptitude test. In plaintiffs' case there was a Spanish test that could be referred to as a special talent. In which turned out to be unfortunately for plaintiff in Defendants work environment. "The US. Supreme court held in Griggs V. Duke Power Co. that disparate impact discrimination in employment is covered by Title 7 of that Act. Defendant Knew it discriminated plaintiff because plaintiff

informed his supervisor that he was being discriminated. In addition, he informed other superiors threw out the years about his Spanish pay. Including HR. In which with there credentials should have known of the discrimination that was occurring to plaintiff. In addition, it was so outrageous that they cannot have any excuse.

Back Ground Facts

1. Plaintiff is a Hispanic male.
2. Plaintiff Worked for Defendant as a Detention officer in the Dallas Marshals Office.
3. Plaintiff began working for Defendant in November 19, 2008.
4. Plaintiff performed duties as a detention officer but, was also a Spanish translator for customers (prisoners), Co. workers, and internal customers (Police Agencies).
Also, plaintiff would have to translate the incident reports for Spanish speakers (Prisoners) if he or she was having a medical emergency or if he or she wanted to

report something. At times, there were some prisoners that were belligerent throughout the years and plaintiff would step in to deescalate the situation. There is a pre-condition for the Dallas Marshal's office to have a Spanish speaker without a Spanish speaker in the jail it cannot function.

5. Plaintiff also informed Sgt. Cortez of the discrimination that was occurring to Plaintiff. Through out the years plaintiff would ask about language skills pay. Plaintiff would go through the chain of command and HR, and he was never given his Spanish pay.
6. Defendant's excuses have been a budget issue and that plaintiff's pay rate was higher than his base rate. Plaintiff, also on top of him being bilingual had a Bachelor of Science in Criminal Justice. In which not even a lot of deputy's or some Sergeants had. Plaintiff believes there was also bad mismanagement as far as priorities in managing the money at the Dallas Marshal's office. For instance, the Marshal's office preferred to open an additional Chief's position and created an additional meeting room. When there was already a meeting room, Instead of paying plaintiff for his Spanish language skills pay, first in which there was a precondition need for Spanish translators.
7. Furthermore, if there was not a Spanish speaker on the next shift. Plaintiff would have to stay over. Even though it was not his turn to stay.
8. Every year the Dallas Marshal's office had a shift bid. Plaintiff recalls requesting to go to another shift and was denied because he was Spanish speaker, even though plaintiff had more seniority than another individual that was an English only

speaker in the other shift. Plaintiff had to stay on the night shift for another entire year or years based on their policy or/ practice, to see if there would be an opportunity that he may gain more seniority than other Spanish speakers.

9. To include, during that time, plaintiff wanted to leave the night shift to work on evenings. One of the main reasons for plaintiff was that night shift was the busiest shift by far in comparison to any other shift.
10. Due, to being a Spanish speaker plaintiff would have to stayover and work a second shift, even though it was not plaintiff's turn to stay over.
11. Defendant also had a mandatory list to make Spanish speakers stay over.
12. There was never no indication on plaintiffs check stubs that he was being paid for language skills. Also, nor did he receive retro pay for his language skills. Additionally, plaintiff never received a parameter report like other employees in the city. In which if plaintiff was receiving language skills pay it would indicate it, in there.
13. However, Defendant did give plaintiff a Spanish test threw a phone call to determine how much to pay plaintiff based on his Spanish skills. In which constituted an agreement between the Defendant and Plaintiff. Defendant still did not pay plaintiff for his language skills pay.
14. On November 15, 2017 plaintiff resigned.
15. On Jan 3, 2018 plaintiff filed a complaint of discrimination based on title 7 of the civil rights act with the EEOC charge No. 450-2018-01881 and No.451-2019-03146
16. On August of 2018 plaintiff filed a complaint with the Department of Labor.
17. On August of 2018 plaintiff filed a complaint with the Texas Workforce Commission (TWC).

Statutory and Constitution provisions Involved

(1) race and national origin employment discrimination under Title VII and the Texas Labor Code, (2) violation of the 14th Amendment Equal Protection Clause, (3) violation of the Lilly Ledbetter Act, (3) breach of contract, and (4) violation of the Federal Service Labor Management Relations Act (“FSLMRA”) and Chapter 61 of the Texas Labor Code (the “Payday Act”). (Doc. 3 at 5-7). Title VII, breach of contract, FSLMRA, and Payday Act claims (Doc. 18); (Doc. 21.) Plaintiff then filed his amended complaint, (Doc. 22), and included a new claim for a DTPA violation. This motion followed. Plaintiff, a Hispanic male and Mexican national, that while working at Defendant’s jail, he was required to perform additional tasks because he spoke Spanish but was not compensated for the extra work. (Doc. 22 at 3-4). Plaintiff had to translate for Spanish speaking prisoners and work nights and extra shifts because Defendant required every shift to have at least one Spanish-speaker, and he was Spanish-speaker. (Doc. 22 at 4.) Though Plaintiff sought additional pay for his linguistic skills and extra work, he never received any. (Doc. 22 at 9.) Court made an error especially in denying plaintiff’s claims under the Lily Ledbetter Act. The reason for the Lily Ledbetter Fair Pay Act was because it was a bill that was passed and signed by President Obama to help fight against discrimination in the work environment. President Obama

quotes. "The Last thing they can afford is losing part of each month's paycheck to simple and plain discrimination." "So, signing this bill today is to send a clear message that making our economy work means, making sure it works for everybody, that there are no second-class citizens in our workplaces and that it's not just unfair and illegal." "It's bad for business to pay somebody less, because of their gender or their age or their race or their ethnicity, religion, or disability. "It's about how our laws effect the daily lives and the daily realities of people."

see. "Lilly Ledbetter Fair Pay Act Summary"

<https://www.youtube.com/watch?v=Zsmla9CrtYc>

In reference to the lily Ledbetter act Fair Pay Restoration Act that was passed and signed off by President Obama was to prevent facially discriminating practices or policies in our country's work environment. Lily Ledbetter was paid less because of how she appeared. She was a women and was discriminated simply because she was born a female. As with plaintiff, just because he was born Hispanic, Mexican-American he was facially discriminated with Defendants practices and/or policies. Also, with in the Lily Ledbetter act. She was allowed to receive her retro pay regardless of any statute of limitations. In plaintiffs' case he also was facially discriminated and did not receive language skills pay and was utilized as a Spanish speaker. As

mentioned, before he was never given his Spanish test scores. This all occurred because of plaintiffs' race. If plaintiff would have been white Anglo this would have never occurred, and plaintiff would not be seeking racial justice for himself. Plaintiff Implied this Act in his original petition and continues to ask the court respectfully to allow plaintiff to be granted relief under this act in addition to the other damages that Defendant caused to plaintiff.

<https://www.youtube.com/watch?v=4zXUZb6AM7w&t=10s>

The Northern District of North Texas made an extreme error in dismissing plaintiff's fourteenth amendment, it's above any federal law, state law, and etc. and should be upheld and protected. In addition, it should overrule any law based of its face. To include, it ties in with plaintiff's claims in defendants work environment as explained in the petition. Also, plaintiff implemented the 14th amendment, in the original petition. As mentioned in the Amended petition see. Perez vs. FBI in which the court favored Perez regarding the 14th amendment. " . "Unfortunately, this does not mean that the Bureau is incapable of violating the provisions of Title VII. No one person is perfect, nor is any agency above violating the law of our land." Plaintiff implemented it and applies same as it does to bureau same to the Defendant City of Dallas and/or Dallas Marshals Office. In plaintiff's words the City of Dallas/and or the Dallas Marshals office is

not above the law or law of our land. Also see. Perez v. FBI . The court finds that on the basis of Hispanic surname or other selection based on the agents national origin, the Bureau singled out agents to take the language skills test and made assignments significantly affecting their conditions of employment an adverse manner. The Court Further finds that no similar presumption attached to non-Hispanic agents." [**45] The Court finds by the great weight and preponderance of the evidence that (1) Hispanic agents suffer disparate treatment in the conditions of their employment; and (2) these conditions affect their promotional opportunities in an adverse manner. The decision in this case that policies and practices of the FBI violated Title VII with respect to their treatment of Hispanic agents was a most difficult decision for this Court to reach. The FBI deserves the well earned respect of the United States citizens, It is as true today as at any time in the history of the Bureau that persons of discipline, character and ability should aspire to its ranks. The Bureau is arguably the best law enforcement agency in the world. Unfortunately, this does not mean that the Bureau is incapable of violating the provision of Title VII. No one person is perfect, nor is any agency above violating the law of our land." In plaintiffs' case he was unable to promote to different shift under defendants practices and/or polices and suffered disparate treatment conditions along without getting his language skills pay. That is If plaintiff had any Language skills because he was never given his

test scores. In addition, in which a cause breach of contract in which both parties agreed to and in addition because it was also a contract that was implied.

Plaintiff implemented the following cause of actions in the Original petition and asks the United States Supreme court to address 5 th Circuit Court of Appeals for proper jurisdiction and respectfully to reverse the Northern District Court of Texas Findings, Conclusions, and Recommendations.

I. First Cause of Action- Racial Discrimination

18. Plaintiff incorporates each of the forgoing paragraphs.

19. Defendant discriminated against Plaintiff because of Plaintiff's race (Hispanic), Mexican, Mexican-American and punished plaintiff because he spoke Spanish by making him stay over an extra shift without pay of the Spanish skills when it was not his turn to stay over and not letting him go to a preference shift even though he had more seniority than a Non- Spanish speaker because of Plaintiffs race and national origin. Plaintiff was treated differently in comparison to other races, National Origins or ethnic groups.

20. Defendants actions Violate 42 U.S.C § 200-e 2(a), 5 U.S.C §7116 (1), (2) (b)4.

Defendants actions also violate actions of the Texas Labor
Codes. 21.110,21.051,61.019, and 61.014

II. Second Cause of Action- National Origin Discrimination

31. Plaintiff incorporates each of the foregoing paragraphs.

32. Defendant discriminated against Plaintiff because of Plaintiff's national origin, punished plaintiff because he spoke Spanish by making him stay over an extra shift without pay of the Spanish skills when it was not his turn to stay over and not letting him go to a preference shift even though he had more seniority than another non-Spanish speaker because of Plaintiffs race and National origin.

Plaintiff was treated differently in comparison to other races, National Origins or ethnic groups.

33. Defendants actions Violate 42 U.S.C § 200-e 2(a),
5 U.S.C § 7116 (1), (2), b (4).

Defendants actions also violate actions of the Texas Labor Codes.

21.110,21.051,61.019, and 61.014

In addition, the Northern District of Texas undermined plaintiffs' Due process, discrimination of National Origin claim and our constitution under the 14 amendment . Defendants practices and/or policies violated plaintiffs 14

amendment right, under the equal protection clause. Also abridged the privilege or immunity of plaintiff. He did not have the liberty of going home when he had to stay, because he was a Spanish Speaker even though he was not being paid for it and at times, would not have been his turn to stay but had to stay because he was Spanish Speaker. In which included his liberty of going home but could not under defendant's policy and/or practice. Plaintiff was treated less favorably from other similar situated races. See article The equal protection of the Laws "We now know that the equal protection to all persons in the enjoyment of their natural and inalienable rights—especially life, liberty, and property—and to do so equally. Defendants Practices interfered with plaintiff's lively hood as well as liberty and in the pursuit to happiness. When plaintiff had to stay over because he was Spanish speaker without pay of his language skills instead of another non-Spanish speaking person. This could have occurred on a holiday or not. Plaintiff would have had to stay and be deprived of his liberty under Defendants practices and/or policies.

See. Plaintiffs original petition. III Third Cause of Action- Plaintiffs Equal protection Claim

34. Defendant Violated the plaintiff's 14th Amendment right. Defendant treated Plaintiff different from other similar situated employees and

treated them favorably. Plaintiff was deprived of liberty when it was not his turn to stay over because he was a Spanish speaker and was prevented to go to another shift even though he had more seniority than a non-Spanish speaker and was treated differently.

Therefore, for especially these reasons plaintiff asks respectfully for reverse the Findings Conclusions, and Recommendations of the Northern district of Texas.

Jurisdiction

In addition, plaintiff implemented Breach of Contract on plaintiff's original petition. Also asks the United States Supreme to address the 5th Circuit for proper jurisdiction of this case and to respectfully reverse Findings, Conclusions, and Recommendation of the Northern district. In addition, because this court the United States Supreme court has jurisdiction because this case came out of a Federal question claim of the Law.

IV. Fifth Cause of Action- Breach of Contract

35. The Policies and procedures of the City formed part of plaintiff's employment contract. As a result of the city's discrimination. The plaintiff resigned and was unable to receive a full pension retirement and/or opportunity, along with the benefits from the city. Also, the Defendant breached the agreement between defendant and plaintiff to pay plaintiff for his Spanish skills after he was tested.

Therefore, constitutes a breach of contract between Plaintiff and the city, In

addition a contract was implied because of the test that was given to plaintiff for the Spanish pay, in which has damaged Plaintiff by depriving him and in which he was entitled under his employment contracts, in which he sues. Plaintiff also implemented the following below in plaintiffs amended petition.

Section 703 of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000e-2, provides:

"(a) It shall be an unlawful employment practice for an employer --

"(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

"(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual [[*4]] of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin".

As mentioned, Defendant has discriminated plaintiff on basis of national origin. Defendant discriminated plaintiff with connection to compensation of Spanish pay. In addition to privileges plaintiff couldn't go to desired shift and had to stay over when it was not his turn. Defendant deprived plaintiff

to go to another shift and there was an adverse effect on plaintiff.

The Northern District Court of Texas made an error in dismissing plaintiff's discrimination claims based on national origin. Plaintiff clearly explained the claim.

Defendants damages included disparate treatment, disparate impact, adverse effect, and discrimination that Defendants practices had on plaintiff. That tied into not being paid for being a Spanish speaker. In which all of these claims were dismissed in error by the Northern District of Texas.

"The US. Supreme court held in Griggs V. Duke Power Co. that disparate impact discrimination in employment is covered by Title 7 of that Act. Defendant Knew it discriminated plaintiff because plaintiff informed his supervisor that he was being discriminated. In addition, he informed other superiors threw out the years about his Spanish pay. Including HR. In which with their credentials should have known of the discrimination that was occurring to plaintiff. In addition, it was so outrageous that they cannot have any excuse.

"Griggs V. Power Co. was a landmark decision from the United States Supreme Court because it recognized that barriers to equal employment opportunity for minority groups and women need not be overt or intentional. Policies, practices, and procedures that appear neutral on their face may nonetheless have an unjustifiably exclusionary effect on other groups who do not share the characteristics of the dominant group. "

<https://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1587&context=facpub>

Under 703(a)(2) of the Civil Rights Act of 1964 (42 USC 2000e-2 (a)(2)), which forbids any employer to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his employee status, because of race, color, religion, sex, or national origin, even as modified by 703(h) of the Act (42 USC 2000e-2(h)), which permits an employer to give and to act upon the results of any professionally developed ability test provided such test, its administration, or action upon the results, is not designed, intended, or used to discriminate because of race, color, religion, sex, or national origin, an employer is prohibited from requiring a high school education or passing of a standardized general intelligence test as a condition of employment in or transfer to jobs when (1) neither standard is shown to be significantly related

to successful job performance, (2) both requirements operate to disqualify Negroes at a substantially higher rate than white applicants, and (3) the jobs in question formerly had been filled only by white employees as part of a longstanding practice of giving preference to whites." In plaintiff case he was given a Spanish test and in which in Defendants practices or/policy deprived plaintiff of employment opportunities as to go to a different shift during the shift bids. Plaintiff was treated less favorable because of his race and national origin. In addition, plaintiff had to stay over at times when it was not his turn to stay over because he was a Spanish speaker. He was also never paid for his language skills.

In addition, see, Griggs vs. Dukes Its described "Sec. 703. (a) It shall be an unlawful employment practice for an employer—

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

https://scholar.google.com/scholar_case?case=8655598674229196978&q=allied+aviation+national+origin+discrimination+Mar+2008+black+and+Hispanic+fuel+service+worker+cl+aimed+discrimination&hl=en&as_sdlt=6,44

"In Griggs v. Duke Power Co.,³³ the United States Supreme Court formulated the adverse impact test for discrimination. Practices which were neutral on their face

could not be continued or maintained if they operated to "freeze" the status quo of prior discriminatory practices. 34 Proof of intent was not necessary. The Griggs case only required a showing that the practices impacted adversely upon a protected class. Thus, even in the absence of discriminatory intent, facially neutral practices which had an adverse impact on equal employment opportunity would not be tolerated." Chiacana/o Latina/o Law Review As mentioned before, plaintiff was limited to move over to a preferred shift and had to stay over at times even though it was not his turn to stay. Also was given a Spanish test and was never given the test results or compensated for his language skill, etc. listed above. Defendant caused an adverse effect on plaintiff because of race and national origin. "The Spanish language is an integral part of Latinos' national origin and ancestry." Plaintiffs ancestors are from a different origin therefore plaintiff is covered under discrimination of national origin." The Supreme Court could acknowledge that language minority status is so integrally related to national origin that discrimination on the basis of language minority status is ipso facto discrimination on the basis of national origin." Chiacana/o Latina/o Law Review

Defendant had prohibited practices. In addition, See. "§ 7-8 Discrimination Based on Race, National Origin, or Religion. (b) Prohibited Practices (1.) Intentionally discriminating against a member of a protected class; or (2.) Doing any act, or establishing any employment practice or rule, that has a disproportionate effect on a protected class." Mathew Bender, Employment in Texas, A Guide To Employment

Laws, Regulations, And Practices (5th ed. 2019) Employment

discrimination §7-8, 7-78 [a.]

The Texas Deceptive trade practices Act. violated Sec. 17.46 Deceptive Trade Practices Unlawful. (a) False, misleading, or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful. (b) the term false misleading, or deceptive acts or practices" includes, but is not limited to, the following acts(1) passing off goods or services of another; (2) causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services; (5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have connection which does not;" In plaintiffs case, plaintiff was providing a service in which was translating. Defendant was deceptive by giving plaintiff a test and not paying him for the language skills. Therefore, defendant passed on the services of language skills without plaintiff's approval without pay along with issues that came along with it.

A. Unlawful Employment Practices

Like title 7 the TCHRA prohibits a broad range of employment practices that are based on national origin. The statue provides in pertinent part:

Discrimination Based on National Origin, Religion, and other grounds § 24:4

"An employer commits an unlawful employment practice if because of....

national origin... the employer.

- (1) Fails or refuses to hire an individual discharges an individual ,or discriminates in any other manner against an individual in connection with the compensation or the terms, conditions, or privileges of employment; or
- (2) Limits segregates or classifies an employee or applicant for employment in a manner that would deprive or tend to deprive an individual of any employment opportunity or adversely affect in any other manner the status of an employee. As mentioned, Defendant has discriminated plaintiff on basis of national origin. Defendant discriminated plaintiff with connection to compensation of Spanish pay. In addition to privileges plaintiff couldn't go to desired shift and had to stay over when it was not his turn. Defendant deprived plaintiff to go to another shift and there was adversely affected plaintiff.

Tex. Lab Code Ann. §21.05(West 2015) Further, the statue defines national origin discrimination to included discrimination because of or on the basis of the national origin of an ancestor.Id. §21110.

See. Franze, Texas Employment Law Revision 18 Volume 2 (2017) §24:4

B. Meaning of National Origin

1. National Origin of Ancestors

Conclusion

For the foregoing reasons, this court should grant this petition and issue a writ of certiorari to review the Northern District court of Texas and to take proper Jurisdiction of the 5th circuit court of appeals because this case is rising out of a Federal question claim of the Law.

Respectfully submitted,

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