ORIGINAL

No. 25-5929

IN THE SUPREME COURT OF THE UNITED STATES

NINTU XI GILMORE-BEY - PRO SE PETITIONER

VS.

HENRY MELTSER, ET AL. - RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Nintu Xi Gilmore-Bey

% 60 East Milwaukee Street, Unit 6633

Detroit, Michigan [48202-9998]

[No phone number to provide.]

FIVE (05) QUESTIONS PRESENTED

1. Whether the U. S. Equal Employment Opportunity Commissions' (EEOC) federal employment discrimination laws under Title VII of the Civil Rights Act of 1964 (Title VII), the Elliot-Larsen Civil Rights Act (ELCRA) and under 42 U.S.C. §1981 (§1981) qualifies employees who are indigenous peoples (whether named native American, american Indian, indigenous, aboriginal, aborigine, african American, muur American, paleo American, etc.) as a protected class for national origin discrimination-disparate treatment and/or race discrimination?
2. Whether national origin discrimination is related to racial discrimination under Title VII and ELCRA?
3. Whether a party has "absolute privilege" if it is abused under the "fighting words" doctrine and can cause an action for a defamation claim?
4. Whether a supervisor who is also the president and director of a company is an "agent" of an "employer" as defined under ELCRA and Title VII that can be held liable for unlawful employment discrimination in their individual capacity?
5. Whether a court of appeals can affirm a lower courts decision to grant a motion to dismiss under Federal Rules of Civil Procedures (FRCP) 12 (b)(6) if misconduct to obtain that decision has taken place by the moving party?

LIST OF PARTIES

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: Nintu Xi Gilmore-Bey, pro se plaintiff-appellant; Henry Meltser, defendant-appellee, being sued in his public/official capacity as the Supervisor, President, Director and Resident Agent of Fidelity Transportation of Michigan, Inc., and in his private/individual capacity and heirs, successors, agents and assigns; Fidelity Transportation of Michigan, Inc., successors, heirs, agents, and assigns, defendant-appellee, a domestic profit corporation registered with the STATE OF MICHIGAN being sued in its public/official capacity. All defendants, severally and jointly.

RELATED PROCEEDINGS

United States District Court (Eastern District of Michigan):

Gilmore-Bey v. Henry Meltser, et al., No. 23-cv-12651 (20 October 2023)

United States Court of Appeals (Sixth Circuit):

Gilmore-Bey v. Henry Meltser, et al., No. 24-1643 (01 August 2024)

TABLE OF CONTENTS

INDEX OF APPENDICES

TABLE OF AUTHORITIES CITED

CASES **PAGE NO.**

STATUES AND COURT RULES

OTHER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari issue to review the judgment of the court of appeals for the sixth circuit.

OPINIONS BELOW

From a federal court case, the opinion of the United States court of appeals appears at Appendix A to the petition and is stated to be unpublished.

JURISDICTION

From a federal court case, the date on which the United States Court of Appeals decided my case was 28 March 2025. A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 13 June 2025 and a copy of the order denying rehearing appears at Appendix E.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- **Constitution for the united States of America First Amendment (Protection of Freedom of Association):**

  Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

- **Title VII of the Civil Rights Acts of 1964 (Title VII):**

  Applies to employers with 15 or more employees. Title VII prohibits discrimination in employment based on national origin, as well as race, color, religion, and sex. Title VII prohibits employers from retaliating against people who oppose workplace discrimination or who participate in an Equal Employment Opportunity (EEO) complaint process. Title VII protection against national origin discrimination extends to all employees and applicants for employment in the United States, regardless of their place of birth, authorization to work, citizenship, or immigration status. National origin discrimination (under Title VII) means discrimination because an individual (or his or her ancestors) is from a certain place or shares the physical, cultural, or language characteristics of a national origin (ethnic) group. Title VII protects every employee or applicant against discrimination based on his or her national origin, including Americans.

STATEMENT OF THE CASE

Nintu Xi Gilmore-Bey, pro se plaintiff/appellant/petitioner (Gilmore-Bey), a former employee at Fidelity Transportation of Michigan, Inc., hired as a full-time "Office Staff" from 19 September 2022 to 26 October 2022 (date of termination without reason given). Gilmore-Bey was regularly treated less favorably than a foreign female "Office Staff" worker from Ukraine and a caucasian/european male "Office Staff" worker both similarly-situated and there were attempts made by the male worker to sabotage Gilmore-Bey's work. It was displayed in an online work profile that the reason for the termination was "Involuntary-Attendance or Tardiness".

The EEOC issued a Determination and Notice of Rights on 24 July 2023. A Notice of Intent to Sue was served to the defendants on 07 August 2023, offering an opportunity to settle the matter out-of-court within thirty (30) days and as an additional administrative process, done in good faith. There was no response to the notice. A second request for Gilmore-Bey's employee file was served on 25 September 2023. The request went ignored until the defendants were served the summons and complaint. The request was partially satisfied on 04 December 2023.

This case was initiated in the district court on 20 October 2023 (application to proceed without prepaying fees was granted) for claims of national origin-disparate treatment discrimination and race discrimination under Title VII, ELCRA and §1981. An amended complaint was filed on 02 February 2024, to include a defamation claim after false statements were written in Gilmore-Bey's employee file and because of the defendant's counsel, Evan M. Chall's abusive, hostile, demeaning and humiliating

behavior towards Gilmore-Bey in the motions to dismiss, arguing "absolutely privileged" as a defense. The Supreme Court case of *Chaplinsky v. New Hampshire 315 U.S. 568 (1942)* established the "fighting words" doctrine, ruling that statements likely to incite violence or breach of peace are unprotected. The defendants responded to the initial complaint with a motion to dismiss under FRCP 12(b)(6) on 21 December 2023 in violation of the court rules for seeking concurrence pursuant to E.D. Court of Michigan Rule 7.1(a) and making a written misrepresentation in the motion that concurrence was adhered to. The defendants and their counsel failed to serve Gilmore-Bey the motion until demands were made in Gilmore-Bey's declaration of facts filed with the district court on 09 January 2024. The motion was then served to Gilmore-Bey on 12 January 2024. The Supreme Court established that notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306.* A second motion to dismiss was filed by the defendants on 19 February 2024 (again in violation of the court rule for concurrence and stating that concurrence was adhered to) in response to the amended complaint. The defendant filed a Motion for Imposition of Rule 11 Sanctions on 09 April 2024. Report and recommendations to deny the sanctions was filed by the district court's magistrate judge on 14 June 2024 at Appendix D (with a threat of future sanctions alleging that plaintiff's lawsuit is frivolous) and a report and recommendation filed on 22 April 2024 to grant the motion to dismiss at Appendix C. The district court filed their order and judgment to adopt the report and recommendation to grant the motion to dismiss under FRCP 12(b)(6) and deny the motion for sanctions, filed on 11 July 2024. The district

court's decision stated that Gilmore-Bey's national origin was not a protected class and "membership" in a "federally recognized Indian tribe" was needed to state a plausible claim under Title VII, ELCRA, and §1981 for national origin discrimination and race discrimination at Appendix B.

Gilmore-Bey is **a woman of the indigenous peoples, autochthonous/indigenous native American (aborigine), descendant, by *jus soli* and *jus sanguinis,* of the copper-colored peoples who were the original and allodial inhabitants of the Americas and the adjoining islands prior to the existence of the United States.** The copper-colored peoples and their descendants has been, perpetually, misclassified by the federal government as, "Colored", "Negro", "African Amercian", and "Black",etc. **Websters Dictionary 1828 of American** as a noun [in relevant part]: A native of America; originally applied to the aboriginals, or copper-colored races, found here by the Europeans;...

Gilmore-Bey filed a timely notice to appeal. On appeal, Gilmore-Bey stated that the district court erred in ruling that: She failed to state a claim for national origin-disparate treatment, race discrimination under Title VII, ELCRA and §1981; defendants have absolute privilege to use fighting words; Gilmore-Bey's national origin is not a protected class; and membership in a federally recognized indian tribe is necessary to have a cause of action under Title VII, ELCRA and §1981. Gilmore-Bey used the following case laws to support her claims and arguments in district court and on appeal: EEOC Enforcement Guidance on National Origin Discrimination; In *EEOC v. Hamilton Growers, Inc., No. 7:11-cv-00134-HL (M.D. Ga. filed Oct. 4, 2011),* a race/national origin lawsuit, the EEOC alleged that "African American" workers were

regularly subjected to different and less favorable terms and conditions of employment as compared to workers from Mexico. In December 2012, Hamilton Growers, Inc., agreed to pay $500,000.00 to the workers to settle the case; **29 C.F.R. §1606.1-** how the EEOC "defines national origin discrimination broadly as including, but not limited to, the denial of equal employment opportunity... because an individual has the physical, cultural or linguistic characteristics of a national origin group." Also *Espinoza v. Farah Mtg. Co., 414 U.S. 86, 88 (1973)* stating that "[t]he term 'national origin' [in Title VII] on its face refers to the country where a person was born, or, more broadly, the country from which his or her ancestors came"); National origin discrimination includes discrimination against American workers in favor of foreign workers, See *Fortino v. Quasar Co., 950 F.2d 389, 392 (7th Cir. 1991); Fulford v. Alligator River Farms, LLC, 858 F. Supp. 2d 550, 557-60 (E.D.N.C. 2012)*(finding that the plaintiffs adequately alleged disparate treatment and hostile work environment claims based on their national origin, American, where the defendant treated them differently, and less favorably, than workers from Mexico); *St. Francis Coll. v. Al-Khazraji, 481 U.S. 604, 614 (1987)*(stating "...national origin claims have been treated as ancestry or ethnicity claims in some circumstances"); *Cortezano v. Salin Bank & Trust Co., 680 F.3d 936, 940 (7th Cir. 2012)*(stating that "national origin discrimination as defined in Title VII encompasses discrimination based on one's ancestry"); The EEOC, "The Commission's position is that employment discrimination because an individual is Native American or a member of a particular tribe also is based on national origin..."; *Reyes v. Pharma Chemie, Inc., 890 F. Supp. 2d 1147, 1158 (D. Neb. 2012)*(stating that "...national origin discrimination is so closely related to racial discrimination as to be indistinguishable"); *Avila v. Jostens,*

Inc., 316 F. App'x 826, 832-34 (10th Cir. 2009) (holding that a reasonable jury could conclude that the employer's reasons for terminating the Hispanic plaintiff were a pretext for national origin discrimination based on evidence that plaintiff's supervisor disciplined him more frequently and severely than non-Hispanic employees. *Woodsford v. Friendly Ford, No. 2:10-cv-01996-MMD-VCF, 2012 WL 2521041, at *12 (D. Nev. June 27, 2012)(*concluding that "lack of [a clear employment policy defining insubordination] could lead a reasonable juror to believe that Defendant's proffered non-retaliatory business reason was a post-hoc rationalization for terminating [the plaintiff]"); *Buon v. Spindler, et al., No. 21-622 (2d Cir. 2023)*, Plaintiff set forth allegations that support a plausible inference of discrimination. A Plaintiff should be allowed to "[c]reat[e] a mosaic with the bits and pieces of available evidence", that, taken together, support a plausible inference of intentional discrimination." **American Declaration on the Rights of Indigenous Peoples: Article VIII.** Right to belong to indigenous peoples. Indigenous individuals and communities have the right to belong to one or more indigenous peoples, in accordance with the identity, traditions, customs, and systems of belonging of each people. No discrimination of any kind may arise from the exercise of such a right; **Article XXVII. Labor Rights.** Indigenous peoples and individuals have the rights and guarantees recognized in national and international labor law. States shall take all special measures necessary to prevent, punish and remedy any discrimination against indigenous peoples and individuals; Pursuant to the Title VII definitions, in relevant part, the term "person" includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations,

corporations…The term "employer" means a person engaged in an industry affecting commerce who has fifteen or more employees. **SEC. 2000e. [Section 701].** Pursuant **ELCRA (MCL 37.2201)**, "Employer" means a person who has 1 of more employees, and includes an agent of that person. In *Jendusa v. Cancer Treatment Centers of America, Inc., 868 F. Supp. 1006 (N.D. Ill. 1994)*, the court said: "By incorporating 'agents' within the definition of 'employers,' the plain language of the statue appears to subject individuals to liability for engaging in unlawful employment discrimination." As was noted in *Schallehn v. Central Trust and Sav. Bank, 877 F. Supp. 1315 (N.D. Iowa 1995)*, "individual liability is imposed under the statue only when two conditions are met: (1) when the individual is an "agent" of the employer. (2) when the employer already falls within the statutory definitions of "employer" by virtue of the number of employees it has." *E.E.O.C. v. AIC Security Investigations, Ltd., 55 F.3d 1276, 1282 (7th Cir. 1995)*; *Jones v. Continental Corp., 789 F.2d 1225, 1231 (6th Cir. 1986)*. When a private company is involved, the acts of an employee can create §1981 liability for an employer. *Gatlin v. Jewel Food Stores, 699 F. Supp. 1266, 1268-69 (N.D.Ill.1988)*; *Montgomery v. Campbell Soup Co., 647 F. Supp. 1372, 1378 (N.D.Ill 1986)*.

The defendants filed a reply brief and another motion to sanction on appeal. The court of appeals affirmed the district court's decision and denied the motion to sanction filed on 28 March 2024 at Appendix A. The court of appeals decision stated that Gilmore-Bey failed to state a claim for national origin discrimination under Title VII and ELCRA because facts were not alleged demonstrating that Gilmore-Bey's national origin "have any particular "physical, cultural or linguistic characteristics" that make them

a protected class." The court of appeals stated that a plaintiff can bring a national-origin claim based on membership in a recognized Indian tribe, but do not hold that it is required. The court of appeals reason for affirming the district court judgement was because it stated that Gilmore-Bey did not allege that she belongs to any particular tribe, therefore, failed to state a claim for national origin discrimination under Title VII and the ELCRA. Further stating, Gilmore-Bey alleging being a descendant of the original copper tone people of the Americas, that she limited her claim to national-origin discrimination because of the courts deciding to conclude that Gilmore-Bey did not intend to bring a race-discrimination claim against the defendants. The court of appeals also threatened Gilmore-Bey with future sanctions alleging that she filed a frivolous appeal.

Gilmore-Bey's claim under 42 U.S.C. §1981 is a racial discrimination claim and this is being ignored. Gilmore-Bey mailed a Petition for Rehearing and Petition for Rehearing En Banc on 08 April 2025 which was timely filed with appeals. A decision on the rehearing was filed on 13 June 2025 at Appendix E.

FRCP 60(b): provides that the court may relieve a party from a final judgment and sets forth the following six categories of reasons for which such relief may be granted: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59; **(3) fraud, misrepresentation, or misconduct by an adverse party;** (4) circumstances under which a judgment is void; (5) circumstances under which a judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable

that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

An order procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided that the party is properly before the court. See *Long v. Shorebank Development Corp., 182 F.3d 548 (C.A. 7 Ill. 1999).* A Void Judgement is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." *Ex parte Seidel, 39 S.W.3d 221, 225 (Tex. Crim. App. 2001).*

REASONS FOR GRANTING WRIT

In the Statement of the Case section (pages 3-10), it details case laws and federal employment laws that conflicts with the lower courts decision. Hence, why the lower courts decision is erronenous, conflicts with other appellate court decisions, and federal employment laws of the U.S. Equal Employment Opportunity Commission, and has decided on an important federal question in a way that conflicts with relevant decisions of the Supreme Court.

Granting this writ of certiorari for review would avoid erroneous deprivation of protection of employment discrimination under federal employment laws against indigenous/aboriginal peoples. The questions presented in this case are of critical importance to the indigenous peoples and the interest of justice is at stake.

Furthermore, granting this writ is an extreme neccesity to avoid erroneous sanctions from false claims of frivolous filings that would result in irreparable injury to indigenous peoples. Gilmore-Bey has been, excessively, threatened with sanctions by defendants, the district court and now the appellate court because of this conflict. To

name a few reiterated cases that the lower courts decision conflicts with and why its erroneous are (see Statement of the Case section for full authorities and statement): In *EEOC v. Hamilton Growers, Inc., No 7:11-cv-00134-HL (M.D. Ga. filed Oct. 4, 2011)*, the EEOC alleged that "African American" workers were regularly subjected to different and less favorable terms and conditions of employment as compared to workers from Mexico. In December 2012, Hamilton Growers, In., agreed to pay $500,000.00 to the workers to settle the case. This was a race/national orgin discrimination lawsuit. National origin discrimination includes discrimination against "American" workers in favor of foreign workers, See *Fortino v. Quasar Co., 950 F.2d 389, 392 (7th Cir. 1991); Fulford v. Alligator River Farms, LLC, 858 F. Supp. 2d 550, 557-60 (E.D.N.C. 2012)*(finding that the plaintiffs adequately alleged disparate treatment and hostile work environment claims based on their national origin, "American", where the defendant treated them differently, and less favorably, than workers from Mexico); *St. Francis Coll. v. Al-Khazraji, 481 U.S. 604, 614 (1987)*(stating "...national origin claims have been treated as ancestry or ethnicity claims in some circumstances"); *Cortezano v. Salin Bank & Trust Co., 680 F.3d 936, 940 (7th Cir. 2012)*(stating that "national origin discrimination as defined in Title VII encompasses discrimination based on one's ancestry"); The EEOC, "The Commission's position is that employment discrimination because an individual is Native American or a member of a particular tribe also is based on national origin..."; *Reyes v. Pharma Chemie, Inc., 890 F. Supp. 2d 1147, 1158 (D. Neb. 2012)*(stating that "...national origin discrimination is so closely related to racial discrimination as to be indistinguishable"). The EEOC's position is that employment discrimination because an individual is native American is based on national origin. See

EEOC-NVTA-2016-9 (11-21-2016) Questions and Answers: Enforcement Guidance on National Origin Discrimination. Websters Dictionary 1828 of American as a noun [in relevant part]: A native of America; originally applied to the aboriginals, or copper-colored races, found here by the Europeans;...

In *Gilmore-Bey v. Deborah Schneider, et al., 2:24-cv-10689,* a case brought in the federal court (Eastern District of Michigan) for national origin discrimation against an indigenous woman, unjust money sanctions, "criminal" contempt, and an injunction to enjoin Gilmore-Bey from seeking recourse in federal court was placed on the pro se plaintiff (proceeding without prepaying court cost was granted) because of the allegations of frivolous filings and fraudulent allegations of concurrence violatons. It had been unjustly ruled in several cases that indigeous peoples must have "membership" in a "federally recognized tribe" and that indigenous peoples are not a protected class under federal law. Therefore, could not state a claim for a cause of action under Title VII, ELCRA or §1981. These unjust rulings has caused irreparable harm to the plaintiff.

CONCLUSION

The lower court's decision warrants this Court's intervention for a review and the interest of justice is at stake. This Court should grant the petition for a writ of certiorari and reverse the judgement of the lower court.

Dated 28 August 2025.

Respectfully requested,

By: ALL RIGHTS RESERVED UCC 1308.