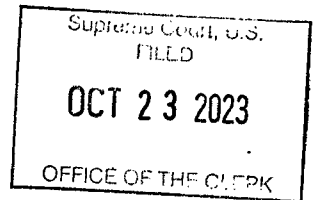


No. 23-5877

ORIGINAL

\_\_\_\_\_  
IN THE  
SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_



Sarah Nathreen Nakanwagi PETITIONER  
(Your Name)

vs.

City of Flagstaff — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Ninth Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

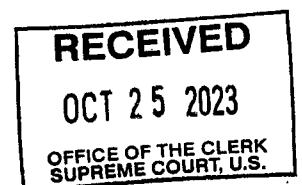
PETITION FOR WRIT OF CERTIORARI

Sarah Nathreen Nakanwagi  
(Your Name)

60 East Anita Avenue, Apt 15302  
(Address)

Flagstaff, Arizona, 86005  
(City, State, Zip Code)

857-919-7753  
(Phone Number)



**QUESTION(S) PRESENTED**

Is the currency for getting justice determined by one's race, ethnicity, and national origin? Are First Amendment and Fourteenth Amendment applicable in judicial system? For employment discrimination cases, what constitutes "in the interest of justice," "to accomplish justice," or "if justice is to be served" in relation to Federal Rules of Civil Procedure 60(b)?

## LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## RELATED CASES

- Nakanwagi v. City of Flagstaff, No. CV2020-00609, Coconino County Superior Court, transferred to District Court of Arizona: 1/25/2021
- Nakanwagi v. City of Flagstaff, No. 3:21-cv-08015-MHB, US District Court of Arizona, Judgment entered: 8/31/2022
- Sarah Nakanwagi v. City of Flagstaff, No. 22-16351, US Court of Appeals for the Ninth Circuit, Judgment entered: 7/24/2023.

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## INDEX TO APPENDICES

APPENDIX A	→ Decision of the United States Court of Appeals for the 9th circuit.
APPENDIX B	→ Decision of the United States District Court and the findings and recommendations of the United States Magistrate Judge, if there were any. (District of Arizona)
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| → <i>Casey v. Albertson's Inc.</i> , 362 F.3d 1254, 1260 (9th Cir. 2004)                      | → Appendix [A] at 2<br>→ Appendix [B] at 2 |
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| → <i>Gonzalez v. Crosby</i> , 545 US 524, 535 (2005)  | → Appendix [B] at 2                        |
| → <i>Hall v. Haws</i> , 861 F.3d 977, 987 (9th Cir. 2017)                                     | → Appendix [B] at 2                        |
| → <i>King v. Ryan</i> , No. CV-98-1277-PHX-RCB, 2009 WL 1904295 at *3 (D. Ariz. July 1, 2009) | → Appendix [B] at 2                        |
| → <i>In re M/v Peacock</i> , 809 F.2d 1403, 1404-05 (9th Cir. 1987)                           | → Appendix [B] at 2                        |

## STATUTES AND RULES

- Title VII of the Civil Rights Act → Appendix [B] at 1  
→ 42 USC § 1983 → Appendix [B] at 1

## OTHER

- OTHER
- Federal Rules of Civil Procedure 60(b)(3) → Appendix [A] at 2
  - Federal Rules of Civil Procedure 60(b)(1)(5), or (6) → Appendix [B] at 2
  - Federal Rules of Civil Procedure 60(b) → Appendix [A] at 2
  - Federal Rules of Civil Procedure 60(b) → Appendix [B] at 1-2
  - Federal Rules of Civil Procedure 59(b) → Appendix [B] at 1
  - Federal Rules of Civil Procedure 60(c) → Appendix [B] at 2
  - Federal Rules of Civil Procedure 60(b)(6) → Appendix [B] at 2

IN THE  
SUPREME COURT OF THE UNITED STATES  
  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

## JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 7/24/2023.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- Title VII of the Civil Rights Act of 1964
- Fourteenth Amendment to the USA Constitution
- First Amendment to the USA Constitution
- Section 1983, 42 USC §1983

- ARS § 23-1361
- ARS § 20-445
- ARS § 23-1501(3)(a), (b)(1), (c)(ii)
- ARS § 23-1362



## STATEMENT OF THE CASE

- 1) In their reply to my opening appellate brief, defendant City of Flagstaff conceded to having coerced me during our 9/28/2021 settlement discussions.
- 2) Defendant City of Flagstaff also boasted how presiding Magistrate Judge of the Arizona district court had retaliated against me and punished me for exercising my first amendment rights by denying my motion to reopen, simply because I had wondered why she (judge) had not arbitrated or overseen the settlement discussions.
- 3) Following case closure with prejudice on 9/29/2021, defendant City of Flagstaff continued retaliating against me by ensuring I was denied benefits and defaming me to third parties including Arizona Department of Economic Security - Unemployment Insurance Program (hereafter "DES").
- 4) In turn, DES relentlessly hounded, harassed me and threatened to forcibly intercept my college tuition (federal grants). I felt very persecuted.
- 5) Effectively, defendant City of Flagstaff had repudiated the settlement agreement (stipulation). I filed a motion to reopen the case on 6/21/2022, on which the Arizona district court stamped "Subject to rejection by the court," indicative of prejudgment.
- 6) District Court of Arizona magistrate judge denied my motion to reopen, arguing that coercion (including threats and intimidation) defendant City of Flagstaff subjected me to during settlement discussions, is perfectly normal and not grounds for reopening my case.
- 7) Prior, the District court of Arizona had granted Motion to Reopen to litigants with caucasian-sounding names in the case: Shawn Jensen et al. vs. Richard Pratt, et al, CV-12-00601-PHX-R0S, by acknowledging repudiation is an extraordinary circumstance.
- 8) In contrast, District Court of Arizona and Ninth Circuit appeals court denied my motion to reopen, by asserting that repudiation is not an extraordinary circumstance that entitled me to reopening my case.
- 9) Yet, the Ninth circuit court had earlier ruled in a case whose litigants had white sounding names that:  
"[r]epudiation of a settlement agreement that terminated litigation pending before a court, constitutes an

## STATEMENT OF THE CASE

extraordinary circumstance, and it justified vacating the court's prior dismissal order." *Keeling v. Sheet Metal Workers International Association*, 937 F.2d 408—Court of Appeals, 9th Circuit 1991.

- 10) District Court of Arizona Magistrate judge cited Rule 60(c), Fed. R. Civ. P.: "[a] motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2) and (3) no more than a year after the entry of the judgment or order or the date of the proceeding."
- 11) This evidences the judge was fully aware my motion to reopen was timely, when she wrote: "[n]early nine months later, on June 21, 2022, plaintiff filed a document entitled 'motion to reopen court case' (Doc. 43)."
- 12) Absurdly and shockingly, magistrate judge of Arizona district court willfully ignored clearly established federal law and fabricated a non-existent time requirement to deny my motion to reopen: "[r]ather, the record reflects that since the filing of her original complaint in state court on December 4, 2020, plaintiff has had ample opportunity to consider and reflect on the merits of her case."
- 13) District court of Arizona NEVER dismissively told Caucasian plaintiffs (Shawn Jensen, et al. vs. Richard Pratt, et al., CV-12-00601-PHX-ROS, whose motion to reopen was granted) that they had plenty of time to think about their case (from moment they initiated their civil action) as a "yardstick."
- 14) So, district court used it as an improper standard for me (a black woman of African ethnicity and Ugandan national origin), while not applying the same standard to Caucasian plaintiffs with same motion to reopen.
- 15) Similarly, on August 2nd 2021 I filed a "Motion for Issuance of Subpoena" requesting permission to issue subpoenas pursuant to Federal Rule of Civil Procedure 45.
- 16) The district court of Arizona discriminated against me by seamlessly granting the motion (for issuance of subpoena) of Caucasian plaintiff (in the case William Richard Patton vs. Ann Ash, et al., No. CV-19-00209-TUC-RM) and concocting extra requirements for me (black woman, African ethnicity, Ugandan national origin). Yet, I had satisfied the district court of Arizona's General Order 18-19, which did not require having IFP (informa pauperis) status, the excuse magistrate judge gave to deny my said motion.

### REASONS FOR GRANTING THE PETITION

1. By affirming the District Court of Arizona's perplexing and shameless assertions that there's nothing wrong with coercion (including threats and intimidation) during Settlement discussions, the Ninth circuit court's ruling in my case conflicted with:
  - a) Decisions of the first circuit court, that vehemently opposes coercion to settle using any type of threat.
    - ⇒ "We view with disfavor all pressure tactics whether directly or obliquely, to coerce settlement by litigants and their counsel." *Kothe v. Smith*, 771 F.2d 667 - Court of Appeals, 2nd circuit 1985.
    - ⇒ "In short, pressure tactics to coerce settlement simply are not permissible." *Kothe v. Smith*, 77 F.2d 667 - Court of Appeals, 2nd circuit 1985 (quoting *Schunk v. Schunk*, 84 AD 2d 904-NY: Appellate Div., 4th Dept. 1981).
  - c) Relevant decision of this court that asserted that a Settlement agreement is a contract that is invalid or unenforceable when there has been coercion.
    - ⇒ "[A]n arbitration or forum-selection clause is not enforceable if the inclusion of that clause in the contract was the product of fraud or coercion."
2. By affirming the District Court of Arizona's order, yet the Ninth circuit court was fully aware that the district court of Arizona's engagement in prejudgment, and the presiding magistrate judge had departed from accepted and usual course of judicial proceedings (especially when judge retaliated against me with punishment of denying my motion to reopen):
  - i) the Ninth circuit court effectively sanctioned such a departure, as to call for an exercise of the US Supreme Court's Supervisory power.
  - ii) the Ninth circuit's decision conflicted with relevant decisions of this court, including:
    - a) "The vital point is that in sitting in judgment... the judge should not himself give vent to personal spleen or respond to personal grievance. These are subtle matters, for they concern the ingredients of what constitutes justice." *Offutt v. United States*, 348 US 11 - Supreme Court 1958.
    - b) "[A] violation of § 455(a) is established when a reasonable person knowing the relevant facts, would expect that a justice, judge, or magistrate knew of circumstances creating an appearance of partiality notwithstanding a finding that the judge was not actually conscious of those circumstances." *Liljeberg v. Health Services Acquisition Corporation* 486 US 847 - Supreme Court 1988.

# REASONS FOR GRANTING THE PETITION

- iii) "[T]he First Amendment bars retaliation for protected speech." Crawford - El v. Britton, 523 US 574, 592 (1998)
  - iv) "As a general matter the First Amendment prohibits government officials from subjecting an individual to retaliatory actions for engaging in protected speech." Nieves v. Bartlett, 139 S. Ct. 1715, 1722 (2019).
  - v) "Official reprisal for protected speech offends the Constitution because it threatens to inhibit exercise of the protected right, and the law is settled that as a general matter the First amendment prohibits government officials from subjecting an individual to retaliatory actions, ... for speaking out.")
3. By affirming the District court of Arizona's order where magistrate judge false accused plaintiff Sarah of "failing to comply with statute of limitations" regarding Sarah's defamation claim, the Ninth Circuit's decision conflicted with that of Arizona State's Court of last resort that held that: republishing defamatory statement in modified form to third parties, resets statute of limitations. Larue v. Brown, 333 P. 3d 767 - Ariz. Court of Appeals, 1st Div. 2014.
4. By affirming the District of Arizona's order that repudiation is not an extraordinary circumstance that qualifies for reopening, the Ninth circuit's decision:
- a) Was in conflict with Fourth circuit that held that: "upon repudiation of a settlement agreement which had terminated litigation pending before it, a district court has the authority under Rule 60(b)(6) to vacate its prior dismissal order and restore the case to its docket." Fairfax Countywide Citizens v. Fairfax County, 571 F. 2d 1299 - Court of Appeals, 4th Circuit 1978.
  - b) Was in conflict with Sixth circuit that held that: Court had full power to vacate its order of dismissal when one party "attempted repudiation of the agreement on which the dismissal rested." Aro Corp. v. Allied Witan Co., 531 F. 2d 1368 - Court of Appeals, 6th Circuit 1976.
  - c) Was in conflict with this court's decision in: "the judge saying well, ... that fits the 60(b)(6) catchall. It justifies relief to tell me one thing and then ... go do another thing." Kokkonen v. Guardian Life Insurance Company of America, 511 US 375 - Supreme Court 1994 (Kokkonen No. 93-263 transcript of discussed judgment modification).

(8)

### REASONS FOR GRANTING THE PETITION

5(a) By applying one law for litigants with white (caucasian-sounding names) and another law for a minority like me (black race, Ugandan national origin, African ethnicity), the District court of Arizona and the Ninth circuit court of appeals engaged in Segregationist, Jim Crow-like conduct, and effectively discriminated against me and deprived me of equal protection of the law (per the Fourteenth Amendment to the US Constitution).

b) By affirming the district court of Arizona's order, the Ninth circuit court's decision conflicted with the third circuit's:

⇒ "A district court abuses its discretion when it bases its decision upon a clearly erroneous finding of fact, an erroneous conclusion of law, or an improper application of law to fact." *Cox v. Horn*, 757 F.3d 113—Court of Appeals, 3rd circuit 2014.

c) On top of itself departing from accepted and usual course of judicial proceedings, the Ninth circuit sanctioned the District court of Arizona's departure from accepted and usual course of judicial proceedings, as to call for an exercise of this court's supervisory power.

d) By affirming the district court of Arizona, the Ninth circuit's decision conflicted with relevant decisions of this court:

Proposed by Congress and ratified by the States in the wake of the Civil War, the Fourteenth Amendment provides that no State shall "deny to any person... the equal protection of the laws." Proponents of the Equal Protection Clause described its "foundation[al] principle" as "not permit[ing] any distinctions of law based on race or color." Any "law which operates upon one man," they maintained, should "operate equally upon all." Accordingly, as this court's early decisions interpreting the Equal Protection Clause explained, the Fourteenth Amendment guaranteed "that the law in the States shall be the same for the blacks as for the white; that all persons, whether colored or white, shall stand equal before the laws of the states."

*Students Fair Adm. v. President Fellows Harvard*, 143 S.Ct. 2141—Supreme Court 2023.

### REASONS FOR GRANTING THE PETITION

6. By affirming the District court's order where the magistrate judge falsely claimed that plaintiff Sarah does not have any evidence, the Ninth circuit's decision was in conflict with Second circuit that: overturned the district court's denial of appellant's motion under Rule 60(b)(6), because the "claims were virtually certain to succeed" if the judgment was reopened. *Marrero Richard v. Ashcroft*, 374 F.3d 46—Court of Appeals 2nd circuit 2004.
7. a) The Supreme Court should grant certiorari so there is improved and uniform application of established law regardless of one's race, skin color, ethnicity, gender or national origin, in the judicial system hence forth.
- b) It is my sincere hope that by grant certiorari, the Supreme Court will look into my grievances, complaint or raised concerns and do everything in its power to ensure equal access to courts without fear of encountering partiality by judges who are supposed to be the face of justice.
- c) "[T]he Supreme Court has not particularized the factors that justify relief under Rule 60(b)(6)," *Liljeberg v. Health Services Acquisition Corp.*, 486 US 847 — Supreme Court 1988. This is an important question of federal law that has not been, but should be settled by this Court. A lack of this Court's guidance or clarification on this matter has caused uncertainty and conflicting decisions by courts, resulting in denial of justice for otherwise deserving litigants like plaintiff Sarah.
- d) As highlighted from my case, defendant City of Flagstaff, the District Court of Arizona, and the Ninth Circuit Court all throw around the "extraordinary circumstances" citations, but all seem clueless as to what exactly it constitutes, and have failed to recognize that repudiation is one example of extraordinary circumstance.
- e) The Supreme court needs to clarify "justice" in employment discrimination cases like plaintiff's. Both District court of Arizona and Ninth circuit turned a blind eye to "accomplishing justice," and by affirming the district court's order the Ninth circuit's decision conflicted with relevant decisions of this court, including:

**REASONS FOR GRANTING THE PETITION**

- i) That clause gives the district court power to vacate judgments "whether such action is appropriate to accomplish justice." *Klapprott v. United States* 335 US 601 - Supreme Court 1949.
- ii) "We must continuously bear in mind that 'to perform its highest function in the best way, justice must satisfy the appearance of justice.'" *In re Murchison*, 349 US 133 - Supreme Court 1955.
- iii) "Rule [60(b)] does not particularize the factors that justify relief, but we have previously noted that it provides courts with authority adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice."
- d) Granting of certiorari is important to me because I hope that by speaking up this bravely, my experience will be an opportunity for mentioned injustices to be corrected moving forward, so that those similarly-situated will have a better experience and get the justice they deserve.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Sarah Nathreen Nakanwagi

Date: 10/23/2023

(11)