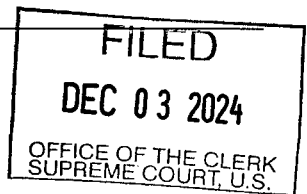


No. 24-7067

In The
SUPREME COURT OF THE UNITED STATES



MANUEL TIJERINO
Petitioner

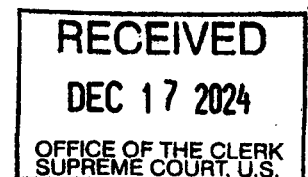
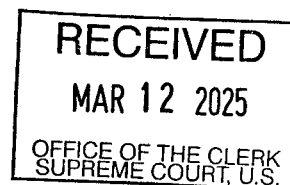
v.

ADMINISTRATORS OF THE TULANE EDUCATIONAL FUND
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE UNITED STATES, WASHINGTON, D.C. FOR THE FEDERAL CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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1. QUESTION PRESENTED FOR REVIEW

Petitioners 14th amendment Constitutional rights to **due process and equal protection under the law** were violated when Tulane terminated employee alleging leave without permission and misuse of company card, against petitioner Manuel Tijerino Pro Se in "bad faith" and proceeded to mislead the courts into miss-applying the **Family Medical Leave Act (FMLA)** waiver of standards blocking Petitioner's FMLA with the alleged misconduct. **Furthermore**, petitioner's attorney neglected and refused to fulfill his obligations to challenge and rebut legal presumption of misconduct and subsequently failed to rectify this oversight in a timely manner, whereby denying Petitioner the opportunity to explain the **dispositive** factor of alleged misconduct blocking Petitioner from receiving FMLA which would have changed the outcome of the case. **FMLA section 105 and section 825.220** prohibits FMLA retaliation and petitioners mix-use card provided protection via various Consumer Laws required by law, such as the **Truth in Lending Act (TILA)** regulation Z, Title 15 USC Ch. 50 Consumer Product Warranties 2301 (10) and **Electronic Funds Transfer Act (EFTA)** and **Regulation E**. Respondent alleging misconduct concealed the fact that they withdrew petitioners' won **merchant dispute** and then miss-represented it as an invalid **fraud dispute** undone by the bank to allege that the petitioner was misusing the company funds, rather than his legally obtained **refund**. As such rather than the case defended and won by preponderance of the evidence the case was undefended and lost through uncontroverted material evidence.

QUESTION: 1. Did the lower courts err in misapplying the Family Medical Leave Act (FMLA) waiver of standards denying Petitioners FMLA, due to a concealed miss-represented matter stemming from employer retaliation?

2. PARTIES TO THE PROCEEDING

The petitioner, Manuel Tijerino, Pro Se is a, Latino American, married man who is in a protected class, who has specialized need to know knowledge through being decade long payment processing merchant, through Sams Club and First Data, where all card processing merchants are required to maintain Payment Card Industry or PCI compliance which are the standard implemented by businesses processing cards needed to protect consumer card transactions, and as such in combination with this matter Petitioner overtime becoming aware of consumer laws, FMLA laws, and discrimination.

The respondent is Administrators Of The Tulane Educational Fund.

Parties to the proceedings are listed on the cover page.

3. CORPORATE DISCLOSURE STATEMENT

The petitioner is an employee of "Free Will," Pursuant to Rule 29.6 of this court rules, the petitioner is not a publicly held corporation; therefore there are no representing public parties, private parties, parent parties, or sister parties that have ownership to petitioner's claims .

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No.

In The
SUPREME COURT OF THE UNITED STATES

MANUEL TIJERINO
Petitioner

v.

ADMINISTRATORS OF THE TULANE EDUCATIONAL FUND
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE UNITED STATES, WASHINGTON, D.C. FOR THE FEDERAL CIRCUIT

6. PETITION FOR A WRIT OF CERTIORARI

Manuel Tijerino, Pro Se respectfully petitions for a writ of certiorari to request that the court review the judgements made by the United States Court of Appeals in Louisiana and to have those decisions reversed in the United States Supreme Court for the Federal Circuit in Washington, D.C. and grant relief as deemed appropriate.

7. OPINIONS BELOW

EASTERN DISTRICT COURT OPINION:

The original case, Tijerino v. Administrators of the Tulane Educational Fund 2:21-cv-00907-JTM-DMD filed on 05/06/2021 was dismissed with prejudice in the Louisiana Eastern District Court on 12/5/2022 as per DOC 28 Defendant's Motion for Summary Judgment. Respondent alleged "employee misused his company card, fled his job, and his FMLA request was meritless, and that he can't shield his misconduct behind FMLA".

EASTERN DISTRICT COURT OPINION FOR DENYING FRCP 60:

On October 30, 2023, Petitioner tried to bring the matter back in a timely motion to amend complaint pursuant to FRCP 60 for misrepresentation and fraud, since FRCP 60 motions can be filed within a year, case 2:21-cv-00907-JTM-DMD, the motion (DOC 44) was denied, order was given on 12/11/23 (DOC 47) due to 3 opinions. 1) failure to demonstrate that termination had to do with FMLA, and 2) that the FMLA claim was effectively time barred, and 3) Plaintiff did not timely file a Motion for Reconsideration under Rule 59 or appeal the Court's decision to the Fifth Circuit.

APPELLATE 5TH CIRCUIT COURT OPINION:

Appellate opinion on 09/04/24 was that they lack jurisdiction to consider Petitioners FRCP 60(b) motion for relief of summary judgment against Petitioners lawsuit arising from FMLA, they review for discretion, but mention they lack the jurisdiction to consider those argument as Tijerino did not file a timely notice of appeal from the grant of the original grant for summary judgment. They said Petitioner was not entitled to Rule 60(b)(1) because that rule is for accidental mistakes like clerical errors, and the court mention Petitioner argued he was entitled to rely under 60(b)(3) because the defendant fabricated a misleading narrative that deceived the district court in summary judgment proceedings.

He does not, however, explain how the purportedly misleading narrative prevented him “from fully and fairly presenting his case.”

APPELLATE 5TH CIRCUIT COURT REHEARING EN BANC OPINION:

The rehearing *en banc* was denied on October 02, 20204, Treating the petition for rehearing en banc as a petition for panel rehearing (5th Cir. R. 35 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (Fed. R. App. P. 35 and 5th Cir. R. 35), the petition for rehearing en banc is DENIED. They also offered that on the matter of new evidence Rule 60(b)(2) limits relief on the basis of new evidence to evidence that “with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b), and that the deposition transcripts surely do not meet these requirements. Finally, Plaintiff has failed to provide “specific evidence in his motion for relief that he ha[s] a ‘fair probability of success on the merits’ if the judgment were set aside, and thus relief under Rule 60(b)(1) would be improper.

8. JURISDICTION

The judgment of the court of appeals was entered on September 04, 2024 (24-3009). A petition for a rehearing en Ban was denied on October 02, 2024 (24-3009). The jurisdiction of this court is invoked under 28 USC 1254 (1): By writ of of certiorari granted upon the petition of any party to any civil or criminal case, after rendering of judgement or decree.

9. CONSTITUTIONAL STATUTORY PROVISIONS & RULES INVOLVES

The relevant provision of the Family Medical Leave Act of 1993, section 105 and section 825.220 which prohibits FMLA retaliation, The Truth In Lending Act Regulation Z

covers merchant dispute rights, The Electronic Funds Transfer Act and Regulation E having to with the reclamation rule. Title 15 USC Ch. 50 Consumer Product Warranties 2301 (10) for my refund. U.S. Constitutional Amendment XIV, I Equal Protections Clause, 14th Amendment Rights, and Article 6 section 2 The Supremacy Clause.

STATUTES:

Protection for employees who need a little bit of unpaid Family Medical Leave.

29 U.S.C CH 28 FMLA - 29 U.S.C. §§ 2601-2654

Protection against retaliation for employees who request or accept their FMLA rights.

29 CFR Part 825.220

Consumer Credit Findings of Use of Credit

15 U.S.C. § 1601 et seq

Truth in Lending (Regulation Z) - Protects people when they use consumer credit.

12 CFR §1026 - 12 CFR Part 1026

Refund Remedies - Protects consumers for receiving broken stuff.

15 U.S.C. §2301 (10)

Electronic Fund Transfers (Regulation E) protects consumers when they use electronic fund and remittance transfers.

12 CFR §1001 - 12 CFR Part 1005

10. INTRODUCTION

The District Court dismissing our case by granting an unjust Summary Judgment would present a matter which stipulates that the questions of fact presented at the time would have demonstrated that there was no arguments in dispute, however in the Pleadings for Summary Judgement (Doc Rec 28 section 3) the Defendant cited Plaintiffs

deposition, concealing the employers retaliatory actions of “undoing employees valid merchant dispute”, misrepresented as an “invalid fraud dispute undone by the bank”, to the alleged misconduct over petitioner use of his refund.

11. STATEMENT

Petitioner, an employee with Tulane University, sought to invoke FMLA leave due to a family medical emergency. Instead of granting this federally protected right, Respondent engaged in retaliatory actions which included, falsely accusing petitioner of misusing a company credit card, and using this fabricated misconduct as a pretext for termination. Despite providing evidence of proper credit card use and compliance with company policies, petitioner faced termination based on manipulated facts. In district court plaintiff's attorney did not object once in the deposition, or object the evidence allowed into the record. The card spend transaction spread sheet used to allege card misuse could had been “objected with the best evidence rule” since it did not show a real statement balance, or demonstrate that a dollar was ever charged where the company owed a dollar between Feb and March 2019 when petitioner was using his refund, and thus **proves no misconduct and caused confusion**. The petitioners attorney breached his duty by failing and refusing to **rebut the legal presumptions** of the alleged misconduct termination reason, whereby allowing the un-rebutted legal presumptions to stand as a matter of law, with a certain degree of legal certainty, which was used to effectively block Petitioners FMLA, and subsequently failing and refusing to file a timely motion for **rehearing** to present or argue **factual evidence**.

When our matter was miss-represented to the district court, the case was prejudiced from the beginning making it much more difficult to prove in the higher courts with

questions of law, since questions of facts are heard in the district court. However in law a **dispositive fact**, is a fact if proven with necessary certainty it **resolves** the legal dispute. FMLA section 105 and section 825.220 prohibits retaliation. The Truth In Lending Act (TILA) is a strict no fault liability law, meaning it's either violated or it is not. The alleged employee misconduct used to deny Petitioners FMLA claim stems from card misuse allegations from petitioner using his refund, which means that if there was no card misuse, there was no misconduct, and with no misconduct, the dispositive fact is proven with necessary certainty to resolve the matter. However, we must carefully consider the respondents retaliatory actions to deny employees FMLA rights by misrepresenting a card matter to allege misconduct to the lower courts preventing petitioner from presenting his side, far outweighs the dispositive fact making this matter a Constitutional matter of violation of **due process, and equal protection under the law.**

The Tenth Circuit Court of Appeals ruled in favor of an employee, emphasizing that “employers should not interfere with or retaliate against employees for exercising their FMLA rights.” *Smith v. Diffie Ford-Lincoln-Mercury, Inc.* (10th Cir. 2011)

Consumer protection are relevant to having a more profound understanding of the underlying matter because the alleged misconduct stemmed card misuse allegations.

As some may all ready know, consumer rights grant individuals various protections and entitlements such as right to safety, which includes protections against defective goods, rights to redress which gives consumers right to seek compensation of remedies when they have been harmed by a faulty product or service, such as refunds, repairs, or replacements, 15 USC Ch. 50 Consumer Product Warranties 2301 (10), and rights to be treated fairly, honestly and respectfully by business, this includes protections against deceptive advertising, unfair contractual terms and aggressive sales tactics.

The undoing of petitioners dispute by the respondent was not legal, which Truth in Lending Act (TILA) regulation Z covers credit card disputes. Additionally under Louisiana Consumer Credit Law, the Scope Section E states that all credit transactions shall comply with federal Regulation Z of the Board of Governors of the Federal Reserve System. The act further defines that Unauthorized or illegal acts by a third party include dispute disrupting operations. Section 3513. Waiver, agreement to forego rights, states the consumer may not waiver or agree to forego rights or benefits under this chapter except that a claim, if disputed in good faith, may be settled by compromise or agreement.

To play devils advocate, even if the dispute withdrawal was somehow legal it would conflict with federal law, the Supremacy Clause (Article VI, Clause 2 of the of the U.S. Constitution) established that Federal law takes precedence over State law, and FMLA rights is a Federal law, therefore an employer would not be able to force employees to waive federally-protected rights or undo petitioners dispute and subsequently use it to deny them FMLA.

The alleged card miss-use was protected by multiple legal channels as explained in our denied Plaintiff Motion to Amend Complaint Pursuant to Rule 60, our denied Judicial Notice, and our denied Motion for reconsideration, and as there was a great effort to deny Plaintiff from explaining the matter.

In Summary, DOL previously cited employer with failing to issue notices pre-qualifying Petitioner for FMLA based the merits of being at the employer long enough, having a qualifying reason, and demonstrating interference. As seen in *Ragsdale v Wolverstine World Wide. Inc* 2002, failure to issue notices wins FMLA cases. Due to the employers' failure issuing FMLA rights and responsibilities, the employee did not know it was his responsibility to provide a doctors note demonstrating his wife's high risk condition

as evidenced in the denied motion. Rather than properly administering FMLA the employer blame shifted and alleged that the employee fled his job, later changing it to attendance, specifically leave without permission. Due to respondent failing to properly administer or designate FMLA, the petitioners termination day on May 6th 2019 became the second FMLA violation, and according to the Doctrine of Continuance, the date of the second violation would mean the petitioners FMLA claim was not time barred. These things were previously presented in our denied motion to amend complaint (Doc 44).

Petitioners motion to amend complaint pursuant to FRCP 60 answered reasons used to deny the petition. In our interconnected malpractice case, *Manuel Tijerino v Gregory J. Miller, et al*, USDC-EDLA 2:23-cv-07391-BWA-KWR. Approximately one day, before taking notice of our Judicial Notice, the appellate court treated Plaintiffs motion for rehearing *en banc* as a regular motion for rehearing without polling and closed the appeals case. When the court moved to take notice, the Judicial Notice was denied without prejudice, and plaintiff attempted to explain the matter more clearly making the connection that the miss-represented card matter was connected to the alleged misconduct used to deny plaintiff's FMLA proving no misconduct with receipts, however, the motion to reconsider was denied because rules of evidence only allows Judicial Notice to be presented in matters that have not been adjudicated and the appeals had recently closed the case. However, the Judicial notice simply attempted to explaining the frameworks of how chargeback and refund processes actually work and the laws that surround merchant disputes and refunds, but subsequent motion to reconsider the Judicial Notice did a good job of setting the records straight with regards to the matter with receipts and some excerpts from the written finding and emails, whereby exposing the miss-representation used by the employer in relating with the card, which proves there was no misconduct, and as a result proving miss-

application of the FMLA waiver of standards.

Misconduct typically blocks FMLA. However, in this matter the employer retaliated against the employee, by **concealing and misrepresented the facts** that they withdrew the employees **valid merchant** dispute and miss-presented it as an **invalid fraud dispute** undone by the bank. These actions were done to allege card miss-use and misconduct as misconduct is necessary to deny FMLA. More importantly the undisputed alleged misconduct stemmed from the Petitioner using his refund in Feb and March.

Considering one sided arguments in district court, solidified petitioners need for appeals careful consideration, of motion pursuant to FRCP 60, misrepresentation and fraud, and allowed petitioner a chance in explaining his side of the matter. The underlying nature of the **dispositive argument** tips the scales of justice away from the alleged misconduct used to unjustly deny employee FMLA and towards employer retaliation.

Since the misconduct allegations stem from card misuse allegations of the **dispositive argument** is presented in a two parts with regards to the card matter. The won merchant dispute in January and the refund in February.

First, allegation of misuse of company card in January are irrelevant due to the card being mix-use card which allows personal use, and provided consumer protection evidenced by our won merchant dispute.

Also arguments, over won merchant dispute, effectively resolve themselves of any alleged misconduct in January 2019 as being irrelevant due to the employer previously admitting to the DOL investigator in the written findings that they did not terminate the employee in January over the card since nothing was owed, and inadvertently acknowledged the employee's won merchant dispute as a subsequent refund of the same amount that settled the card balance back to zero in January.

Unfounded allegations of employee misconduct by using his card to pick up a UHAUL reservation in January **lacks relevance**, proximity, and hold no connection to the FMLA retaliation in May what so ever and were made to conceal since we see that the refund what was alleged as the undisputed fact in motion in Support of Summary Judgment. However, the Petitioners' won merchant dispute in January **holds relevance** to employer's retaliatory action of withdrawing employees's won merchant dispute and alleging misuse of T&E card on employees termination letter, miss-representing employee termination alleging misconduct to DOL and the courts, to deny Petitioner FMLA violating both the employees consumer protections and FMLA.

Respondents admissions to DOL contradict what was alleged to dismiss our case in Summary Judgment. There is no misconduct in January, and the card matter in January is not connected to FMLA adverse action in May against employee. The won merchant dispute chargeback was protected under TILA, regulation Z.

Having argued no misconduct existed in January, the alleged misconduct now moves to the employee receiving a refund. The merchant refunding the customer, for a customer alleged breakdown and towing fees, has been demonstrated with refund receipts demonstrating the refund came in February and had no connection to FMLA adverse action taken in May by respondent. The emails from the merchant also support the refund came in February and the merchants own insurance company confirming that the damages were pre-existing demonstrate why a refund was issued. The manner in which a merchants chooses to refund customers is protected by the reclamation rule, and refund matter also resolves it self as the employer previously acknowledging that the refund belonged to the employee, while arguing the reclamation rule, as evidenced in the Judicial Notice.

The inconsistent allegations made to the courts that the employee was misusing the

employer's funds are **unfounded** since the negative balance from the work approved expense report indicates the employee was using his refund so the employer allegations of employee misconduct lack credibility. It was also mathematically impossible to allege misuse of company funds, since the negative balance indicated the refund.

These allegation of misconduct are **baseless** and there is nothing showing a dollar was ever owed when employee had possession of his refund or when using his refund. Since there is no misconduct, the dispositive facts have now been proven with necessary certainty to **resolve** the legal dispute.

In petitioners 5hr. deposition, after respondent learned that there was insufficient evidence to substantiate any claim of misconduct when it came to the employee obtaining or using his refund, and the right process had been followed prior to submitting a merchant dispute, and no friendly fraud existed, and that the chargeback and refund were rightfully obtained through various legal channels, respondent still chose to continue to misrepresent the matter to the courts, and together with petitioners attorney refusing to defend the card matter, the FMLA waiver of standards was miss-applied to block petitioners FMLA, allowing respondent to hide FMLA retaliation behind the card.

12. REASON FOR GRANTING THE PETITION

1. Misapplication of FMLA Standards and Retaliation

The FMLA prohibits employers from retaliating against employees who exercise their rights under the act (29 U.S.C. § 2615(a)(2)). In this case:

- **Employer's Misrepresentation:** The Respondent fabricated allegations of credit card misuse to justify the denial of FMLA leave and subsequent termination. This constitutes retaliation, a clear violation of federal law.
- **DOL Findings:** The Department of Labor cited the employer for failing to provide required FMLA notices, which constitutes interference under 29 U.S.C. § 2615(a)(1).

- **Precedent:** The Tenth Circuit in *Smith v. Diffie Ford-Lincoln-Mercury, Inc.* (2011) ruled that retaliation and interference with FMLA rights are unlawful. This precedent supports Petitioner's claims of employer misconduct.

2. Violation of Due Process and Equal Protection

The Fourteenth Amendment guarantees equal protection and due process. Respondent's actions and the courts' oversight raise significant constitutional concerns:

- **Fabrication of Evidence:** The Respondent misrepresented credit card transactions, undermining Petitioner's right to a fair trial.
- **Failure of Lower Courts:** The district court and appellate court failed to address dispositive evidence demonstrating that the alleged misconduct did not occur.
- **Precedent:** In *Cleveland Bd. of Educ. v. Loudermill* (1985), the Court held that due process requires an opportunity to present evidence and challenge false accusations.

3. Consumer Protection Violations under TILA

The Truth in Lending Act (15 U.S.C. § 1601 et seq.) protects consumers from fraudulent practices, including misrepresentation of credit card disputes.

- **Employer Manipulation:** Respondent falsely accused Petitioner of fraud despite evidence that credit card charges were resolved through lawful channels.
- **Legal Protections Ignored:** TILA Regulation Z explicitly protects consumers from such manipulation, and its application here would have invalidated the employer's claims.
- **Broader Implications:** Allowing employers to exploit consumer credit laws for retaliatory purposes undermines federal protections and creates dangerous precedents.

4. Procedural Failures and Judicial Oversight

Procedural errors compounded the injustice faced by Petitioner:

- **Summary Judgment Missteps:** The district court granted summary judgment without addressing conflicting evidence regarding credit card use.
- **Denial of Motions:** Petitioner's motion to amend the complaint under FRCP Rule 60 was denied despite new evidence demonstrating fraud and misrepresentation by Respondent.
- **Judicial Precedent Ignored:** The Supreme Court in *Anderson v. Liberty Lobby, Inc.* (1986) emphasized the need for courts to evaluate whether evidence could lead a reasonable jury to find in favor of the non-moving party.

5. National Implications of the Case

This case highlights broader issues affecting employees nationwide:

- **FMLA Enforcement:** Employers increasingly exploit loopholes and fabricate misconduct to block employees from exercising FMLA rights.
- **Consumer Protections:** The misuse of consumer credit laws in employment disputes threatens the integrity of federal protections.
- **Judicial Accountability:** Procedural failures in lower courts undermine public trust in the justice system.

13. CONCLUSION

Wherefore, Petitioner Manuel Tijerino Pro Se , respectfully request that this Honorable Court to grant the Writ of Certiorari to review the judgment of the lower courts, address these significant and constitutional issues, and provide the relief as deemed appropriate.

Respectfully Submitted,



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