No. 22-306

IN THE SUPREME COURT OF THE UNITED STATES

LINDSAY O'BRIEN QUARRIE,

Petitioner,

v.

STEPHEN WELLS; THE BOARD OF REGENTS OF THE NEW MEXICO INSTITUTE OF MINING AND TECHNOLOGY; LORIE LIEBROCK; ALY EL-OSERY,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

PETITIONER'S REHEARING BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

NEW INTERVENING CASE LAW AS OF DECEMBER 2, 2022

Statutes

Supreme Court Rule 44
Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.)
Fed. R. Civ. P. 60 Relief from Judgment or Order

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PETITION FOR REHEARING

This brief for rehearing, filed pursuant to Rule 44 of this Court, brings to the Court's attention intervening matters and new intervening case law since December 2nd 2022 of utmost importance to the proper disposition of the petition for a writ of certiorari in this case.

REASONS FOR GRANTING REHEARING

1. On December 2nd , 2022 the same day this Court denied Petitioner Writ of Certiorari Petitioner was also denied promotion after working 7 years with high performance reviews as an Adjunct Engineering Professor at National University, San Diego California owing to Respondents continuing fraud and falsification of academic records by Respondent's. Non-African Americans with less experience are paid almost 2.5 times Petitioners salary. Petitioner was paid an average salary of 23.84 per hour over 7 years beginning in 2015 during which time the National University Adjunct Faculty pay was and is over $50/hr. Petitioner has over 30 years of professional experience as an engineer.

2. On December 5th , 2022 Petitioner notified the District Court of New Mexico of Respondents Fraud on the Court. Rule 60(b)(3) provides for reconsideration upon a showing of fraud. Fed. R. Civ. P. 60(b)(3). In addition, Rule 60(d)(3) allows the Court to "set aside a judgment for fraud on the court." Fed. R. Civ. P. 60(d)(3). To date as of the filing of this Petition for Rehearing, the District Court has not intervened. Petitioner has no other option for justice and relief but to file a petition for rehearing.

3. The Tenth Circuit's decision warrants this

Court's rehearing and grant of Petitioner's petition for certiorari. It is improper for a judge, to give consideration to the Respondents' false testimony.

4. There is new intervening case law since December 2nd 2022 supporting the rehearing of Petitioners Writ for Certiorari

BANKS-GRANT v. Grant, Record No. 0364-22-2 (Va. Ct. App. Dec. 20, 2022).

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> [3] Code § 8.01-428 provides that "the court may set aside a judgment by default or a decree pro confesso" for multiple reasons, such as fraud on the court.

KAYIK v. Saucedo, No. 2: 21-cv-1401 CKD P (E.D. Cal. Dec. 16, 2022).

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> Under Rule 60(d)(3) of the Federal Rules of Civil Procedure, the court may set aside judgment for "fraud on the court." Since it does appear more likely than not that the dismissal of this action was based upon fraud, plaintiff's motion to reopen the case will be granted. Accordingly, IT IS HEREBY ORDERED that:
>
> 1. Plaintiff's motion to reopen this case (ECF No. 23) is granted.

2. This case is reopened.

3. Defendant Sauceda is granted 30 days to file his waiver of service of process.

4. Since no appearance has been filed on behalf of defendant Sauceda, the Clerk of the Court is directed to serve a copy of this order upon Monica Anderson, Supervising Deputy Attorney General.

YACHT ASSIST, INC. v. CRP LMC PROP CO., No. 4D22-523 (Fla. Dist. Ct. App. Dec. 14, 2022).

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Wenwei Sun v. Aviles, 53 So. 3d 1075, 1076 (Fla. 5th DCA 2010) ("Trial courts have the inherent authority to dismiss an action as a sanction when it learns that a plaintiff has perpetrated a fraud on the court.")

5. New Mexico Tech continues to retaliate against Petitioner exercising his civil rights under Title VI. By continuing to defraud and defame him, his academic record and accomplishments. New Mexico Tech is a rogue university continuing to making false statements about Petitioner's academic accomplishments by continuing to claim that Petitioner did not earn any degree at New

Mexico Tech. An injunction against New Mexico Tech is needed to stop the continuing defamation.

A. There is Major Mistake and Major Error of Fact and Law. The District Court and 10th Circuit committed Reversible Plain Errors Due to Respondents Fraud

There is major mistake as well as major error of fact and law important to public policy. The need for rehearing is also more pressing here.
The Tenth Circuit excused Respondents' proffered reason-namely that the settlement agreement was still valid based on ignorance of the law (Black's Law Dictionary, 5th Edition, pg. 672-673). Respondents proffered reason was deficient because it fell below the range of competence demanded of attorneys based on ignorance of the law. It is a fundamental legal principle that ignorance of the law is no defense. Thomas Jefferson once said, "Ignorance of the law is no excuse in any country, If it were, the laws would lose their effect, because it can always be pretended". This is exactly what the respondents have done. Respondents willfully and consciously set into motion an unconscionable scheme to perpetuate fraud on the court, the deception was intentional and material

United States v. Householder, No. 1: 20-cr-77 (S.D. Ohio Dec. 12, 2022).

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> c. Ignorance of the Law
>
> The Government argues that Defendants should be precluded from presenting evidence and argument in support of a mistake of law defense. (Doc. 138 at 8-9). And the Government notes that Defendant Householder's Daubert briefings suggest his intent to raise or imply such a defense. (Doc. 138 at 8-9). Defendant Householder states that he has no intention to raise the argument, but merely intends to present testimony to assist the jury in understanding the operation of a 501(c)(4) and the funding of political campaigns. (Doc. 150 at 6). Again, the Court will address the specifics in its Order resolving the Daubert motions. But mistake of the law is not a valid defense in this case, and any testimony or argument to that end is precluded.

There was mistake of the law in the District Court. Contract law, as opposed to tort law, is applicable to the resolution of a breach of contract dispute in a Title VI racial discrimination case. However Petitioner wins on both contract and tort law.

Sneed v. Austin Indep School Dist, No. 21-50966 (5th Cir. 2022)

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> A fact finding is clearly erroneous when "the reviewing court on the entire evidence

> is left with the definite and firm conviction that a mistake has been committed." Guzman v. Hacienda Recs. & Recording Studio, Inc., 808 F.3d 1031, 1036 (5th Cir. 2015) (quoting Anderson v. City of Bessemer City, 470 U.S. 564, 573, 105 S.Ct. 1504, 84 L.Ed.2d 518 (1985))"

Detterbeck v. Detterbeck, 2022 I.L. App (1st) 220162 (Ill. App. Ct. 2022). December 20, 2022

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> "[A] court may depart from the law of the case to correct clerical mistakes, to clarify its opinion or mandate, to remedy fraud on the court or other misconduct, to avoid divergent results in cases pending simultaneously, or to minister to other similar aberrations." Id. (quoting Laffey v. Northwest Airlines, Inc., 642 F.2d 578, 585-86 (D.C. Cir. 1980)). Because application of the law of the case doctrine is a question of law, our standard of review is de novo. In re Christopher K., 217 Ill. 2d 348, 363-64 (2005).

Respondents racial discrimination against Petitioner under Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.) by their proffered ignorance of the law to justify a public university's refusal to readmit a more than qualified minority student to a doctoral program based on his race weakens Title VI.

B. New Mexico Tech, the 10th Circuit and District Court Decisions Remains a continuing Detriment to the public especially to African Americans and weakens Title VI Enforcement and Standard of Review

This remains a detriment to the public,1833 case of Barlow v. United States. U.S. Supreme Court ruled in Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA. St. Mary's Honor Ctr. v. Hicks, 509 US 502, 511, (1993) (emphasis added)

Petitioner an African American has been in terror since his PhD program at New Mexico Tech starting in 2009 the victim of well documented arbitrary and capricious actions by the university administrators without due process of law, and the Federal District Court of New Mexico. These include repeated ongoing lying and fraud committed by New Mexico Tech that the District court repeatedly ignored. and made arguments on Respondents behalf that Respondents did not even make themselves. Petitioner was never allowed any due process rights at New Mexico Tech.

The District Court of New Mexico forced Petitioner to do depositions in person at the height of the Covid pandemic despite Petitioners declared medical conditions and vulnerability, while allowing others to do remote depositions.

In the words of the late Honorable Ruth Bader Ginsberg "The court does not comprehend...the insidious way that women can be victims to discrimination". This generally, applies to the devious and hellish discrimination against African Americans compounded by insufficient representation in the judicial system and lack of concern and judicial will to what amounts to a public health crisis with the arbitrary execution of African Americans by state and non-state actors almost on a daily basis on pretext.

On December 5, 2022 Petitioner notified the District Court of New Mexico of the Respondents Fraud on the Court. To date the District Court has not intervened. Petitioner has no other option for justice but to file a notice for rehearing in the Supreme Court.

C. The trier of facts is entitled to treat a party's mendacity related to a material fact as evidence of Respondents culpability in a Title VI racial discrimination case.

Respondent's actions mandates a finding for the Petitioner therefore the writ of Certiorari should be granted.

The court assumes the truth of "all well-pleaded facts in the complaint, and draw[s] all reasonable inferences therefrom in the light

most favorable to the plaintiffs." *Dias v. City & Cty. of Denver,* 567 F.3d 1169, 1178 (10th Cir. 2009).

D. A public university student's admissions application fee qualifies as financial property and is therefore protected by state constitutional property rights.

The District Court failed to Protect Petitioner's Property Rights deprivation of property without due process violate one's constitutionally protected right to possess and protect property. And the contrary findings by the district court and the court of appeals are erroneous and a petition for rehearing should be granted.

E. Egregious District Court contention and reversible error that including racial slurs on a Petitioners Student Academic Transcript would not violate a Settlement Agreement

From the District Court of New Mexico *Id*:

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> Plaintiff asserts that "[j]ust because a given contract does not state every conceivable thing that cannot be done does not mean that it licenses any unstated thing to be done." Doc. 447 at 18. Plaintiff argues that

a contrary position would permit Defendants to add "any language whatsoever [to Plaintiff's transcript] no matter how derogatory or defamatory," such as a racial slur. ***Id.*** **[The addition of a racial slur to Plaintiff's transcript would certainly provide relevant evidence here, but not because it would violate the Settlement Agreement.]** Rather, the presence of racial slurs on an official record could support an inference that Defendants were motivated by discriminatory animus—which is, after all, the real subject of this case. *See, e.g.*, *Guyton v. Ottawa Truck Div., Kalmar Indus. U.S.A., Inc.*, 15 F. App'x 571, 581 (10th Cir. 2001) (unpublished) (holding that language showing racial animus "may be significant evidence of pretext") (quoting *Jones v. Bessemer Carraway Med. Ctr.*, 151 F.3d 1321, 1323 n.11 (11th Cir. 1998)). The fact that the addition of *certain* language to Plaintiff's transcript might support his case does not mean that the addition of *any* language that Plaintiff finds objectionable constitutes equally compelling evidence.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests this Honorable Court GRANT the petition for rehearing on Petition for a Writ of Certiorari.

Respectfully submitted,

December 2022

/s/ Lindsay O'Brien Quarrie
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