Supreme Court, U.S.
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22-1092

No.

In the

Supreme Court of the United States

ONOYOM UKPONG,

Petitioner,

v.

INTERNATIONAL LEADERSHIP OF TEXAS, AND KAREN MARX, INDIVIDUALLY AND IN HER OFFICIAL CAPACITY AS PRINCIPAL, JOINTLY AND SEVERALLY,

Respondents,

On Petition For Writ of Certiorari to the United States Court of Appeals For the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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March 4, 2023

QUESTIONS PRESENTED

1. Did the Fifth Circuit deviate from paramountcy of Supremacy Clause, federal laws and this Court's on-the merits-based final pretrial judgment precedent when it adopted the district court's qualified immunity-based summary judgement in favor of a non-State, non-governmental, non-open-enrollment Defendant and its employee, in the absence of a clearly established applicable law?

2. Did the Fifth Circuit diverge from accurate interpretation of the clearly established EEOC's and TWC's statute of limitations for Title VII, state-laws tort and § 1981 claims when it opined affirming the district court's "time-barred" ground entry of summary judgment, unmindful of Appellant's timely and distinctly filed lawsuit in federal and state courts?

PARTIES TO THE PROCEDING

Onoyom Ukpong is Petitioner here; was Appellant in the Fifth Circuit; and Plaintiff in the district court.

International Leadership of Texas, and Karen Marx, individually and in her official capacity as principal, are Respondents here; were Appellees in the Fifth Circuit and Defendants in the district court.

CORPORATE DISCLOSURE STATEMENT

Petitioner is an individual, and is therefore not required to file a statement under Rule 29.6. Respondent-ILT is a corporate party to this proceeding.

STATEMENT OF RELATED PROCEEDINGS

- *Ukpong v. International Leadership et al*, No. 21-11111. U.S. Court of Appeals for the Fifth Circuit

  Opinion entered Oct. 12, 2022 (not reported but available at 2022 WL 6935140).

- *Ukpong v. International Leadership et al*, No. 3:19-cv-00218-E. District Court of the Northern District of Texas

  Decision and Order entered October 27, 2021 (not reported but available at 2021 WL 4991077).

- *Ukpong v. International Leadership et al*, No. 3:19-cv-00218-E. District Court of the Northern District of Texas

  ELECTRONIC ORDER denying without prejudice 32 Defendants' Motion to Dismiss, entered Aug. 5, 2020. See **Appendix D. Dkt. 81**

- Texas Workforce Commission Appeal Tribunal, N. 2249798-1-1, Austin Texas

  Decision denying Defendants' appeal against Plaintiff's successful application for unemployment benefits: entered February 28, 2018. "The determinations appealed from are in all respects affirmed."

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The United States District Court for the Northern District of Texas Dallas Division' Decision and Order on Defendants' Motion to Dismiss was delivered electronically on August 5, 2020, and is unreported (**App. D**). The United States District Court of the Northern District of Texas Dallas's Memorandum and Order on Defendants' Motion for Summary Judgment were issued on October 27, 2021, and are unreported but available at 2021 WL 4991077. (**App. B,** memorandum **App. C.** See **Dkt. 97.**) The Opinion of the Fifth Circuit Court of Appeals affirming the District Court's entry of Summary Judgment on all two grounds of Defendants' defense was issued electronically on October 12, 2022, **App. A**, and are unrecorded but available at 2022 WL 6935140.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1). The judgment of the United States Court of Appeals for the Fifth Circuit was entered on October 12, 2022. On July 14, 2022, Justice Samuel Alito, Jr. extended time within which Petitioner could file a petition for a writ of certiorari to and including March 4, 2023. Petitioner filed petition postmarked March 4, 2023 with proof of service to Respondents.[1] The petition was returned for correction of page size and formatting, and filing fee amount, with instruction to resubmit petition within 60 days of the March 8, 2023 date of the letter.

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[1] As of May 2, 2023, Respondents' copy of the petition mailed to their attorney by U.S. Postal Service (USPS) certified mail has not been received. See **App. G**: proof of pending delivery of Respondents' copy of the petition.

RELEVANT CONSTITUTIONAL PROVISIONS AND STATUTES

U.S. Const. V Amend.

The people's right to not be "deprived of life, liberty or property without due process of law." This requires fundamental procedural fairness for those facing the deprivation of ... including the right to liberty of retaining gained employment.

U.S. Const. XIV Amend § 1

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. Article VI, par 2

The Supremacy Clause establishes that the federal constitution, and federal law generally, take precedence over state laws, and even state constitutions.

42 U.S.C. § 2000e-7

Nothing in this subchapter shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this subchapter.

42 U.S.C. § 1983

This section provides an individual the right to sue state government employees and others acting "under color of state law" for civil rights violations. For this purpose the section shall be considered one should have annulled Defendants' Texas State "qualified immunity" defense.

Title VII of the Civil Rights Act of 1964, as amended.

All personnel actions affecting employees or applicants for employment ... shall be made free from any discrimination based on race, color, religion, sex, or national origin.

PLEADING

Onoyom Ukpong respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

STATEMENT OF THE CASE

1. FACTUAL BACKGROUND

Plaintiff-Petitioner Onoyom Ukpong, an alumnus of Pratt Institute, New York, began working as an art teacher at the Corporate Defendant-Respondent's school on August 2, 2017. He interviewed with Assistant Principal Aaron Thorson (Thorson) and Dean of Instruction Marco Deleon (Deleon) on August 1, 2017; was hired the same day. Plaintiff taught multiple sections of art course at ninth- through twelfth-grade levels in the Defendants' school. The new teacher orientation began on August 2, 2017 and Plaintiff attended. So did the Corporate Respondent's District Superintendent Edward G.

Conger (Conger), Principal Karen Marx (Marx), and other senior school administrators. To assure maximal participation in orientation, new teachers were required to attend equipped with official computers that the school was to provide them. Other teachers outside the black-race and -skin color were equipped, but Plaintiff was not. Notwithstanding the lapse, he participated in orientation; handicapped by the lack of computer in the largely computer-aided orientation process environment. There each teacher was informed of funds allotted to him or her for purchase of class supplies and incidental pedagogical needs that school year. The Plaintiff's was in the amount of $800.00.

On the first day at orientation, Conger stood adjacent to where Plaintiff sat in part front of the assembly. Before Conger commenced his speech Conger glimpsed the Plaintiff and questioned: "who brought this Nigerian here"? Referring to the "Nigerian" in the person of Plaintiff; also murmured the word "Nigerian" while passing the Plaintiff in the school campus hallway during one of his visits to campus.

After orientation, Plaintiff requested from the official designated to order art supplies for his classes to order. But as of October 16, 2017, Marx did not sign the purchase order document for the ordering, according to the official. Marx signed ordering for supplies for the rest of the non-black and Caucasian teachers'. Petitioner ended up using his personal funds to purchase supplies to teach his classes.

Letters of Expectations and Reprimands

On September 20, 2017—the 48th day after start of school year— Marx brought a Letter of Expectations for Violation of Staff Expectations for delivery to Plaintiff in his classroom; tried forcing him to sign the letter, instantaneously. Plaintiff

wanted to read letter, first. Frustrated by his want, Marx invited a female teacher from the adjacent classroom into Petitioner's to witness the letter delivery event, stating: "I will fire this Nigerian". After reading the letter, Plaintiff scribbled his comments on p.2 of it denying the two students' allegations in it before signing. (See letter in Defds.' exbs. in sup. MSJ, p.23, App. 017, in record). Plaintiff continued teaching his courses with diligence, competence and respect to and for all the students.

On October 3, 2017, teacher Dr. Unkyoung Kim came into Plaintiff's classroom preparatory for them visit to school's Human Resources Office (HR). Dr. Kim volunteered to cover and covered Plaintiff's class while he went to obtain permission from Principal Marx for the visit. Marx was not in her office. Plaintiff inquired about her whereabouts at the school reception desk, where three receptionists were on duty including Ms. Argote. Plaintiff informed them he wanted to request permission from Mrs. Marx to visit HR for resolution of important salary-related inquiries, and for Marx to assign a teacher to cover his classroom during the visit. Plaintiff's personnel record was "housed in the Office of Human Resources" and "considered the official" record of and for him. (Defds.' *Employee Handbook*, **Personnel Records**, p.20.) Argote informed that Marx was at meeting with all the assistant principals; volunteered to cover and covered Plaintiff's class. And he left with Dr. Kim to HR. That was a distance away from campus and usually was closed before Plaintiff could reach there after work. Both returned to campus immediately inquiries were over.

On October 6, 2017, Marx visited his classroom and served Plaintiff a Letter of Reprimand for Violation of Staff Expectations, alleging he removed Ms. Argote from her desk to

cover his classroom on October 3, 2017. She wanted Plaintiff to sign the letter but after glancing at it he disputed the Argote allegation; demanded correction of allegation before signing letter. Marx cancelled the allegation from in the letter. Despite cancelling the inaccurate allegation she brought purporting Plaintiff removed Argote from reception desk, she acknowledges in paragraph two of her letter that the situation which took Plaintiff "to Human Recourses was important and time sensitive", Marx served him the letter. Plaintiff explained to Marx that he could not locate her or any senior school administrator for permission to leave campus for HR because they were at a meeting; scribbled remarks of the importance of his visit to HR on the letter before signing and receiving it. (See Defds.' exbs. in sup. of MSJ, p.25, App. 018, in record.)

On November 13, 2017, Marx visited his classroom and served Plaintiff a Letter of Reprimand for Violation of Staff Expectations—in which she referred to statements in her October 6, 2017 Letter of Reprimand—and adumbrated nine additional student allegations in it, forcing him to sign the letter. Plaintiff denied all nine allegations in the letter and scribbled his remarks on it before signing and receiving it. (See *Id.*, pp. 27—28, Apps. 019 and 020.) Plaintiff's affidavit, August 2020, holds testimonies showing the alleged student allegations were solicited by Marx and Assistant Principal Thorson to satisfy their prejudicially-driven termination agenda.

Informal Observations of Plaintiff-Petitioner's Class Sessions

Notwithstanding the Corporate Respondent's failure to comply with the clearly established state-required formal teacher appraisal policy (*Texas Education Code 21.351(e)*, that required formal appraisal of Plaintiff's performance that school term.

(See also Defendant's *Employee Handbook*, p. 15), four of its senior administrators informally observed Petitioner's class sessions: Elise Longley (Teachers' Professional Development coordinator) commended Plaintiff-Petitioner for having organized:

> students work together after his "direct instruction was over, showing student to student communication as long as it was brief and on point"; for having redirected his students to correct the steps and making sure they were on task; and for having asked "many guiding questions to students" during his "direct instruction."

See Petitioner's *Affidavit*, p.10: in record.

Jeffery Berry (Assistant Principal) commended how Plaintiff-Petitioner:

> began his "class with an objective" and his use of students' work during a work-shadowing session "as examples to show how expected end product should look", adding that so showing "gave them a better understanding of the assignment and more direction to completing the task", and that he "really enjoyed listening to the students talk about their art" in Petitioner's classroom.

Id.

Marco Deleon (Dean of Instruction) described Petitioner as one whose "passion shines brightly" when "discussing and giving strategies to students"; that the specific "examples of warm tones and colors" that Petitioner used to instruct were "very helpful" to students and that Petitioner's "1 on 1 feedback" was "very valuable." *Id.*

Ms. Betsy Hampton (Fine Arts Unit Coordinator). Her first observation of Plaintiff-Petitioner's class happened in approximately second half of November 2017. Commended him for having:

> incorporated the year 2017 Hispanic Heritage month celebration in his "lesson as both an example and point of reference" and for "having examples of the main concepts already drawn on the board" which she believed had helped "keep the flow of the lesson and also allowed" Petitioner to "stay facing his "students the majority of the time, holding them more accountable for engagement." Emphasis added.

(See Petitioner's *Affidavit*, p.10: in record).

Compton's second visit to Petitioner's classroom, November 15, 2017, was in a feud. It coincided with teachers' professional development conference (TPDC) which was scheduled to take and took place in Petitioner's classroom that school term. Compton arrived before the conference began. She saw Petitioner sitting in class away from his classroom desk ready for the TPDC to begin. Rather than wait for teachers to arrive for the TPDC, Compton stood behind him and took a photo of Petitioner seated where he usually sat in his classroom during the TPDC (see Defds.' exbs. in sup. of MSJ, p.69, their App. 059).

Compton prejudicially showed the photo to Principal Marx as evidence of Petitioner having disengaged from his students during a purported class session. Marx used the photo as exhibit to support her alleged justification for recommending termination. This Superintendent Edward Conger and the Board accepted and approved the recommendation and terminated, without procedural due process. The fact:

Petitioner's pre-TPDC class had ended that day, but the three students (seen in the background of the Compton's photo of Petitioner) lingered in his classroom since the TPDC had not begun.

The Fifth Circuit did not consider that Defendants violated clearly defined state education codes, requiring a formal appraisal of Plaintiff's performance and the submission of appraisal scores to the state during the period at issue:

> A district shall use a teacher's consecutive appraisals from more than one year, if available, in making employment decisions and developing career recommendations for the teacher

Texas Education Code 21.352(e).

> Each school district shall submit annually to its regional education service center a summary of the campus-level evaluation scores from the Texas Teacher Evaluation and Support System, or the district's locally adopted appraisal system, in a manner prescribed by the commissioner of education.

19 Tex. Admin. Code § 150.1008(b).

The Fifth Circuit and district court having overlooked the forgoing Defendants failure to formally appraise Plaintiff's performance "in a manner prescribed by the commissioner of education" has evidenced a violation of his right to procedural due process that the lower courts should not have overlooked. Neither the Fifth Circuit nor the district court considered this crucial evidence of violations of the codes. Their failure to formally appraise Plaintiff evidences Defendants were not a state or its entity that period. The informal observation of

Plaintiff's class sessions by Defendant's senior administrators was designed preparatory to terminate and justify termination all in violation of his procedural due process right, protected under the clearly established Fifth and Fourteenth Amendments, including his liberty to retain earned employment. The Fifth Circuit did not consider the preponderance of evidence in courts' dockets showing Defendants' violated clearly stipulated in education code of the same Texas State behind which they purport to be immune from suit.

Termination

On Thursday December 14, 2017, Assistant Principal Thorson invited Plaintiff to Principal Marx's office where Marx informed him that she had recommended to District Superintendent Conger that his employment be terminated. Plaintiff pleaded to be allowed to complete his contract term but to avail. On December 18, 2017, Respondents' Deputy District Superintendent Mr. Taylor invited Plaintiff to HR office for conference with him and HR Director Claudia Neira. Plaintiff responded to the invitation. Whereupon Taylor presented him an already filled-out employee Resignation/Termination Form coercing him to sign it to avoid potential approval of Marx's recommendation for termination at the Respondents' Board of Directors (Board) meeting on Wednesday December 20, 2017. Petitioner declined signing the Form, stating he did not engage in a tort to warrant being forced to resign. And that had he done a wrong deed, the district superintendent was required to file a report:

> The Superintendent shall promptly notify the SBEC by filing a written report (within seven days of first learning about an alleged incident of misconduct) with the Texas Education Agency

> upon obtaining knowledge or information indicating any of the following circumstances:

ILTexas Employee Handbook, Reporting an Educator's Misconduct, p.17.

Plaintiff requested from Taylor to take home the proposed Resignation Form and decide what to do; was given the Form and advised to return it to Taylor by December 19, 2017 after signing. Otherwise, Marx's recommendation for termination would be tendered at the Board meeting for approval. Plaintiff neither signed nor returned the Form to them. (These facts were in the dockets when the lower courts decided).

On December 20, 2017, contrary to Defendant's policy against unconstitutional coercing and to Plaintiff's constitutional liberty to retain employment at the Defendant school, Thorson promised to write Plaintiff a favorable recommendation letter if he resigned. He declined resigning. On December 20, 2017, Conger and Neira attended the Board meeting; tendered the recommendation for termination letter to the Board and the Board approved it, without a hearing and compliance with the Supreme Court's balancing test requirement set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1978). As to what balanced procedures an employer must follow before terminating an employee. Nor did they comply with the process prescribed under the Fourteenth Amendment. Marx did not follow these procedures, the Corporate Respondent did not, Conger did not, Taylor and Neira did not and the Board did not. Notwithstanding that *Mathews* and the prescription in the Fourteenth Amendment were sufficiently clear that specific reasonable officials Marx, Conger and others in her company were highly knowledgeable to decipher the foregoing clearly established laws.

One of the simplest clearly-established laws that an ordinary U.S. citizen finds easy to understand is the law against discrimination. Defendants broke these easily understandable laws, unmindful of the active employment contract between them and Plaintiff: 08/04/2017—05/30/2018. **Dkt. 76**.

They fired Plaintiff by a letter dated December 22, 2017. Dfds.' *Brief/Mem*, in sup. of MSJ. **Exb. B**, p.14, MSJ. **Dkt. 76**.

On January 9, 2018, Plaintiff returned all Defendants' belongings in his possession to Marx. Defendants soon replaced Plaintiff with a teacher of a different race and younger age. After Plaintiff filed a lawsuit, Defendants fired teacher Dr. Kim (Plaintiff's principal witness in this case). (See Marx's testimony of the firing, in transcript, depo. of Marx by Plaintiff, in record or should be in record). The harassment was very severe, Thorson asked Kim to write a false report that Plaintiff left campus to HR office, without having someone cover his class, and without permission to leave campus. Kim declined arguing that front-desk receptionist Ms. Argote volunteered to cover and covered Plaintiff's class before he left campus that day accompanied by Kim to HR. Argote volunteered after informing Plaintiff (who wanted to see Marx for permission) that Marx was at a meeting with all the senior school administrators.

Post-Termination Events

After Plaintiff sought unemployment benefits, Defendants filed an appeal with TWC Appeals Tribunal challenging his application for benefits, claiming he was terminated on a date earlier than, and different from, the one on the December 22, 2017 letter of termination. Claimed Plaintiff failed to perform in a satisfactory manner that warranted his termination; thereby did not claim to the Tribunal misconduct occurred. TWC did not disqualify the application under Sections 207.004

and 207.041 of the Texas Unemployment Compensation Act, but approved his application on January 18, 2018. Defendant-Appellant "did not appear to offer evidence" at Tribunal hearing, whereupon the Tribunal concluded that Defendant's ground of appeal was not credible and that it "finds no reason to disturb the determinations of the claims representative" on the Appellee-Plaintiff's unemployment benefits application.

II PRECEDURAL HISTORY

A. United States District Court Eastern District of Texas

On October 4, 2018, Plaintiff-Defendant timely filed, *pro se*, a Title VII complaint in United States District Court Eastern District of Texas, Sherman Division at Plano Office (Sherman) for alleged violations of his Fifth and Fourteenth and procedural due process rights using EEOC Notice of Right to Sue (on the 86th day, of the 90 days allowed for filing suit, following his receipt of EEOC Notice of Right to Sue dated Friday July 6, 2018; (see **App. 003** to Ptnr.'s appl. for extn. of time, EEOC Notice received: July 10, 2018, in record. See **App. 004** to appl. for extn..., Sherman Civil Docket for case #: 4:18-cv-00699-ALM-CAN, 2pp.; see **App. 005** to Ptnr.s' appl. for extn..., Sherman Case Entry Sheet, in record. By then, he was living in Allen, Texas, and that Court had jurisdiction. On October 31, 2018, Defendants filed answer to Plaintiff's timely filed lawsuit at Sherman. ***Id.*** By so filing an answer, Defendants acknowledged Plaintiff's lawsuit was filed in federal court (Sherman) timely.

On November 12, 2018, Plaintiff filed a case withdrawal notice in Sherman after he timely filed an equivalent Title VII and state tort claims in state court. Sherman gave Defendants ten (10) days from November 13, 2018 to respond to Plaintiff's filed notice to withdraw case from federal court. Defendants failed

to respond. Sherman ordered granting the notice (see Petnr.'s **App. 009** to his appl. for extn. of time, Sherman Order.

B. Judicial District Court of Dallas County

On November 5, 2018, Plaintiff filed, *pro se*, Title VII complaint in the 160th Judicial District Court of Dallas County, Texas (District District), alleging violations of his Fifth and Fourteenth Amendment and procedural due process rights, using TWC Notice of Right to Sue, dated October 10, 2018, received October 15, 2018. That allowed him 60 days beginning October 15, 2018 to file suit (see **App. 27** to this). On January 28, 2019, Defendant-Respondents removed Petitioner's timely filed Title VII suit in District Court from the court to the United States District Court. This Court may take judicial notice of the irony here: Defendants' removal of Plaintiff's timely filed suit in state court to federal court; whereas they did not disturb his notice for withdrawal of case from federal to state court.

C. United States District Court, Northern. District of Texas

On May 8, 2019, Plaintiff filed his First Amended Original Complaint with jury demand, adding Karen Marx as Defendant and seeking damages under 28 U.S.C. § 1331; 42 U.S.C. § 2000e *et seq* (an equivalent to Title VII of the Civil Rights Act of 1964, as amended); 42 U.S.C. § 1981; Equal Pay Act; Civil Rights Act of 1991; vicarious liability theory for unlawful harassment by Plaintiff's supervisor; and for claims arising out of Texas law, pursuant to 28 USC Section 1367(a) for alleged violations of his Fifth and Fourteenth Amendment and procedural due process rights.

Plaintiff "fully articulated his claim for Discrimination in Violation of § 1981" in his *Brief* challenging Defendants' Motion to Dismiss (MTD), reasoning that "Defendants acknowledged that the plaintiff stated his claim for § 1981 violation because the Defendants can discern whether or not the Plaintiff's allegations are sufficient for his ... § 1981 claims." (Citing including but not limited to *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554, 555-56 & n.3 (2007); *Mohamad v. Palestinian Auth.,* U.S., 132 S. Ct. 1702 (2012)). (See Plt's Resp. to Dfds.'s MTD., 21-22)

On May 28, 2019, the case was "set for jury trial on the Court's three-week docket beginning 1/18/2021 before district court Judge Karen Gren Scholer, who ordered setting deadlines for Pleadings: 8/8/2019; Notions: 7/24/2020; Discovery: 5/4/2020; and the final pretrial conference before Scholer: 1/7/21. On September 18, 2019, the District Court's chief judge transferred case from Judge Scholer to Judge Ada E. Brown and the facts of Plaintiff's case soon began to erode; rejected unconstitutionally by the new court in disregard to his procedural due process rights under the Fifth and Fourteenth Amendments.

On September 19, 2019, Defendants filed Motion to Dismiss (MTD) Plaintiff's First Amended Complaint (**Dkt. 33**); and, on October 7, 2019, filed Motion to Stay Discover (**Dkt. 35**). On November 1, 2019, Plaintiff filled a response/objection to Defendants' MTD Plaintiff's First Amended Complaint (**Dkt. 49**). On January 27, 2020, the court denied Defendants' Motion to Stay Discovery (**Dkt. 31**). On February 28, 2020, Plaintiff filed Motion to Compel discovery, (**Dkt. 52**) Defendants' challenged trying to obstruct his right to "equal protection under the laws." On March 19, 2020, the Court stayed Plaintiff's Motion to Compel discovery (**Dkt. 54**). On August 5,

2020, the Court denied Defendants' MTD on the merits of Plaintiff's claims.

D. Fifth Circuit Court of Appeals

The Fifth Circuit equivalently affirmed the district court's grant of summary judgment in favor of the Defendants on two grounds: "sovereign immunity entitlement," and Plaintiff's suit: "time-barred". **App.12.** Defendants were not entitled to immunity because they terminated Plaintiff in a proprietary manner and without a hearing in violation of his procedural due process right, and the clearly established law of the Supreme Court set forth in *King v. Six Unknown ...*" and *Mathews.*

While the Fifth Circuit delivered its Opinion acknowledging that Appellant was a member of the protected class, "Dr. Ukpong, a black man, is a native of Nigeria" (**App. 2**), it justified the discriminatory behaviors of his immediate two supervisors Karen Marx and Edward G. Conger whose actions violated the clearly established law of the Supreme Court in King's *Bivens*, XIV Amend § 1, and Texas Tort Law Claim Act.

The Fifth Circuit did not consider Appellant argument that "ILT is a business with a board of directors." (Citing www.ILT.org.), and underscoring clarity: "It should be noted that its website is not www.ILT.gov to indicate an affiliation with state government. It is a business organization regulated by the state." See Plt.s resp. to Defds.' MSJ, 20. The court evaded addressing "the arguments": a precedent this Court set forth in King's *Bivens*, that summary judgment ruling hinges on a "quintessential merits decision: whether the undisputed facts established all elements" of Appellant's claims violated the clearly established law of Supreme Court set down in *Bivens*. Appellant's argument: during the period at issue, ILT

was not a state or governmental entity: The mere fact that its business is regulated by the state does not by itself convert its action into that of a state's political subdivision, as to qualify it for sovereign immunity.

Am. Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 52 (1999).

> Even an extensive government regulation of a business is not sufficient to make that business a state actor if the challenged conduct, the Plaintiff's termination herein, was "not compelled or even influenced by any state regulation". *Rendell-Baker*, 457 U.S. at 841-42; see also *Morse v. N. Coast Opportunities, Inc.*, 118 F.3d 1338, 1342 (9 Cir. 1997) (a school employment decision is not sufficient to create a state [or political subdivision] action because the procedural guidelines for employment decisions were not guided, compelled, or influenced by the state).

Plt.s resp. to Defds.' MSJ, 20-21.

REASONS FOR GRANTING THE PETITION

While the Constitution clearly establishes that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor" ... "deprive any person of life, liberty, or property, without due process of law;...", the Fifth Circuit and the district court departed from this constitutional provision by joining with Defendants to snatch from Plaintiff his right to "due process" and "equal protection under the laws". These lower courts erroneously held state law as one to override the Constitution in violation

of U. S. Const. XIV, as amend., see U.S. Const., V, as amended; see also Article VI, Paragraph 2 of the U.S. Constitution. And in violation of specific federal laws and this Court's precedent reversing an unconstitutional summary judgment in King's *Bivens*.

This Court has persistently directed the Circuits to not rush entry of summary judgment without fully addressing the arguments, as to the sufficiency of disputed facts in the case. Notably: in King's *Bivens v. Six...*, and in *Torres v. Texas Department of Public Safety*. And to not rely solely on the movant's argument and distrust or reduce the non-movant's. That summary judgment should be decided on the merits of the case. So that equity in the courts would prevail.

This Court has consistently directed that when deciding qualified immunity defenses courts not construe qualified immunity defense in and as a broad all-encompassing general dogma, or beyond the limits of right of those to whom the law clearly designates as the qualified. But that the process "must be undertaken in the light of the specific context of any case, not as a broad general proposition." *Mullenix v. Luna*, 136 S Ct. at 308 (quoting *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004) (per curiam)); see also *City of Escondido, Cal. V. Emmons*, ... U.S..., 139 S. Ct. 500, 503 (2019) ("Under our case, the clearly established must be defined with specificity.")

The Fifth and Fourteenth Amendments were primarily established citizen's right to a hearing, prevent racial injustice in society, in the benefit of all, not of some. Madison's effort in draft Constitution culminated in the enactment of Title VII.

Madison wanted to prevent injustice from the Land and extend prevention to posterity including, by progression in this case where that protection is threatened in violation of Petitioner's rights to due process and "equal protection under the laws",

and his privileges under Title VII. The very rights the Fifth Circuit's decision has attempted to snatch and which stem from clearly established laws. Madison's original idea of justice rested or was to rest considerably on the paramountcy of the Constitution, its Supremacy Clause, over all laws. But the Fifth Circuit differs from the Madison ideology of justice which this Court recurrently embraces, for the good of the people, in the general sense which the people's right under the Constitution should be defined and protected by this Court.

I. REVIEW IS CRUCIAL TO DEFINE SPECIFICITY, GENERALITY, AND COMPEL COMPLIANCE WITH THIS COURT'S ON-THE-MERITS-BASED PRETRIAL FINAL JUDGMENT PRECEDENT, AND WITH PARAMOUNTCY OF THE SUPREMACY CLAUSE

A. The Fifth Circuit's Opinion departs from this Court's directive to courts that sovereign immunity decisions have not followed a straight line

In order for one to avail in qualified immunity defense, this Court has emphasized, "[i]t is not enough that the rule is suggested by then-existing precedent. The precedent must be clear enough that every reasonable official would interpret it to establish the particular rule the plaintiff seeks to apply." *Wesby*, 138 S. Ct. at 500. Although this Court "do[es] not require a case directly on point," for a right to be clearly established, the "existing must have placed the statutory or constitutional question beyond debate" *al-Kidd*, 563 U.S. at 741.

This Court has made it clear to lower courts that they should define clearly established law at too high a level of generality. *Bond*, 142 S. Ct. at 11, see also *Kisela v. Pauly*, -- U.S. – 137 S. Ct. 548, 552 (2018) ("Today, it is again necessary to reiterate the longstanding principle that 'clearly established law' should not be defined 'at a high level of generality.") (quoting *al-Kidd*, 563 U.S. at 742)). For the purpose of qualified immunity, the inquiry "must be undertaken in the light of the specific context of the case, not as a broad general proposition." *Mullenix*, 138 S. Ct. at 308 (quoting *Brosseau v. Haugen,* 543 U.S. 194, 198 (2004) (per curiam)); see also *City of Escondido, Cal. V. Emmons*, -- U.S. --, 139 S. Ct. 500, 503 (2019) ("Under our case, the clearly established right must be defined with specificity."). "[S]pecificity is especially important in the Fourth Amendment context, where ... it is sometimes difficult for an officer to determine how the relevant legal doctrine ... will apply to the factual situation the officer confronts." *Rivas-Villegas v. Cortesluna*, -- U.S. --, 142 S. Ct. 4, 8 (2021) (citation omitted).

Although this case is not exactly as *Rivas-Villegas*, in which this Court observed that "an officer" sometimes finds it difficult to determine "how the relevant legal doctrine ... will apply..., the Corporate Appellee-Respondent was during the period at issue a school, understood applicable laws it has violated here. The Corporate was, still is, a domain of knowledge transfer: a factory that produces knowledgeable first-level manpower resource for society, and produces some preparatory for higher education. Marx had to be highly educated for her to become a school principal, Therefore, both Defendants were educated and could not reasonably have found it difficult to interpret the procedural "due process" right and "equal protection under the laws" provisions under the clearly established Fifth and Fourteenth Amendments. They understood the legal remedies that their violation of clearly established Title VII, the Fifth and Fourteenth Amendments would attract.

Review is necessary to compel compliance with this Court's mandate that lower courts "not to define clearly established law at too high a level of generality." *City of Tahlequah, Okla., v. Bond*, -- U.S. -- , 142 S. Ct 9, 11 (2021) (per curium). They should not define clearly established law at too high a level of generality.

Review is necessary to compel adherence to this Court's unanimous court issues limited ruling set forth in King's *Bivens* in which the Court determined the Sixth Circuit "did not address the arguments", reasoning that the district court's "summary judgment ruling hinged on a quintessential merits decision: whether the undisputed facts established all the essential elements of King's FTCA claims." The more reason for which this Court should review the case at issue here to determine whether the undisputed facts in the case established all the elements of Appellant-Petitioner's Title VII and state tort claims, and whether all his arguments were addressed, and whether the preponderance of his arguments were addressed, including those in his amended complaint, his affidavit, in transcript of deposition of him by defendants, and in his *Brief* in response to Defendants' summary judgment motion. He argued that the district court's consideration of the evidence and the Fifth Circuit's concurrence were partisan. Worsened by the lower courts' acceptance as evidence the correctness-unverified transcript of deposition of Plaintiff by Defendants, absent his signature on it and that he had not seen. (See transcript, Dfds. Exb. 4. P.120. in supp. MSJ).

The district court held that it "relied "on the declaration of Edward G. Conger" to determine that "ILT" was entitled to state sovereign immunity. But it placed crucial statements in Plaintiff's affidavit in unconstitutional obscurity. (citing: FED. R. CIV. P. 56(c)(1) (declarations may support a summary-judgment motion), as well as the Texas Education Agency's

website," reasoning that website "lists ILTexas as an open-enrollment charter school," (citing "*Kitty Hawk Aircargo, Inc. v. Chao*, 418 F.3d 453, 457 (5th Cir. 2005)", which persuades the taking of "judicial notice of agency website." See App. 7. Plaintiff contended: Defendants' "*Kitty v. Chao* citation in support should equally have applied to and be balanced with argument citing Defendants' website as evidence: "ILT is a business with a board of directors. See www.ILT.org. It should be noted that its website is not www.ILT.gov to indicate an affiliation with state government." Plt.'s resp. to Defds.' MSJ, 20. Also, Plaintiff's affidavit in support should have been balanced with Conger's declaration. That did not happen. What was good for the goose was good for the gander.

This Court has repeatedly acknowledged that review is a necessary condition of justice when justice is denied, especially in a summary judgment motion hearing. As is in this case where the Fifth Circuit carelessly affirmed the district court summary judgment decision for the wrong and inaccurate alleged reasons that Defendants gave for the employment termination at issue, in that, given the preponderance of Plaintiff's evidence to support his allegation of discrimination by Defendants, the termination may well qualify before this Court as unconstitutional, or as violation of a constitutional right.

A right that any United States citizen must enjoy, that which is provided him or her under the Fifth and Fourteenth Amendments, including right to due process and to heterogeneous modes of liberty. Not liberty in the general sense it is often misconstrued to mean, for example freedom to socialize, but specifically here the liberty to retain earned employment in the land of the greatest of civilizations. The Land the people are given to benefit from including the right to statutory and procedural benevolences that the Fifth and

Fourteenth Amendments lend to the people, from within these Amendments' friendliness and exuberances and flora. Review is necessary because the concept of liberty here is in the fairness of justice. Frequent denial of justice for unjust cause is the very action against which the Amendments were established for compliance.

Review is necessary because Petitioner had shown to the Fifth Circuit and the district court that these establishments exist, but to no avail: In their Decisions and Orders, these courts ignore the paramountcy of the Constitution, its Supremacy Clause that supersedes all laws in presented courts. Warranting intervention with respect to the Court's interpretation of the word "paramount" or "supreme" as in the U.S. Supreme Court, the Court's routine in ensuring justice and applying the supreme law. The justice respectfully sought here is for this Court to disallowed and reversed as it did in King's *Bivens* claims, and more. Where and when opining, on behalf of the Court, Justice Clarence Thomas sent a stern message the Sixth Circuit that the Supreme Court is "a court of review, not of first view."

The Court is right in its "review" ideology and its commitment to continue pursuing same: Justice for all, not for some, or for the politically powerful against the economically weak. Some teachers in our schools may not be economically strong but they are intellectually valuable in and even outside pedagogical environments. Especially when administrators unnecessarily flex their political-muscles against a producing teacher such as the Petitioner, whose employment was prejudicially terminated by administrators Karen Marx, Edward G. Conger and others in their company, unmindful of the value of Petitioner. The Court must serve justice to administrators for harassing eminent teachers and causing their termination when American budding scholars need them.

This is necessary to keep civilization afloat, so that it will not be forced aground and this Court prefers "afloat" to "aground." For through fair justice the United State has risen to prominence in global judicial history.

The Fifth Circuit ignored the fact: states immunity doctrine is an unsettled law. This Court has repeatedly debated on the topic, marked by a series of precedential shifts. From *Chisholm v. Georgia*, in which the Court held that under the new Constitution, states did enjoy immunity from suit by citizens of other states in federal court to the Eleventh Commandment which superseded *Chisholm*, to *Hans v. Louisiana* case in 1890 when the Eleventh Amendment prohibited a citizen of a state from suing the state at federal court, and this stream of cases continued including in the *Seminole Tribe of Florida v. Florida* case in 1990, to in the *Alden v. Maine* case, to *King v. the Six...* more. (Qualified immunity is not clearly settled).

Then came in the twenty-first century what may be considered to be a major shift in this Court's sovereign immunity doctrine in *Central Virginia Community College v. Katz* with a decision seemingly focused on interpretation of "plan of the Convention", and to *Torres v. Texas Department of Public Safety*, where the Court added war privileges to this list of doctrinal variants, without clarifying these heterogeneous patterns of a doctrine. Review is necessary to determine whether these doctrinal shifts have not shown clearly that the sovereign immunity doctrine has not become a clearly established law, upon which the Fifth Circuit could reasonably have opined affirming the district court's grant of summary judgment to a non-State movant.

B. *The Fifth Circuit overlooked the paramountcy of the Supremacy Clause over state laws in Title VII and state tort damages liability claim*

Paramountcy of the Supremacy Clause is widespread, should not be subjected to compromise. The Clause establishes that the Constitution, federal laws made pursuant to it, and treaties made under its authority, constitute the "supreme Law of the Land", and thus take priority over any conflicting state laws. Review is necessary in that the Fifth Circuit's Opinion and Order affirming the district court's summary judgment decision misplaced the "priority" by admittance of alleged applicable Texas State sovereign immunity doctrine over the "supreme Law of the Land". Both the Fifth Circuit and the district court overlooked Plaintiff-Petitioner's response to summary judgment motion arguments about the violation of his procedural due process rights under the Fifth and Fourteenth Amendments,

The Fifth Circuit's adoption of Defendant's definition of open-enrollment charter school defense has flaw because the school, by then, had a lottery-type admissions system. The lottery admission process is not an open-enrolment system, as Plaintiff has argued in his response. Still, the Fifth Circuit carelessly concurred with the district court's definition of open-enrollment holding that "Texas law is clear that open-enrollment charter school and their employees are generally entitled to immunity from suit and liability." (Citing "TEX. EDUC. CODE ANN. § 12.1056(a); *El Paso Educ. Initiative, Inc. v. Amex Props.,* LLC, 602 S.W.3d 521, 526-30 (Tex.2020).", see the court's argument **App. 23,** but the Circuit did not address or even mentioned Appellant's equally admissible elements in his affidavit bearing crucial arguments (his reference to website evidence): "www.ILtexas.org/apply (as ILT's website)," showing that "ILT" was a private organization during the period at issue. To support Appellant (Cited "*Handbook Aircargo, Inc. v. Chao,* 418 F.3d 453, 457 (5th Cir. 2005) (a

court may take judicial notice where information is reasonably accurate from a website)."

The Fifth Circuit did not address Appellant's argument that the "entirety of Defendants' Exhibit D, except App. 036, are not competent Summary Judgment evidence and must be stricken from the record." Plt's resp. to Dfds.' MSJ, 9. It did not address or even consider addressing Plaintiff's argument that the alleged student complaints were solicited preparatory to terminate or for use to "prove that the Plaintiff's employment was terminated based on nondiscriminatory grounds and based on misconduct" *Id.*

Not to talk of addressing the admissible counter-evidence, that countered the Defendants' alleged implied misconduct reason for termination defense, countered by TWC claims representative's favorable determinations on Plaintiff's application for unemployment benefits that Defendants challenged filing an appeal with TWC Appeals Tribunal. On which the Tribunal decided that reasons for his termination were not misconduct: "After careful examination of the existing record and the evidence, and in the absence of any testimony from the appellant, the Appeals Tribunal finds no reason to disturb the determinations of the claims representative." P. 2.

III. REVIEW IS CRUCIAL TO DEFINE SPECIFICITY, GENERALITY, AND COMPEL COMPLIANCE WITH THIS COURT'S ON-THE-MERITS-BASED PRETRIAL FINAL JUDGMENT PRECEDENT, AND WITH PARAMOUNTCY OF THE SUPREMACY CLAUSE

A. The Fifth Circuit's departs from this Court's clearly defined federal statutes of limitations for

Title VII tort claims, EEOC's, and Texas Workforce Commission's (TWC)

Plaintiff Filed his Lawsuit at Sherman Timely

The Fifth Circuit opined affirming the district court's that he did not file his lawsuit timely in federal court. In response, Plaintiff stated clearly that he did file his lawsuits timely and within 90 days of receiving the EEOC right-to-sue letter." He filed timely on July 10, 2018 (on the 86th day, following his receipt of EEOC Notice of Right to Sue dated July 6, 2018). Thus, he has clearly and sufficiently explained and proven that he filed his lawsuit in federal court within the time allowed.

Plaintiff Filed His Lawsuit in State Court Timely

The Fifth Circuit opined affirming the district court's that he did not file his lawsuit timely in state court. In response, Plaintiff stated he filed lawsuit timely and within 60 days upon receiving TWC Notice of Right to SUE (letter). This he stated clearly in his amended complaint and his *Brief* response: "the TWC letter ... provided authority to file Texas Commission on Human Rights Act", the letter in part: "... this notice is to advise you of your right to bring a private civil action in state court in the above-
referenced case. YOU HAVE SIXTY (60) DAYS FROM THE RECEIPT OF THIS NOTICE TO FILE THIS CIVIL ACTION." **App. 37 par. 1**, adding: "Therefore, filing a lawsuit in state court based on the issuance of this notice of right to file a civil action may prevent you from filing a lawsuit in federal court based on Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e - et seq." *Id.*, par. 3. Thus, Plaintiff filed his claims in state court with the appropriate authorizing TWC's Notice of Right to Sue timely (on the 28th of the 60 days allowed). Correspondingly, Plaintiff argued with evidence, but

the Fifth Circuit ignored the evidence in record showing that he filed his suit in state court on time "On October 10, 2018, the Texas Workforce Commission issued another "Right to Sue", and provided the Plaintiff 60 days to file his Complaint. On November 5, 2018, the Plaintiff filed his Complaint *pro se* in the 160 Judicial District Court of Dallas County, Texas." See

Plt.'s resp. to Dfds.' MSJ, 5.

B. The Fifth Circuit's interpretation of federal statute of limitations conflicts with this Court's clearly established definition of time barred Title VII and tort claims and citizens' right to procedural due under the Fifth and Fourteenth Amendments

While the federal and state statuses of limitations for Plaintiff-Appellant's claims were clearly established for any ordinary person to understand; as to in his case: federal (a 90-day period); state (a 60-day period), the Fifth Circuit and district court decided that these clearly established federal and state statutes were less important than their unconstitutional interpretation of the statutes, and made decisions, unmindful of efficacy and the paramountcy of the Supremacy Clause. See Article VI, Paragraph 2.

Denied Defendants' Motion to Dismiss

The district court denied Defendants' Motion to Dismiss, noting the following that cause them to amend their Motion: "Defendants' pending Motion for Summary Judgment raises many of the same issues raised in the Motion to Dismiss. The Court will decide these issues on the more complete record available in connection with the Motion for Summary Judgment." **Dkt. 81**, Order denying Defds.' MTD. **App.20.**

The U.S. Supreme Court has sent a stern directive to Circuits conveyed in King's *Bivens* that, for equity to prevail in any filed Motion for Summary Judgment, each party' arguments must be fully considered, in compliance with the "equal protection under the laws": the Fourteenth Amendment. What is good for the goose is good for the gander.

Plt.'s Resp. Defds.' MSJ.

That the Fifth Circuit overlooked Appellant's argument:

> the private organization running the school in *Rendell-Baker*, supra, ILT charter status, which in essence involves contracting with the State of Texas to provide education for some students, even as a legislative policy choice or consequent upon the Texas Education Code, does not necessarily entitle ILT to sovereign immunity. *Rendell-Baker,* supra, forecloses any argument that because ILT provides additional academic choices for parents and pupils or that the program offered by ILT is authorized by the state or that ILT calls itself an open-enrollment school, legislative policy in no way makes these services the exclusive province of the state.

Rendell-Baker, 457 U.S. at 842.

And his argument: the Corporate Defendant "acknowledges that by removing the action from state to federal court, the Corporate Defendant waived its jurisdictional immunity from suit. **Dkt. 32 at 8**, citing *Lapides v. Bd of Regents of the Univ. Sys. of Georgia,* 535 U.S. 613 (2002)." It also ignored Appellant's argument that the Supreme Court settled the distinction "between private and public action" in *Rendell-*

Baker v. Kohn, 457 U.S. 830, 842 (1982). *Id.* 19. The Fifth Circuit ignored the Appellant-Petitioner's argument that "the Corporate Defendant waived its jurisdictional immunity from suit. **Dkt. 32 at 8**, citing *Lapides v. Bd of Regents of the Univ. Sys. of Georgia,* 535 U.S. 613 (2002)."

That the one ground Defendants assert immune from suit, that Plaintiff has clearly disputed, is their Conger's Declaration, executed in support of their summary judgment motion. The other ground they proffered is that their immunity from liability continues *ad infinitum* after they removed the case from state court. (Citing *Cephas v. Tex. Health and Human Servs. Comm'n,* 146 F. Supp. 3d 818, 827 (S.D. Tex. 2015) (again without providing a copy of the case since it is not precedential) which holds that immunity from liability was an affirmative defense that barred enforcement of judgment against a governmental entity. Rule 12(b)(6), Complainant argued, "deals with a failure to state a claim, not a selective application of immunity."

Plt's resp. to Defds.' MSJ, 22.

Overlooked also was Plaintiff's argument that contrary to their immunity defense, during the period at issue, the Corporate Defendant's Employee Handbook reflected clearly that it was a "proprietary" corporation: self-evidencing its "proprietary" status, emphasis the Plaintiff's. And that "information includes all information relating in any manner to the business of ILTexas and its schools, students, parents, consultants, customers, clients ..." (See Handbook, under "**Proprietary Information**", p. 25.) See also Defendant's self-disclosure of self as Respondent-International Leadership of Texas in its response to Plaintiff's timely filed in U.S. District Court...., Sherman Division, Plano Office, that Defendants claim was

time barred. Filed November 27, 2018. See Sherman **Dkt. 13. page 1** of Defendants' response.

The fundamental principle of federalism in the United States was, to the founding Fathers, intended to distribute power between the national government and the state governments, with the federal government becoming the watchdog partner in the union. To be governed by laws and has been so governed ever since, in many respects. During which the Supremacy Clause midwifed by the First Amendment and engineered the Constitution to becoming the Supreme Law of the Land. Thenceforth, the Supreme Court became the Court of courts; not only the Court of justice but one that oversees and ensures that lower courts would not disturb citizens' constitutional rights and its precedents. For example in the Court's recent unanimous ruling in King's *Bivens*, it sent a stern signal to the Sixth Circuit that citizens' rights to petition the courts must not be snatched by unconstitutional summary judgment. It reminded lower courts that the Supreme Court is "a court of review, not of first view." This Court should review to prevent abrogation of the civil rights, which the Constitution provides and which the Supreme Court protects. Otherwise, the repercussions would be severe loss of protected rights. Citizens' injuries from any torts against them will no longer reach the courts. Their liberty to petition the courts will be annulled. The consequences will be adverse. Lawlessness will prevail and thrive against and over uncompromising paramountcy of the Supremacy Clause in the Constitution: a clearly established law that supersedes all other laws. This Court has defended civil right to petition the court in its ruling (over the Sixth Circuit's) against constitutional right violation in King *Bivens* claims.

Where the Court made it clear that the Supreme Court is "a court of review, not of first view" when a constitutional right is

disturbed. In that "sovereign immunity decisions have not followed a straight line." *Torres v. Texas Department of Public Safety*, 597 U.S. _ (2022). The Court should review because even if the Corporate Defendant was a state during the period at issue, it was liable to suit in the light of Supreme Court's decision on *PennEast Pipeline Co. v. New Jersey* (on which it relied in deciding Torres's petition); where it "recognized that the States had waived their sovereign immunity as to the exercise of the federal eminent domain power under the structure of the Constitution pursuant to the 'plan of the Convention'", on the basis of which the Court granted *Torres's* petition. Holding that "[u]pon entering the Union, the States implicitly agreed that their sovereign immunity would yield to federal policy..." *Torres v. Texas*, 597 U.S. _ (2022). And Congress has authorized a private damages suit against nonconsenting States, "a state cannot run under the cover of state immunity to suit its own purposes." (Thus, in joining together to form a Union, the States agreed to sacrifice their sovereign immunity for the good of the common defense).

The lower courts took the paramountcy of the Supremacy Clause for granted. The Supremacy Clause explicitly specifies that the Constitution binds the judges in every state notwithstanding any state laws to the contrary. Here the Fifth Circuit's Opinion and the district court's decision snatch away Appellant-Petitioner's rights to due process of the law and equal protection by the laws. Review will reveal a preponderance of Plaintiff-Petitioner's arguments supported by laws showing Defendant-Respondents are not entitled to sovereign immunity. And that "Open-enrollment is not defined in the Texas Education Code." Plt.'s resp. to Defds.' MSJ, p.15.

If the lower courts' decisions are allowed to hold, citizens' constitutional right will erode; be annulled. That is,

their right to petition the courts and be treated fairly in court. If the Fifth Circuit's "time barred" ground of affirming the district court's judgment is allowed to hold, this will foreclose against future timely filed lawsuits, and against citizen's Seventh Amendment right (to file legitimate claims in the courts): one that extends to the right to a jury trial that Petitioner has been denied. This Court has authority to review and should review.

CONCLUSION

For the foregoing reasons, this Court should grant this petition.

Respectfully submitted.

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