

No. 25-815

In the
SUPREME COURT OF
THE UNITED STATES

[Siddharth Kode](#),

Petitioner,

v.

[Joseph Pargin](#); [Kimberly Pargin](#),

Respondents.

ON PETITION FOR A
WRIT-OF-CERTIORARI TO:
United States Court of Appeals
for the Fifth Circuit ("CA5")

PETITION FOR REHEARING ("Pfr")

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§I. LIST OF ALL PARTIES SCR-14.1(b)(i)

All parties are not captioned on the cover-page. A list of all parties to the proceedings in the courts whose judgments are the subject of this petition is as follows:

1. Siddharth Kode ("Kode");
Petitioner, plaintiff in W.D.Tex. Civil-Action Number ("CA#") 1:23-cv-01223
2. Joseph Pargin ("J.Pargin" or "[JSP]");
Respondent, original-defendant ("OD")
OD in W.D.Tex. CA# 1:23-cv-01223
3. Kimberly Pargin ("K.Pargin" or "[KAP]");
Respondent, OD in W.D.Tex. CA# 1:23-cv-01223
4. Rebecca Sue Robertson ("Robertson", "[RSR]" or "Becky");
OD in W.D.Tex. CA# 1:23-cv-01223
5. Williamson County ("WC]" or "Cnty."),
[WC] Constable's Office ("WCCO"),
[WC] Sheriff's Office ("WCSO"),
[WC] County Attorney's Office ("WCAO"),
[WC] District Attorney's Office ("WCDAO"),
collectively "the-County-defendants" or "TCDs";
ODs in W.D.Tex. CA# 1:23-cv-01223
6. Williamson County and Cities Health District ("WCCHD");
OD in W.D.Tex. CA# 1:23-cv-01223

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1 Applicable-SoL is plaintiff's " <i>entitlement</i> " protected by: FRCP-15(c)(1);FRCP-54(c)	24
2 Per FRAP-4(a)(4)/TRAP-33.1, legal-errors are perserved by: FRCP-59(a)/FRCP-59(e); SEE: (†)-ToA-consensus-cases; PACiFC:Ch.-4.A,D,F	24
3 No " <i>Forfeiture</i> " for Error-Preservation- Exceptions: " <i>Pure/Recurring Question-of-Law</i> " (Δ)-ToA-consensus-cases; PACiFC:Ch.-1.E.2-7 " <i>manifest-error</i> " is " <i>disregard of controlling-</i>	

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§IV. REASONS TO GRANT Pfr

1 FRCP-15(c)(1);FRCP-54(c): "[F]inal-judgment should grant...relief...which each party is entitled, even-if...party has not demanded that relief in...pleadings[.]" The correct/"applicable statute-of-limitations" ("SoL") - tied to plaintiff's "date of...original-pleading" - is the-most-basic "relief" upon-which, "[plaintiff is] entitled-to-rely". FRCP-15(c)(1); *Al-Khazraji*, 481 U.S. 604,604-608. By depriving petitioner his "entitle[ment]" to correct four-year SoL ("4Y-SoL") for his §1981 claim - 4-year-period terminating on {2023-10-10} - W.D.Tex.'s "final-judgment" violated FRCP-54(c),FRCP-15(c)(1), as held by *Al-Khazraji*. If it is true that petitioner's §1981 claim is subject to §1658(a)'s 4Y-SoL (infra, **§IV.4**-**§IV.9**), CA5 reversibly-erred by failing to reverse W.D.Tex.'s reversible-error, even-if CA5 was correct that petitioner did "not demand[] that relief in...pleadings", as mandated by FRCP-54(c),FRCP-15(c)(1). Thus, FRCP-54(c),FRCP-15(c)(1) refute CA5's erroneous ruling that petitioner "forfeited" 4Y-SoL ("CA5-SoL-Ruling").

2 FRCP-59(a)/FRCP-59(e);FRAP-4(a)(4)/TRAP-33.1: CA5-SoL-Ruling is further-refuted by both FRAP-4(a)(4)/TRAP-33.1, which expressly-convey that: motion-for-new-trial and motion-to-amend-judgment ((FRCP-59(a))/FRCP-59(e)) are sufficient to preserve legal-errors in order(s)/judgment(s) for "civil-cases".

the overruling by operation-of-law of...motion-for-new-trial or...motion-to-modify-judgment preserves for appellate-review...complaint properly-made in [such] motion[.]

Petitioner re-raised W.D.Tex.'s improper/abusive application of two-year SoL ("2Y-SoL") to petitioner's §1981 claims in petitioner's combined FRCP-59(a)/FRCP-59(e) motions. **W.D.Tex.1:23cv1223.51.pp.20-33.** This court recognized the error-preserving nature of such post-judgement-motions for 60+ years. *Foman*, 371 U.S. 178,180-182; *Swift-Eckrich*, 546 U.S. 394,396,398,404. Upon-information-and-belief ("UiaB"), every USCA/state-supreme-court (many citing FPaP-§2818) recognize this as proper error-preservation. SEE (†)-**ToA**-consensus-cases. While FRCP-59(e) motions are deemed "motions-for-reconsideration" ("MfRs"), FRCP-59(a) motions are not MfRs,

and nothing in the term "*Motion-for-New-Trial*" indicates "*reconsideration*". PACiFC:Chapter-4,A,D,F;pp.231-256,248-249 ("*When-in-doubt...safest-option is to file...FRCP-59(a)-motion raising any-issues forming...basis for...new-trial, whether...issues were previously-raised-or-not*"). Petitioner filed W.D.Tex.1:23cv1223.51 as FRCP-59(a) and this filing is officially-recorded on W.D.Tex.'s docket-sheet/docket-entry as FRCP-59(a). The errors did not arise until order/judgment W.D.Tex.1:23cv1223.49,50; therefore, petitioner raised such errors at earliest-opportunity. For these additional reasons, *USBNA/LincolnGen/Templeton/Simon* ("4-CA5-Reconsideration-Procedural-Rule-Cases", Pet.62,71-73)) do not apply to petitioner's FRCP-59(a) motion, which was not-only unjustifiably-denied by W.D.Tex., but-also wrongly "*shield[ed]...from review*"(infra, *Davis-v-US*) by CA5.

3 Error-Preservation-Exceptions: Although petitioner timely-preserved such reversible-errors at all-stages - petitioner's complaints, petitioner's pre-judgment-briefs (directly addressing respondents), petitioner's post-judgement-motions (Pet.52-53) - error-preservation is not necessary for:
(A) "*plain[/]fundamental[/]manifest* error"; **(B)** "*uncertainty in...state of...law*"; **(C)** "*novel[/]important recurring-questions of federal-law*"; **(D)** "*extraordinary-situations [necessitating] review...to prevent...miscarriage-of-justice...preserve integrity of judicial-process*"; **(E)** "*pure question-of-law*"; **(F)** "*inherent-issue on appeal*"; **(G)** "*futility [of raising...issue]*". PACiFC:Chapter-1.E.2-7;pp.25-40 (collecting over-100 USCA-cases). In pre-judgment FRCP-26(f)-report addressing all-defendants, petitioner expressly-states that his "*postformation*" §1981 claims "*aris[e]-under*" **Civil-Rights-Act-of-1991** ("CRAo1991").
W.D.Tex.1:23cv1223.47.p.5. W.D.Tex.'s application of state's personal-injury SoL ("SPI-SoL"), originating in state-statute **Texas-Civil-Practice-&-Remedies-Code-§16.003** (2Y-SoL), rather than federal-statute §1658(a)'s mandate of 4Y-SoL to **CRAo1991** is both abuse-of-discretion and reversible-error that arises from such: "*pure question-of-law*" and "*novel[/]important recurring-question of federal-law*". *Sandberg* 501 U.S.1083,1099n.8 ("*issue in...evolving-definition[/]uncertainty...important[t]-to...administration-of*"
p.25 1776462505

federal-law" warrants review even-if it "*was-not-raised-below*.") *Koon*, 518 U.S. 81,100 ("court...abuses...discretion...when it makes...error-of-law.") *Thorton*, 829 S.E.2d 592,599 ("[A]pplying incorrect-statutes...is, in-itself, reversible-error.") SEE (Δ)-ToA-consensus-cases. Eventhough *Donnelley*, which mandated application of 4Y-SoL, narrowly-dealt with postformation employment-contract §1981 claims (Pet.52-54,62,69-75), all USCAs (including CA5) have broadly-interpreted *Donnelley* as controlling-precedent for one-or-more other federal-statutes where §1658(a)'s application was successfully raised-on-appeal (but not in lower-court) - further-proving that applying wrong-SoL for any-statute falls under one-or-more error-preservation-exceptions (A)-(G). "[M]anifest-error' is... 'wholesale disregard[/]/misapplication[/]/failure-to-recognize controlling-precedent.'" SEE (*)-ToA-consensus-cases; *Zurko*, 585 U.S. 129,155,158,165 ("manifest-error" means "*clear-error*".) §IV.7; Pet.62,67n.ML,73-74; *International-Fiber*, 169 Ohio.App.3d 395,397-401 ¶¶1,10-21 ("wrong-SoL...[is]...plain-error...which seriously-affects fairness[/]/integrity[/]/public-reputation of...judicial-process, thereby challenging...legitimacy of...underlying judicial-process itself", even-if plaintiff did not raise applicable-SoL); *Simpkins*, pp.1,5,6,39 ("incorrect-SoL...[is]...clear-error-of-law...injustice"); *Bernstein*, 63 F.4th 967 (incorrect-application-of-SoL is abuse-of-discretion); *AAAMWI*, 739 N.W.2d 92,92-94 (Kelly, Cavanagh, Weaver, JJ., dissenting, "*incorrect-SoL...[is]...miscarriage-of-justice*"). This Court has repeatedly-remanded CA5's "*outlier...refus[al]*" to apply "*plain-error-review*", even on "*unpreserved factual-arguments*". *Davis-v-US*, 140 S.Ct. 1060,1061-1062; *Rosales-Mireles*, 585 U.S. 129; *Hicks-v-US*, 137 S.Ct. 2000,2000-2002 ("When this Court identifies...*legal-error*, it routinely-remands"); *Holguin-Hernandez*, 140 S.Ct. 762,765-767 ("CA5's approach is inconsistent-with...*Federal-Rules*"). This Court has even required CA5 to review ((B),(C), (E)) "*substantive...unsettled legal-question[s]*", eventhough, there is no possibility of "*plain-error*". *Henderson*, 568 U.S. 266,268-279

4 "Enforcement" means "Performance": "*Statutory-language matters*." *Comcast_TOA*, p.33; *Sylvain*, 714 F.3d 150,152. [Discrimination in the "*right...to...enforce...contract*"] does not

mean the same as [discrimination in the enforcement of contract] ("discriminatory enforcement of [RCC]"). In the former, the object of discrimination is (plaintiff's) right itself - therefore, not the actual enforcement. In the latter, the object of discrimination is the actual enforcement. The latter refers to how the contract is being "perform[ed]" "carried-out", specifically by-defendant(s) against plaintiff, and it conveys that, because of race/color/retaliation:

(A) plaintiff's existing, postformation contractual-rights are being "interfere[d-with]" "breach[ed]" "impair[ed]" "violat[ed]" "infringe[d]" Pet.70 *Patterson*, 491 U.S. 164,164-166,169,171,176-182;

AND/OR

(B) plaintiff is subjected to "*discrimination in the terms...conditions...privileges*" ("TCP")("DTCP") of such contract. Pet.60n.MD; 491 U.S. 164,180 in-response-to - *Patterson-petition*, p2 - asking this very question.

Before Congressional-enactment of CRAo1991, this Court narrowly-interpreted §1981's language to cover only the former, but not the latter. (There is much debate within *Patterson_TOA*, pp.2,20,21 whether "*make-and-enforce*" includes "*make-and-perform*", with Justices White, Scalia and Rehnquist insisting that "*enforce*" only means "*[plaintiff's] right to go to...State-court for relief*", while petitioner argued contrarily that "*enforce[ment]*" includes "*performance*"):

"[P]ostformation conduct does not involve...right to make...contract, but rather implicates...performance of established contract-obligations...conditions of continuing-employment, matters more naturally governed by state-contract-law[/]/Title-VII...It is plain that...former right is not implicated directly by...employer's breach in...performance-of-obligations under...contract-already-formed. Nor is it correct to say that racial-harassment amounting to...breach-of-contract impairs...employee's right to enforce...contract. [Contrariwise], conduct amounting to...breach-of-contract under state-law is precisely what...language of §1981 does not cover[.]...[P]laintiff is free to enforce...terms of...contract in state-court, and cannot possibly assert, by reason of...breach alone, that he has been deprived of...same right to enforce contracts as...enjoyed by white-citizens." 491 U.S. 164,177,183.

"[R]ight to enforce...contract...embraces *only* protection of...judicial[/]nonjudicial legal-process...and...*right-of-access to that process*, that will address[/]resolve contract-law claims without regard to race." 491 U.S. 164,165

It is clear from *Patterson's* language above that this Court narrowed §1981's scope to exclude postformation conduct, not only for employment-contracts, but for all-contracts. *Rivers*, 511 U.S. 298,306n.6. I.E., this Court deemed that 39th-Congress wrote "enforce" into §1981 in {1866}, only because:

(1) Otherwise, courts in post-civil-war South - would not have recognized this right that was not afforded to black-persons prior to civil-war, in-light-of this Court's prior-precedent, *Dred-Scott*, which held, *inter-alia*, that black-persons "*had no rights which...white-man was bound to respect.*" 60 U.S. 393,393-454.

(2) The only way that state/local governments and white-persons/groups could prevent "*right-of-access to that process*" would be to (unlawfully) re-enslave/kidnap/incarcerate blacks by holding them in bondage, thereby physically preventing them from exercising their right to "*enforce contracts*". 491 U.S. 164,177-178 ("*[R]ight...to...enforce contracts accomplishes [nothing] other than...removal of legal disabilities to sue...be...party...testify...enforce...contract[.]...[I]t is impossible to give such language any other meaning.*")

A modern Congress, witnessing this Court's narrow-holding in *Patterson*, realized that §1981's language must be changed, not-only, to undo/overrule *Patterson's* holding, but-also, to "enlarge...expand...scope of [§1981]...to provide adequate protection to victims of discrimination...appl[ying throughout]...all phases[/]incidents of...contractual-relationship...[and]...entirety of...contracting-process." *Comcast*, 140 S.Ct. 1009,1020 (Ginsburg,J.,concurring); *Rivers*, 511 U.S. 298,302,304,306,308 (citing S.Rep.101-315, pp.12-14 (1990); 105 Stat. 1071-1072). In CRAol991, Congress wrote §1981(b), such that "make" in §1981(a) only corresponds to "making" in §1981(b), whereas "enforce" in §1981(a) encompasses all other (postformation) contractual-rights: "*performance...modification... termination of contract[:]* enjoyment of all benefits...[TCP]...of...contractual-relationship". So, when §1981-plaintiff alleges "*discriminatory*

enforcement of [contract]", she is, by-definition, incorporating into her complaint, *"discriminatory performance"*/DTCP. Even Summerlyn-RCC-§10.7, "Enforcement", states (<https://summerlyn.org/dccrs>):

"owners...shall have...right to have each[/]all of...foregoing restrictions...conditions...covenants herein faithfully carried-out[/]performed with reference to each[/]every portion of land within...Subdivision, together with...right to bring any suit...undertake any legal-process that...[is]...proper to enforce...performance thereof"

meaning that:

(A) petitioner's right to enforce (as defined in *Patterson*)

Summerlyn-RCC is not in-dispute, because it is firmly safeguarded by Summerlyn-RCC (as-well-as Texas-Property-Code-§202.004); AND

(B) *"enforcement"* is referring precisely to how the contract is being carried-out[/]performed; AND

(C) all adverse-actions by defendants against petitioner, as alleged in petitioner's complaint, fall exclusively into the realm of racially-motivated/retaliatory *"performance"*/DTCP.

Given the salient difference explained above, petitioner respectfully-asserts that the lower-courts have manifestly-erred by failing to realize petitioner's incorporation of the new-definition of *"enforce"*, as codified in CRAo1991-amendment §1981(b). The lower-courts have misread/misinterpreted petitioner's use of *"enforce"* to mean the obsolete/defunct meaning, as specified in *Patterson*, that has been overridden by Congressional-enactment of CRAo1991. cf. *Diriltens35, Diriltens94* 2014 WL 2979113 (N.D.Ill. correctly recognizes new-definition of *"enforce"*). This manifest-error caused W.D.Tex. to apply the wrong statute-of-limitations ("SoL") corresponding to obsolete/defunct definition of *"enforce"*, as specified in *Patterson*. Similarly, CA5 did not catch this distinction, thereby reversibly-erring by failing to recognize that W.D.Tex. committed reversible-error in misinterpreting petitioner's complaint, as explained above. (Words "DTCP"/"DHEH"/"retaliation" in the complaint is further-evidence that petitioner has incorporated the new-definition of *"enforce"*, clearly showing that petitioner's claims *"aris[e]-under"* CRAo1991.)

5 Congressionally-Ratified, Nonemployment Antiretaliation:

Antiretaliation-protection is necessary for nonemployment-contracts such as vehicle warranty/service contracts. SEE E.G. *Causey*, 394 F.3d 285,287-288. While warranty/service contract(s) could conceivably be protected under §1982, contracts that do not involve property such as life-insurance-contracts or facility-membership-contracts make this point crystal-clear. *Hunter*, 375 F.Supp.2d 442,445-446 (denying defendant's motions-to-dismiss §1981, but granting motion-to-dismiss §1982); *Swinton*, p.1 (gym-membership-contract); *Rivera*, p.1 (warehouse-membership-contract). §1981 is the sole-law that directly-redresses such civil-rights-violations in nonemployment-contracts - either as monolithic-retaliation/retaliatory-hostile-environment-harassment. If district-courts (such as W.D.Tex.) and appellate-courts (such as CA5) refuse to recognize §1981 retaliation in nonemployment-contracts, then §1981-plaintiffs have no method to redress this retaliation. Although not explicitly-stated, the lower-courts' rulings erroneously-imply that *CBOCS* allowed for §1981 retaliation claims only in employment-contracts. Such implicit-ruling is baseless, because even the plain-language of §1981 says nothing about employment. More importantly, such courts would be flouting this court's holdings in *CBOCS*, *Patterson*, *Runyon*, *Rivers* that "*§1981 encompasses retaliation claims*" under "*all-contracts*". 553 U.S. 442,442-443; *CBOCS_BftR*, pp.47-48 citing 511 U.S.298,304:

"§101 [of CRAo1991]...is not limited to employment; because it covers all-contracts...a substantial part of §101's sweep does not overlap Title-VII...§101 has the effect not only of increasing liability but also of establishing...new standard-of-conduct."

In *CBOCS*, this court expressly-authorized §1981 retaliation claims in nonemployment-contracts, stating: "*Nor is it obvious how we can interpret §1981 to avoid employment-related overlap without eviscerating §1981 in respect to nonemployment-contracts where no such overlap exists.*" 553 U.S. 442,455. The *CBOCS* opinion-announcement by Justice Breyer does not even mention "employment" (or Title-VII), instead, referring generically to "*contract-rights*" and "*contract-related-discrimination*", further indicating that §1981 retaliation claims

are actionable under "*all-contracts*". *CBOCS_OA*, pp.1-2. This court made its ruling in *CBOCS*, after having considered amicus-briefs supporting respondent-plaintiff, in which one-or-more amicus-brief(s) specifically call this court's attention to antiretaliation rights of nonemployment-plaintiffs, who would be left without antiretaliation protection, if this court had ruled that §1981 did not "*encompass[] retaliation claims*" - that "*Congress could not have intended such...perverse-result.*" SEE E.G. *CBOCS_Amicus_LCCR*, pp.25-28. Such amicus-brief expressly-cites the example of a person "*fac[ing] false criminal charges*" because of retaliatory criminal-complaint(s) filed by those accused of discrimination. *CBOCS_Amicus_LCCR*, p.27 (citing *Burlington*, 548 U.S. 53,53-55,63-64). But even disregarding their clear-violation of *CBOCS*, if this court and state-supreme-courts cannot carve-out exceptions for statutes, then lower-courts, most-certainly, do not have authority to carve-out such antiretaliation/antiharassment exception(s) exclusively for employment-contracts, because then, such courts are making law that was not enacted by Congress, in violation of *Article-I:§1. DePrizio*, 705 N.E.2d 455,463 ("*Absent...express-directive from...legislature, we decline...to carve-out...exemption for...policies[.]...[A]bsent...explicit statutory-exemption to-the-contrary...[.]...As such, the statute requires...*") *NSSFI*, 420 P.3d 870,875 ("*statute does not authorize courts to...carve-out exceptions for...*") *Kirlin*, p.2:

"language of...statute...drafted-by...legislature...&...appellate-decisions mandate that even...[.]. The law makes no distinction between...[.]...or...[.]. This court cannot carve-out exceptions to the law; that is the duty of...legislature. This Court is bound-to apply all-statutes and cannot choose which, if-any, it does not like."

UPenn, 493 U.S. 182,191 ("*§§[.]...[.]...do not carve-out any special privilege relating to [], despite the-fact-that Congress undoubtedly was aware, when it extended [] coverage, of the potential burden that...*") *Bock*, 549 U.S. 199,216-217:

"“Whatever temptations...statesmanship of policy-making might wisely-suggest,”...judge’s job is to construe...statute—not...make it better[:]...judge “must not read in by way of creation,” but instead abide by.... “duty-of-restraint...humility-

of-function as merely...translator of another's command."
"No mere omission...which it may seem wise to have
specifically provided for, justifies...any judicial-addition
to...language of...statute"

(The same logic applies to §1658's 4Y-SoL for postformation §1981 claims; courts cannot carve-out an exception that 4Y-SoL only applies to employment-contracts. [Pet.69-70.](#)) 11 USCAs (including CA5) that authorized antiretaliation have uniformly applied 4Y-SoL to §1981 postformation-retaliation claims, because these USCAs determined that such retaliation claims were "*made-possible-by*" [CRAo1991](#). [CBOCS_RBiO](#), pp.4-6; SEE (↓)-[ToA](#)-cases. In [Humphries](#), CA7 ruled that "*§1981, as-amended-by...CRAo1991, applies to claims of retaliation*"; thus, when this Court affirmed [Humphries](#), it was directly ruling that 4Y-SoL applies to §1981 postformation-retaliation claims. [CBOCS](#) 553 U.S. 442,451 ("*broad-consensus that §1981, as-amended, encompasses retaliation*") As [CBOCS](#) makes clear - following the same holdings of [Sullivan](#), [Jackson](#), [Burlington](#), [Gomez-Perez](#) (and subsequently [Crawford](#)) - the "*right...to...enforce contracts*" free from discrimination is meaningless if, as soon as one complains of contract-related-discrimination, she will face retaliation, without any ability to redress such retaliation; indeed, the retaliation could be worse than the actual racial-harassment being complained-of. [Jackson](#), 544 U.S. 167,167-169 ("*Retaliation is...intentional...discrimination...because...complainant is subjected to differential-treatment...This objective would be difficult to achieve if persons complaining about [race-]discrimination did not have effective-protection against retaliation.*") [Burlington](#), 548 U.S. 53,53-55:

"[T]his would not achieve the...objective because it would not deter...many forms that...retaliation can take...
[A]ntiretaliation-provision does not confine...actions[/]harms it forbids to those...related-to...[housing.]...Thus...antiretaliation-provision is not limited to actions affecting...[TCP.]...
[S]ignificance of any...[retaliatory] act may depend upon...particular-circumstances."

In [CBOCS](#), this Court agreed with the Congressional-ratification argument that Congress intended [CRAo1991](#) to cover §1981 retaliation claims under "*all-contracts*". [CBOCS_Amicus_Congress](#), pp.5-22 ("*for complaining about race-based-*

discrimination in employment or another contractual-context). Nearly 2 decades after *CBOCS* and more than 2 decades after *Donnelley*, Congress has remained silent while nonemployment §1981-plaintiffs have benefited from both 4Y-SoL and antiretaliation-protection provided by §1981; thus, there can be no further-proof that Congress ratified both rights afforded under "all-contracts". When count-"B" incorporates-by-reference allegations from previous-count-"A", those allegations become part of the claim described by count-"B" which incorporates them; thus, petitioner has properly-alleged claims under §1981 for "DTCP"/"retaliation"/"discriminatory-performance" (*Nash*, 123 F.3d 1046,1064; §IV.4; Pet.52)

6 RCC-peer-relationship cf. Employer-Employee-relationship:

Under U.S.-law, rightly or wrongly, employers exercise authority over employees, and employees enter into employment-contract with employer, having consented to such authority. SEE E.G. *Patterson TOA*, p.16 ("President...stared at her...criticized her work"); *JRCI*, 701 So.2d 774,790 (Smith,J.,dissenting, citing *Larson's Workmen's-Compensation Law, Vol.-1* and *Mississippi Workers'-Compensation Law §186 (1986)*):

"...traditional test of...employer-employee relation is...right of...employer to control...details of...work.' [*Gily*], 246 Miss. 384,389 In *Gily*, the Court found *Gily* instructed O'Neal where-to-dig, when-he-could-work and that....dragline-work was...necessary-part of...performance of...contract."

Therefore, if an employer bosses-around its employee, or uses strong-language against such employee, it may be difficult to ascertain whether such conduct is within employer's lawful-authority, or instead, unlawful-discrimination. This court atleast partly addressed type(s) of language/conduct that could be considered unlawful-discrimination in *Tyson*, where it disagreed with CA11, stating that even words like "boy" (without "modifiers[/]qualifications") could be indicative of "discriminatory-animus" based upon "various factors including context, inflection, tone-of-voice, local-custom, and historical-usage." 546 U.S. 454,456. Upon initial-analysis, it appears that this Court's holding in *Tyson* is flagrantly-violated in the opinions below where the lower-courts fail to recognize far-worse

language/conduct than "boy", indicative of discriminatory animus - even within shorter 2-year SoL ("2Y-SoL"). However, this situation is more extreme. Aside from homeowners' associations ("HOAs") and County which may have some authority, by law/contract, over landowners, rank-and-file landowners have no authority over each other, and landowner-landowner RCC-relationships are truly coequal/peer ("*n-ary*") contractual-relationships. *Summerlyn-RCC* §§21,3.4(j),10.6,10.7,10.8 at *Pet.App1Z* (Pet.41-42,114-116,118-120); *Heinemeyer*, 269 S.W.3d 662,667-669. Therefore, any acts of landowner-landowner interference/coercion/intimidation/retaliation/harassment ("ICIRH") is much more severe in its unlawfulness than employer-employee ICIRH. This concept has even been enshrined in this Court's precedents, *Frisby, Jardines*. Pet.46,64,67; *Pet.App3A* (Pet.122-123). For this additional reason, W.D.Tex.'s/CA5's failure to recognize actionability of racially-discriminatory/retaliatory conduct of defendants, particularly respondents, [RSR], against petitioner, as alleged in petitioner's complaint, is all-the-more alarming.

7 Distinction from *Lucent*: In *Lucent*, *pro-se* plaintiff-Johnson sued under §1981-retaliation regarding nonemployment disability-insurance-contract alleging **Civil-Rights-Act-of-1866** (but not **CRAo1991**), did not assert 4Y-SoL in-response-to defendants motions-to-dismiss first-amended-complaint based-on SoL, and thus, did not cite *Donnelley*. C.D.Ca dismissed-with-prejudice as being time-barred under SPI-SoL(2Y-SoL). Plaintiff-Johnson did not file any post-judgment-motions in-order-to preserve such error(s), and instead, appealed such judgment to CA9. CA9 then reversed-and-remanded, stating plaintiff's §1981-retaliation-claim "*arose-under*" **CRAo1991** - never once considering whether plaintiff "*forfeited*" 4Y-SoL. During oral-argument, defendants argued that it was the "*enforcement*" of such contract, and thus, that such §1981-retaliation-claim arose under original **Civil-Rights-Act-of-1866**. As explained in **§IV.4**, that argument misrepresents the law. In *Wachovia*, D.Del would not rule on SoL without first reviewing the contract (which had not been attached by any party) - a very-reasonable

decision. In *Maldonado116*, S.D.Tex. looked-up the controlling-law, *Heinemeyer*, on its own initiative, because none of the well-represented parties knew-of such controlling-law on RCCs.

8 FRCP-60: Petitioner excerpted Texas-Property-Code-§202.004 even in Original-Complaint, showing that property-owners under RCC have the right to sue each-other for breach-of-contract due to RCC-covenant violations.

W.D.Tex.1:23cv1223.1.p.52. Furthermore, Petitioner attached Summerlyn-RCC showing that all Summerlyn property-owners are in contractual-relationship with each other in such "n-ary" contract. After these moments in time, Respondents continued to fraudulently-state that they were not in contractual-relationship with petitioner, and that, going even further, petitioner could never show that petitioner was in contractual-relationship with them. **W.D.Tex.1:23cv1223.52.p.4. CA5.24-50759.27-1.pp.21-23.** Respondents even fraudulently-cited *Heinemeyer's* sentence that RCCs are contractual-relationships between buyer(s)-and-seller(s) of property, when *Heinemeyer's* following paragraphs clearly show that the modern RCC contractual-relationship is "n-ary" contract between all buyer(s) of land within subdivision. Setting aside the obvious-fact that Respondents made fraudulent-arguments throughout all of their filings in the lower-courts, in atleast these 3-respects, Respondents knowingly committed fraud-on-the-court, in violation of **FRCP-60**. Thus, **FRCP-60** alone, is sufficient justification for this court to vacate lower-courts' judgments.

9 Conclusion: The date that **CRAo1991** passed in Senate, Congress's widely-cited "**Interpretative-Memorandum**" representing views of all **CRAo1991** cosponsors - intended "*to instruct courts what legislative-history they may consider when interpreting [CRAo1991]*" (*SEPTA*, 479 F.3d 232,241; *Thurdin*, 452 Mass. 436,449n.19) - states:

"...list...in §1981(b) is illustrative only...should be given broad-construction to remedy...any act of intentional-discrimination committed in...performance of...contract. [CRAo1991] also overturns Patterson in contractual-relationships other than employment[:]....nothing in...amended-language should be

construed to limit it to...employment."

Given the issues raised/clarified in PfR/Pet. - and following everything conveyed in Petitioner's CA5 appellate-briefs - Petitioner respectfully-submits that both W.D.Tex./CA5 failed to follow this Court's admonition in Runyon-Reconsideration-Order, 485 U.S. 617,619, as codified in §453:

"[T]reat all litigants equally: [Litigant's] claim for...application of...rule to its case should not be influenced by...Court's view of...worthiness of...litigant in-terms-of extralegal-criteria...Congress meant when it required each...Justice[/]Judge...to swear-to 'administer justice without respect-to-persons...do equal-right to...poor[/]rich....' §453."

Ala §453, this Court's holdings in Haines,Pardus,Al-Khazraji,Foman, establish that federal-court is an institution where all-persons - not just lawyers - get to bring/litigate claims:

"[FRCP] reject...that pleading is...game-of-skill in which one misstep-by-[litigant] may be decisive to...outcome[.]...[T]he purpose of pleading is to facilitate...proper-decision on-the-merits."

Conley, 355 U.S. 41,48 (abrogated on other grounds by Iqbal, Twombly). If rehearing is granted, this Court need not decide any question-presented, but could-instead, reverse-and-remand for CA5 to address one-or-more issue(s).

Respectfully submitted,



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DATED: April 17, 2026

§V. CERTIFICATE OF PARTY SCR-44.2

Petitioner hereby certifies that this petition-for-rehearing is presented in good-faith and not for delay and is restricted to the grounds specified in SCR-44.2.



Siddharth Kode, petitioner *pro-se*