

No. _____

26-509

FILED

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SUPREME COURT, U.S.

**In the
Supreme Court of the United States**

EFRAIN AREIZAGA,

Petitioner,

v.

TFORCE FREIGHT INC., UNITED PARCEL SERVICES, INC.,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS.

Respondents.

**On a Petition for a Writ of Certiorari to
the United States Court of Appeals
for the Fifth Circuit and the United States Dis-
trict Court for the Northern District of Texas**

PETITION FOR WRIT OF CERTIORARI

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Blessed are those who act justly, who always do what is right. Psalm 106:3

QUESTIONS PRESENTED

(1) Did the United States Court of Appeals sanctioned the decision of the District Court, where the District Court exceeded their authority and abused its discretion by granting respondent Tforce Freight's motion for summary judgment dismissing petitioner's case on a genuine issued of disputed facts infringing on petitioner's constitutional right of due process and a right to a fair trial, conflicting with the U.S. Supreme Court's decisions in *Matushita Elec. Indus. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986), *Anderson v. Liberty Lobby, Inc.*, 477 U.S., 477 U.S. at 248 (1986) and Section 704(a) of Title VII of the Civil Rights Act of 1964, codified at 42 U.S.C. § 2000e-3(a).

(2) Did the United States Court of Appeals sanctioned the decision of the District Court, where the District Court exceeded their authority and abused its discretion by failing to rule on three other counts of retaliation in Petitioner's partial motion for summary judgment where the respondent Tforce Freight admitted to the retaliatory actions infringing on petitioner's constitutional right to due process and which directly conflicts with views bound by principles of *stare decisis* of the United States Supreme Court's case law in *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101 (2002) and Section 704(a) of Title VII of the Civil Rights Act of 1964, codified at 42 U.S.C. § 2000e-3(a).

(3) Did the United States Court of Appeals sanctioned the decision of the District Court, where the District Court exceeded their authority and abused its

discretion by ruling on respondent Tforce Freight's motion for an extension of time to file an answer pleading without giving the Petitioner the opportunity to be heard, holding that respondent Tforce Freight demonstrated excusable negligence and completely ignoring its own order to show cause why "Plaintiff's request for entry of default should not be granted" infringing on petitioner's constitutional right of due process, conflicts with the U.S. Supreme Court's decisions on the fundamental right to be heard in *Joint Anti-Fascist Comm. v. McGrath*, 341 U.S. 123 (1951), *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965), *Grannis v. Ordean*, 234 U.S. 385 (1914).

(4) Did the United States Court of Appeals sanctioned the decision of the District Court where the District Court exceeded their authority and abused its discretion by dismissing appellant's causes of actions by applying the 2-year statute of limitations instead of 4-years of limitations to 42 U.S.C. § 1981 to the first count of retaliation and disregarded the other 3 retaliations counts, conflicting with 28 U.S.C § 1658(a) and *Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369 (2004) and *North Star Steel Co. v. Thomas*, 515 U.S. 29, 34 (1995).

PARTIES TO THE PROCEEDINGS

The parties & interested parties to the proceeding in the United States Court of Appeals for the 5th Circuit and, the United States District Court for the Northern District of Texas are as follows;

- (1) Efrain Areizaga, *Pro Se*
Petitioner
- (2) Tfroce Freight, Inc.,
Respondent.
- (3) United Parcel Services, Inc., (UPS).
Respondent.
- (4) International Brotherhood of Teamsters, (IBT)
Respondent
- (5) TFI International.
Parent Company to Tfroce Freight, Inc.

RELATED PROCEEDINGS

United States District Court, Northern District of Texas, Ft. Worth:

Efrain Areizaga v. Tforce Freight, United Parcel Services Inc., International Brotherhood of Teamsters Local 745, No. 4:22-cv—00703-Y (October 14, 2025).

United States Court of Appeals (5th Cir.):

Efrain Areizaga v. Tforce Freight, United Parcel Services Inc., International Brotherhood of Teamsters Local 745, No. 25-11255 (July 14, 2026)

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Efrain Areizaga, *pro se* litigant, respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the 5th Circuit denying petitioner's appeal without an opinion thereby sanctioning the District Court's decisions that exceeding their authority and abusing their discretion.

OPINION AND ORDERS

The 5th Circuit court of appeal for the 5th Circuit Court of appeals denial of petitioner's petition for rehearing En Banc rendered on July 14, 2026 (App. A, p.38), final judgment affirming the district court's final judgment without opinion, rendered on May 11, 2026 (App. B, p.40) is not designated for publication. In addition, District Courts final judgment rendered on October 14, 2025 (App. C, p.42) and the following orders; (1) Order on cross motion for summary judgment rendered on October 14, 2025 (App. D, p.43); (2) Order granting motion for extension of time to file answer rendered on July 11, 2024 (App. E, p.51); (3) order to show cause rendered on May 29, 2024 (App. F, p.53); (4) Order denying motion to dismiss and requiring a more definite statement rendered on April 9, 2024 (App. G, p.54); (5) Order granting motion for

ruling and denying motion for reconsideration rendered on September 13, 2023 (App. H, p. 58); (6) Order partially granting dispositive motions and granting leave to amend rendered on March 2, 2023 (App. I, p.61).

JURISDICTION

The Court has jurisdiction over this case under 28 U.S.C. § 1254(1) based on the 5th Circuit Court of appeals denial of petitioner's petition for rehearing En Banc rendered on July 14, 2026 (App. A, p.38), after entry of a final judgment by the appellate court on May 11, 2026 (App. B, p.40). Petitioner's 90-day deadline falls on a federal legal holiday, October 12, 2026, Columbus Day, see 5 U.S.C § 6103. Therefore, petitioner's brief for writ of certiorari deadline falls on the next day October 13, 2026, pursuant to U.S. Supreme Court rule 30(1).

STATUTORY PROVISIONS INVOLVED

Title VII of the Civil Rights Act of 1964, as amended, codified at 42 U.S.C. § 2000e, *et. Seq.* (Title VII), Title I of the Civil Rights Act of 1991.

Section 704(a) of Title VII, 42 U.S.C. § 2000e-3(a) provides: "It shall be unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, ..., because he has opposed any practice made an unlawful practice

by this subchapter, or because he has made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under this subchapter based on race, color, religion, sex or national origin.”

The goal of anti-retaliation provisions is to maintain unfettered access to statutory remedial mechanisms, see *Robinson v. Shell Oil Co.*, 519 U.S. 337 (1997). The second circuit has held that the potential of retaliation to undermine enforcement of the law by deterring “other employees ... from protecting their rights ... or from providing testimony for the plaintiff ... may be found to constitute irreparable injury,” see *Holt v. Cont’l Group, Inc.*, 708 F.2d 87, 91 (2nd Cir. 1993). Former employee is protected under FLSA against any type of harassment after employment has ended, see *Hayes v. McIntosh*, 604 F.Supp. 10 (N.D. Ind. 1984).

The 5th Amendment of the U.S. Constitution has an explicit requirement that the federal government not deprive individuals of life, liberty or property without due process of law and an implicit guarantee that each person receive equal protection of the laws. The unequal treatment must be closely scrutinized and carefully confined, see *Harper v. Virginia State Bd. of Elections*, 383 U.S. at 670 (1966). To survive this scrutiny, the unequal apportionment of reasoned must be narrowly tailored to achieve a compelling government interest, see *Parents Involved In Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720 (2007).

Due process is violated if a practice or rule offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental, see *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934). Due process is that which comports with the deepest notions of what is fair, right and just, see *Solesbee v. Balkcom*, 339 U.S. 9, 16 (1950). Strict scrutiny is also applied to classifications that impinge on a fundamental right. The Supreme has recognized that the right to have access to the courts is a fundamental right, see *Bounds v. Smith*, 430 U.S. 817, 828 (1977).

Congress enacted 28 U.S. C. § 1658(a) to establish a uniform four-year statute of limitations for federal causes of action arising from statutes enacted or substantively expanded after December 1, 1990. Although 42 U.S.C § 1981 existed prior to 1990, Congress expanded § 1981 through the Civil Rights Act of 1991 to cover post-contract conduct, including retaliation. Because appellant's § 1981 claim is based on retaliation occurring after the employment relationship began, the four-year statute of limitations applies rather than a borrowed two-year state injury statute of limitations, see *Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369 (2004) and *North Star Steel Co. v. Thomas*, 515 U.S. 29, 34 (1995).

STATEMENT OF THE CASE

The respondent Tforce Freight has willfully and intentionally engaged in discriminatory retaliation

actions against the petitioner by obstructing every effort the petitioner has made to address his constitutional rights in every administrative & judicial proceeding spanning over the last 8 years. The defendant continued with their willful misconduct and delay in judicial proceedings in the District Court by either refusing to admit or deny allegations in their answer pleading and engaged bad faith denials of petitioner's factual allegations, which can be verified by defendant's business records or defendant's business records attached to the petitioner's complaint.

The facts and evidence presented in this case were submitted by the petitioner in his motion for partial summary judgment which incorporated petitioner's sworn testimony with corroborating admissible evidence, where the respondent Tforce freight did not oppose any facts either by sworn testimony or any documentary evidence. Moreover, the respondent failed to admit or deny petitioner's sworn affidavit for a more definite statement incorporating petitioner's grievance ordered by the district court (App. J, p.70 to p.82), where the petitioner's grievance alleged sexual discrimination pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et. Seq.* (Title VII), Title I of the Civil Rights Act of 1991.

The district court dismissed petitioner's case holding that petitioner's grievance for sex and ADA was not a protective activity under Title VII, based on the self-serving and bias opinion of respondent Tforce Freight's attorney claiming that petitioner's grievance was not protected activity under Title VII.

The District Court failed to rule on three other counts of retaliation in Petitioner's partial motion for summary judgment where the respondent

The 5th Circuit and the district courts of Texas all continue to use the two-year statute of limitations instead of the 4-year statute of limitations enacted by congress at 28 U.S. C. § 1658(a).

STATEMENT OF FACTS

On August 21, 2017, the Plaintiff filed a grievance against CLINT SHIRLEY, the current dock supervisor, who was harassing JENNIFER BLANKENSHIP, a dock worker, for weeks because of her sex and physical limitations as personally witness by the Plaintiff (App. J, p.71).

On August 22, 2017, the plaintiff was terminated via telephone JEFF CHENEY, the service center manager, stating that a new employee was taking my position and will start work tomorrow on the day shift and that a senior clerk will take over the evening shift. He continued to state that human resources did not approve the second evening shift and that tonight was plaintiff's last day of work. JEFF CHENEY then asked Plaintiff to hand the phone over to KENNETH CORNWELL, TForce Freight driver and chief steward for Teamsters union. A few minutes later KENNETH CORNWELL and ANTHONY BROWN (daytime shift dock supervisor) confiscated my employee badge and escorted me off the property. The plaintiff was terminated without any notice in violation of the IBT union's collective bargaining agreement (CBA) section 7.2 which states that "except in

cases where an employee can be suspended or discharged without a warning letter, an employee subject to suspension or discharge shall be allowed to remain on the job, without loss of pay, unless and until the suspension or discharge is sustained under the grievance procedure.” Later that evening, the plaintiff returned to work and filed his return to TForce Freight terminal and filed his second grievance for wrongful termination without notice (article 6) and for retaliatory discrimination (article 28) pursuant to the National Master TForce Freight Bargaining Agreement (CBA). The plaintiff gave a copy to the on-duty steward, KENNETH CORNWELL and left a copy for TForce Freight (App. J, p.71 to p.72).

On October 16, 2017, the plaintiff¹ received a USPS certified letter (7016 2710 0000 1649 9199) dated October 10, 2017, from JEFF CHEYNE it stated as follows:

“You have been absent without authorization since 8/22/17. You need to report to work by 10/19/17 for the 0930-1600 shift. If you do not report to work by 10/19/17 for the 0930-1600 shift, the Company will consider you as having voluntarily quit your position at UPS Freight.”

On the bottom left of the letter copies were sent to RONALD GODBEY, regional director of operations, JEFF CHEYNE, service center manager, ROBERT CURRIE TForce Freight Labor Manager, IBT local 745 and Plaintiff. There was no such position available for plaintiff to return to since someone else was

¹ The facts also refer to petitioner as plaintiff in the lower court and respondent Tforce Freight as defendant.

hired for Plaintiff's position prior to appellant's termination. This was a false narrative of job abandonment of a non-existing position made almost two months (55 days) after plaintiff's termination (App. J, p.71 to p.72).

On October 19, 2017, on Plaintiff's way to work he called NICK HANDCOX, the daytime TForce Freight clerk & union steward, and informed him that Plaintiff was on my way to work the day-time shift. NICK HANDCOX, stated to Plaintiff "not to come into the office because someone else was already working my shift and that there was no position for me at the TForce Freight". I still showed up at the TForce Freight terminal and handed NICK HANDCOX, Plaintiff's third grievance for the false narrative of job abandonment and left a copy for TForce Freight (App. J, p.72). Plaintiff's 2nd & 3rd grievances notify the defendant Tforce Freight that their false statements/narrative of job abandonment against the Plaintiff for a non-existing position violates numerous federal statutes and their contractual duty as a federal contractor with the federal government. Sometime on or after October 25, 2017, Plaintiff obtained a copy of his termination letter from ROD CUEVAS, IBT local 745 trustee, business representative. The termination letter was marked as received by IBT local 745 on October 25, 2017. Plaintiff's termination letter dated October 23, 2017, from JEFF CHEYNE, who fired plaintiff again, a non-employee at the time, for a non-existing position after Plaintiff showed up to work on October 19, 2017. The letter stated as follows:

"On October 10, 2017, you were sent a 48 hour letter to report to work, but you have failed to do so. Due to your job abandonment your

employment is terminated. This is an official notice of termination as outlined under article 6 of the current labor agreement between UPS Freight and IBT local 745.”

On the bottom left of the letter copies were sent to RONALD GODBEY, regional director of operations, JEFF CHEYNE, service center manager, ROBERT CURRIE, labor manager, IBT local 745 and Plaintiff (App. J, p.74).

Tforce Freight continued with their false narrative by falsely stating that Plaintiff's was terminated due to job abandonment for a non-existing position. A little over 2 months (64 days) after Plaintiff's previous termination on 8/22/17. While discussing the termination letter with BRENT TAYLOR, Secretary treasurer & business manager, insisted that Plaintiff wasn't terminated on August 22, 2017, because TForce Freight did not provide a notice of termination and that plaintiff's termination letter on October 23, 2017, was the notice required to proceed with Plaintiff's grievances hearing. BRENT TAYLOR and ROD CUEVAS advised me that Plaintiff's claims of retaliation will not be decided by the grievance panel and that Plaintiff was required to fill out a 4th grievance cover sheet as to include the notice of termination on October 23, 2017, so that IBT local 745 can pursue Plaintiff's claims concerning contractual disputes issues only before the grievance panel on November 16, 2017 (App. J, p.75).

Due to the implied threat by BRENT TAYLOR, Plaintiff had no other choice but to fill out the 4th grievance cover sheet as directed by ROD CUEVAS and BRENT TAYLOR, so that the union can pursue

Plaintiff's grievances (pursuant to article 7.1. - Where the grievance procedure can be invoked only by union or employer representatives).

On October 30, 2017, Plaintiff attended a pre-grievance hearing with IBT local 745 representative ROD CUEVAS, convened at the TForce Freight terminal located in Ft. Worth, Texas. Present in the pre-hearing was JEFF CHEYNE, service center manager, JASON FOLMER, union city steward, NICK HANDCOX, union clerk steward, ROBERT CURRIE, TForce Freight labor manager. No agreement was reached, but the following admissions were made during the pre-grievance hearing:

JEFF CHEYNE admitted that no notice was provided at the time of termination on 8/22/17 where the plaintiff was relieved of his duties. In addition, JEFF CHEYNE admitted talking to the plaintiff about the new evening clerk position but denied offering the plaintiff the position.

ROBERT CURRIE admitted that the plaintiff was improperly discharged.

ROD CUEVAS informed Plaintiff that the grievance hearing was set for November 16, 2017, in Tampa, Florida, which made it impossible for me to attend the grievance hearing. ROD CUEVAS told me not to worry that the union would take care of it (App. J, p.76).

Plaintiff's grievances were heard on November 16, 2017, by the Southern Region Teamster TForce Freight Grievance committee before S.R.T.U.P.S.F.G.C committee hearing in Tampa,

Florida. ROBERT CURRIE, TForce Freight labor manager, and KRIS TAYLOR, IBT local 745 assistant business representatives were present at the hearing. The committee hearing for plaintiff's grievance case #17-11-001F decision "was based on the presented claim of the union was denied."

As a result of the grievance committee's decision to deny Plaintiff's grievance claims presented by KRIS TAYLOR, IBT local 745 assistant business representative, on behalf of IBT local 745 union, and ROBERT CURRIE, TForce Freight labor manager, Plaintiff was injured by loss of pay for 3 months from 8/22/17 to 11/16/17, in the amount of \$3,685.71 (per article 7.2) and the customary x3 for the contractual violation which equaled to \$11,057.14 for a grand total of \$14,742.85 (App. J, p.76 to p.77).

Plaintiff was unaware that Tforce freight and IBT local 745 conspired to submit false documents which contained a false narrative of job abandonment, for a non-existing position, to the grievance panel to defraud me of my pay and job.

On June 4, 2018, Plaintiff filed a discrimination complaint with the U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP) complaint # 100207766 for allegations of discrimination based on veteran status and for discriminatory retaliation to recover my pay, benefits and job.

On or about February 6, 2019, TForce Freight responded to Plaintiff's complaint of discrimination via their attorneys Amber M. Rogers, Jayde Ashford Brown from the law firm Of Hunton Andrews Kurth LLP located at 1445 Ross Avenue, Suite 3700, Dallas, TX 75202 with the same false narrative that they used

in my grievance hearing on November 16, 2017, with the specific intent with malice to deny me of my pay, job recovery and benefits. Hector M. Melendez Jr., J.D., compliance officer for the OFCCP reviewed UPS Freight's response and made the following statement in an email to me stating that:

"In summary, USPF's main argument is they terminated your employment for job abandonment. They did not mention or acknowledge any termination on 8/22/17, as you allege. However, they do claim, as you do, that 8/22/17 was your last day of work. What I find hard to believe is their position that despite knowing there was no available position for you (they had hired someone for the AM shift and the PM shift senior employee/clerk was taking over the position you had held), they somehow expected you to show up for work after 8/22/17. Moreover, I find it hard to believe, for 49 days, they did not contact or notify you at all; they waited 49 days to send you a 48-hour notice to return to work. Had they immediately terminated you for either insubordination (for argument with Clint Shirley) or for not being able to take the AM shift after being displaced, this case would be very different. UPSF's actions/delays seem very peculiar to me. In any case, I intend to get to the bottom of this."

On May 21, 2019, the U.S. Department of Labor OFCCP mailed Plaintiff a Notification of results of investigation, finding that Tforce Freight was a federal contractor, notification of no violations and transfer to EEOC for further investigation. The findings state as follows:

“Based on the findings of this investigation, there was insufficient evidence that the contractor violated its obligations under the non-discrimination and affirmative action provisions of the VEVRAA. However, OFCCP finds that the complainant may have a *prima facie* case to support his claim that the contractor wrongfully terminated his employment in retaliation for filing a grievance and the contractor’s defense is pretextual”.

On May 31, 2019, the U.S. Department of Labor OFCCP transfer Plaintiff’s retaliation discrimination case over to EEOC pursuant to a Memorandum of Understanding (MOU) which was developed between EEOC and OFCCP which EEOC assumes jurisdiction over individual complaints which include allegations of discrimination of an individual nature of the basis of race, color, religion, sex, national origin, or age (41 CFR60-742.5(d)) (App. J, p.76 to p.80).

On March 24, 2021, TForce Freight responded to plaintiff’s EEOC complaint no. 450-2019004874 via their attorney Michael B. Guillian with the law firm of BurnsBarton PLC, located at 2201 E. Camelback Road, suite 360, Phoenix, AZ 85016. UPS & TForce Freight responds as follows:

“... UPS terminated Areizaga’s employment as a result of his express inability to transfer to an open morning shift position after he was displaced from an evening shift position by an employee with higher seniority.”

This is Tforce Freight’s pretext to my first termination on 8/22/2017 and a contradiction to the false narrative of job abandonment made by Tforce Freight

in Plaintiff's grievance hearing and administrative reviews before the U.S. Department of Labor OFCCP as stated in the paragraphs above. This pretext comes a little over 3 ½ years (1,310 days) after plaintiff's first termination, which is extremely late and copies the alternate possible narrative as stated above by Hector M. Melendez Jr., J.D., compliance officer who states:

... Had they immediately terminated you for either insubordination (for argument with Clint Shirley) or for not being able to take the AM shift after being displaced, this case would be very different...

On 5/17/2022, the EEOC issued a determination and notice of rights and made no findings regarding whether the investigation would establish any violation of the statute, they provided Plaintiff with a notice of right to sue and file a law within 90 days of receipt of the notice. Plaintiff viewed and/or received this notice on or after 5/25/2022 (App. J, p.81).

On April 9, 2024, the district Court denied the respondent Tforce Freight's motion to dismiss petitioner's amended complaint and ordered the respondent to file an answer pleading 14 days after petitioner's filing of plaintiff's affidavit of a "more definite statement" which was due no later than April 29, 2024 (App. G, p.54). This would require the respondent to file their answer pleading no later than May 13, 2024. So, this would give the respondent **637 days** from petitioner's original complaint to review defendant's business records and admit or deny petitioner's factual allegations in his amended complaint.

On May 22, 2024, the Plaintiff filed a request to the Clerk to enter a default (Doc. 95) for defendant's

will failure to file a timely answer on May 13, 2024, pursuant to the Federal Rules of Civil Procedure 55(a). This is the Clerk's ministerial duty as required by the Federal Rules of Civil Procedure.

On May 29, 2024, the District Court issued an Order to Show Cause to the Defendant why Plaintiff's request for entry of a default should not be granted (App. F, p.53).

On July 11, 2024, the district court issued an order granting the respondent Tforce Freight's motion for an extension of time to file an answer pleading (App. E, p.51), without addressing the court's own order to show cause entered as stated above and without providing the petitioner an opportunity to be heard.

REASONS TO GRANT THE PETITION

This case is candidate for certiorari under Supreme Court rule 10(a) where the 5th Circuit Court of appeals without opinion affirm and sanctions the decisions of the District Court had "so far departed from the accepted and usual course of judicial proceedings" as to call for an exercise of the Court's supervisory power under rule 10(a). see *Nguyen v. United States*, 539 U.S. 69 (2003), *Hollingsworth v Perry*, U.S. 183, 196-199 (2010).

In *Nguyen*, the Supreme Court exercises its supervisory power under rule 10(a) where the appellate court departed from the established requirements governing the judicial proceedings, where the case demonstrates that a serious procedural defect affecting the proper administration of lawful functioning of

an appellate court can warrant the Supreme Court intervention, rather than being treated as an ordinary error in the application of law.

The appellate court's affirmation of the district court conflicts with the U.S. Supreme Court's decisions in *Matushita Elec. Indus. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986), *Anderson v. Liberty Lobby, Inc.*, 477 U.S., 477 U.S. at 248 (1986), where the district court granted summary judgment dismissal when there were disputed facts of sex discrimination.

In addition, these decisions weaken Section 704(a) of Title VII of the Civil Rights Act of 1964, codified at 42 U.S.C. § 2000e-3(a) retaliation provisions by requiring parties to provide detail facts of sex discrimination voiding the reasonably good faith belief spirit of the federal statute where opposition to sex discrimination is the criteria to be a protected activity.

The appellate court's affirmation of the district court decisions conflicts with the U.S. Supreme Court's decisions in *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101 (2002). Where each discrete act of discrimination or retaliation is a separate actionable claim which starts a new clock for filing charges alleging that act.

The appellate court's affirmation of the district court failure to rule repeated on retaliation attacks against the petitioner in every single legal proceeding weakened Section 704(a) of Title VII of the Civil Rights Act of 1964, codified at 42 U.S.C. § 2000e-3(a) retaliation provisions. Where if a party is allowed by the courts to retaliate in every legal proceeding, then the retaliation provision has no remedy for anyone seeking relief.

In addition, the appellate court's affirmation of the district court decisions conflicts with the U.S. Supreme Court's decisions on the fundamental right to be heard in *Joint Anti-Fascist Comm. v. McGrath*, 341 U.S. 123 (1951), *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965), *Grannis v. Ordean*, 234 U.S. 385 (1914).

I

The United States Court of Appeals sanctioned the decision of the District Court, where the District Court exceeded their authority and abused its discretion by granting respondent Tforce Freight's motion for summary judgment dismissing petitioner's case on a genuine issued of disputed facts infringing on petitioner's constitutional right of due process and a right to a fair trial, conflicting with the U.S. Supreme Court's decisions in *Matushita Elec. Indus. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986), *Anderson v. Liberty Lobby, Inc.*, 477 U.S., 477 U.S. at 248 (1986) and Section 704(a) of Title VII of the Civil Rights Act of 1964, codified at 42 U.S.C. § 2000e-3(a).

On August 22, 2017, the petitioner, a Hispanic male, was terminated without notice & without just cause by JEFF CHEYNE, service center manager of TForce Freight, in violation of Title VII, 42 U.S.C. §2000e for opposing a discrimination practice when petitioner filed a discrimination complaint (protective activity) against CLINT SHIRLEY a dock supervisor for harassing JENNIFER BLANKENSHIP because of her sex and her disabilities (App. J, p. 71 to p.72).

For two weeks petitioner had personally observed & argued with CLINT SHIRLEY about harassing JENNIFER BLANKENSHIP because of her sex and her disabilities and petitioner finally filed discrimination complaint against CLINT SHIRLEY on August 21, 2017, petitioner was terminated the next day on August 22, 2017 (App. J, P.70, 71). This adverse action is a casual link to plaintiff's protected activity of opposing harassment based on sex & disability for two weeks prior to plaintiff filing a discrimination complaint against CLINT SHIRLEY (App. K, p.84, 85).

Respondent Tforce Freight's response to petitioner's *prima facie* case of retaliation was a non-legitimate retaliatory false narrative by falsely stating that petitioner was terminated due to job abandonment for a non-existing position on October 23, 2017, 2 months (64 days) after petitioner's first termination was on 8/22/17.

Moreover, defendant provided a conflicting pretext on March 24, 2021, contradicting pretext a little over 3 ½ years (1,310 days) after Plaintiff's first termination on August 22, 2017, by stating:

“... UPS terminated Areizaga's employment as a result of his express inability to transfer to an open morning shift position after he was displaced from an evening shift position by an employee with higher seniority.”

When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a Court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment, see *Scott v. Harris*, 550 U.S. 372, 380-81 (2007).

The district court rendered an order ruling on cross motions for summary judgment (App. D, p.48) stating the following:

“Areizaga has wholly failed to present any evidence tending to demonstrate that he reasonably believed Shirley’s treatment of Blankenship, a dock worker for UPS Freight, constituted sex discrimination under Title VII or that he reported the basis for that belief to his employer. His August 21, 2017, written grievance states that Shirley had targeted Blankenship for termination “because of her gender and her physical limitations in repeatedly handling hand freight, which on occasions may exceed several hundred pieces and range up to 80 lbs., or more (App. D, p.48).

The lower court’s statement was paraphrased from the summary in plaintiff’s grievance (App. K, p.83, 84), and the analysis contradicts itself, by first stating that “Areizaga” failed to present any evidence that he reasonably believed Shirley’s treatment of Blankenship constituted sex discrimination under Title VII.”

And then affirming that plaintiff stated in his August 21, 2017, grievance, that Shirley had targeted Blankenship for termination “because of her gender and her physical limitations in repeatedly handling hand freight, which on occasions may exceed several hundred pieces and range up to 80 lbs., or more.”

Giving Blankenship repeatedly hand freight every day is work that amounts to hard labor because of her

gender constitutes evidence of discrimination under Title VII.

This daily hard labor assignments because of Blankenship's gender are more than sufficient to support petitioner's grievance that Shirley discriminated against Blankenship because of her sex and summary judgment dismissal of petitioner's case based on a proven fact of sex discrimination was an abuse of discretion. In addition, in plaintiff's statement of facts item #3, plaintiff's states,

"I worked at all times besides UPS Supervisor CLINT SHIRLEY and I have personally witnessed the sex discrimination and harassment against ... JENNIFER BLANKESHIP. At all times CLINT SHIRLEY disrespected and mistreated JENNIFER BLANKENSHIP (App. K, p.84).

Moreover, this fact is undisputed by the respondent Tforce freight in petitioner's motion for partial summary judgment when petitioner failed to oppose petitioner's factual testimony in plaintiff's sworn testimony that petitioner filed a grievance against CLINT SHIRLEY who was harassing JENNIFER BLANKENSHIP because of her sex and physical limitations and respondent's failure to admit or deny petitioner's affidavit in petitioner more definite statement per court order.

The purpose of summary judgment is "to enable a party who believes there is no genuine dispute as to a specific fact essential to the other side's case to

demand at least one sworn averment of that fact before the lengthy process of litigation continues, see *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888-89 (1990). Federal rules of civil procedure 56(a) provides, that summary judgment is appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” The substantive law governing a matter determines which facts are material to a case, see *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

Moreover, the evidence the non-movant does provide must raise more than “some metaphysical doubt as to the material facts, see *Matushita Elec. Indus. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). This evidence must be such that a jury could reasonably base a verdict in the non-movant’s favor, see *Anderson v. Liberty Lobby, Inc.*, 477 U.S., 477 U.S. at 248. If the non-movant is unable to make such a showing the court must grant summary judgment, see *Little v. Liquid Air Corp*, 27 F.3d at 1075 (5th Cir. 1994) *per curiam*.

When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a Court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment, see *Scott v. Harris*, 550 U.S. 372, 380-81 (2007).

Federal Rule of Civil Procedure 56(c) a dispute about a material fact is “genuine” if the evidence is such that a reasonable jury could return a verdict for the non-moving party, see *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). In *Richardson v.*

Monitoronics Int'l, Inc., 434 F.3d 327 (5th Cir. 2005), the Court held that summary judgment was improper where the plaintiff produced evidence creating a genuine issue of material fact as to whether her prior protected activity was a motivating factor in her termination. The court emphasized that retaliation claims involving motive and causation are fact-intensive and often unsuitable for resolution at the summary judgment stage.

The plaintiff engaged in protected opposition merely by reporting racial harassment, see *Green v. Franklin Nat'l Bank of Minneapolis*, 459 F.3d 903 (8th Cir. 2006). This desire to punish the individual for engaging in protected activity and to deter others from acting similarly, is what makes it retaliation, see *Brisette v. Franklin County Sheriff's Office*, 235 F.Supp. 2d 63 (2003).

Legal proceedings, including counterclaims, can constitute actionable retaliation if they are filed against an employee in response to the employee asserting statutory workplace rights, see *Jacques v. Di-Marzio Inc.*, 216 F.Supp. 2d 139, 141-43 (E.D.N.Y. 2002). A lawsuit ... may be used by an employer as a powerful instrument of coercion or retaliation and may dissuade individuals from pursuing their claims, see *Rosania v. Taco Bell of Am., Inc.*, 303 F.Supp. 878, 885 (N.D. Ohio 2004). Even the threat of a lawsuit can constitute an adverse employment action because it is designed to deter protected activity, see *Lovejoy-Wilson v. NOCO Motor Fuel, Inc.*, 263 F.3d 208, 223 (2nd Cir. 2001).

Retaliation occurs when an employer takes a materially adverse action because the individual has engaged, or may engage, in activity furtherance of the equal employment opportunity (EEO) laws. The EEO anti-retaliation provisions ensure that individuals are free to raise complaints of potential EEO violations or engage in other EEO activity without the employer taking materially adverse action. Title VII anti-retaliation provisions protect a person who volunteers to testify on behalf of a coworker even if the person is never actually called to testify, *see Jute v. Hamilton Sundstrand Corp.*, 420 F.3d 166 (2d Cir. 2005).

A district court abuses its discretion if it bases its decision on an erroneous view of the law or on a clearly erroneous assessment of the evidence, *see Esmark Apparel, Inc. v. James*, 10 F.3d 1156 (5th Cir. 1994). A District court by definition abuses its discretion when it makes an error of law, *see Koon v. United States*, 518 U.S. 81, 100 (1996). Thus, abuse of discretion review of purely legal questions ... is effectively de novo, *see United States v. Delgado-Nunez*, 295 F.3d 494, 496 (5th Cir. 2002).

If the district court's act was not one of discretion but rather involved the erroneous interpretation of law or erroneous application of law to facts, those are legal questions not subject to discretion, *see In re Am. Airlines*, 972 F.2d 608-09 (5th Cir. 1992).

II

The United States Court of Appeals sanctioned the decision of the District Court, where the District

Court exceeded their authority and abused its discretion by failing to rule on three other counts of retaliation in Petitioner's partial motion for summary judgment where the respondent Tforce Freight admitted to the retaliatory actions infringing on petitioner's constitutional right to due process and which directly conflicts with views bound by principles of *stare decisis* of the United States Supreme Court's case law in *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101 (2002) and Section 704(a) of Title VII of the Civil Rights Act of 1964, codified at 42 U.S.C. § 2000e-3(a).

Petitioner's complaint had three other separate and distinct discrete acts of retaliatory discrimination claims admitted by respondent Tforce Freight in the petitioner's request for admissions (App. J, p.92), and these facts were undisputed and unopposed by respondent Tforce freight in their response to petitioner's affidavit in petitioner's motion for partial summary judgment (App. L, p.93 to p.95). All three retaliatory count of discrimination were false statements of job abandonment that respondent Tforce Freight submitted to the union grievance committee administrative hearing, U.S. Department of Labor Office of Contract Compliance administration compliance officer and then changed its response/pretext to the EEOC administration 3 ½ years (1,310 days) after petitioner's first termination (App. J, p.82).

Each discrete act of discrimination or retaliation is a separate actionable claim which starts a new clock for filing charges alleging that act, see *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101 (2002).

The United States court of appeals affirmed a decision of the District Court that infringed on petitioner's constitutional rights to due process and equal treatment of the law, where the lower court deviated from the established principles of law by not following the doctrine of *stare decisis* in *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101 (2002).

The district court was without any compelling reason deviated from precedence from the United States Supreme Court's case law in *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101 (2002). *Stare decisis* assures equality of treatment for litigants similarly situated, spare judges the task of re-examining rules of law with each succeeding case and affords the law a desirable measure of predictability. The Supreme Court has identified four virtues of the consistency that *stare decisis* brings; predictability, fairness, appearance of justice and efficiency, see *Hohn v. United States*, 524 U.S. 236 (1998).

Stare decisis carries such persuasive force that the court has always required a departure from precedent to be supported by some special justification, see *Dickerson v. United States*, 530 U.S. 428, 429 (2000).

The court held in *Lighting Ballast*, that it was bound by principles of *stare decisis* to maintain its review standard, see *Lighting Ballast Control v. Philips Electronics*, 744 F.3d 1284 (Fed. Cir. 2014).

III

The United States Court of Appeals sanctioned the decision of the District Court, where the District

Court exceeded their authority and abused its discretion by ruling on respondent Tforce Freight's motion for an extension of time to file an answer pleading without giving the Petitioner the opportunity to be heard, holding that respondent Tforce Freight demonstrated excusable negligence and completely ignoring its own order to show cause why "Plaintiff's request for entry of default should not be granted" infringing on petitioner's constitutional right of due process, conflicts with the U.S. Supreme Court's decisions on the fundamental right to be heard in *Joint Anti-Fascist Comm. v. McGrath*, 341 U.S. 123 (1951), *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965), *Grannis v. Ordean*, 234 U.S. 385 (1914).

The district court entered an order to show cause against the respondent Tforce freight as to why petitioner's request for entry of default should not be granted (App. F, p.53), but then the court granted the respondent's motion for an extension of time to file an answer pleading without allowing the petitioner to be heard denying the petitioner's constitutional rights (App. E, p.51).

This order was entered before the petitioner had an opportunity to respond to respondent Tforce Freight's motion for motion for an extension of time to file an answer pleading. The petitioner had 21 days to respond to defendant motion for extension of time to file an answer pursuant to local rule 7.1(e). By making a ruling early before the petitioner had an opportunity to respond (within the 21 days) the lower court infringed on plaintiff's constitutional right to be heard. Due process rights guaranteed by 5th amendment provide appellant the opportunity to be heard full and

fair, where said premature order rendered on ... denied the appellant's due process rights to be heard.

The "right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society." *Joint Anti-Fascist Comm. v. McGrath*, 341 U.S. 123 (1951), (Frankfurter, J., concurring). The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965), *Grannis v. Ordean*, 234 U.S. 385 (1914).

This Court consistently has held that some form of hearing is required before an individual is finally deprived of a property interest, see *Mathews v. Eldridge*, 424 U.S. 333 (1976), *Wolff v. McDonnell*, 418 U.S. 539, 557 (1974), *Phillips v. Commissioner*, 283 U.S. 589, 596 (1931), *Dent v. West Virginia*, 129 U.S. 114, 124 (1889).

Due process clause of the 14th Amendment, like its 5th Amendment counterpart, guarantees more than fair process; it also includes substantive component that provides heightened protection against government interference with certain fundamental rights and liberty interests, see *Troxel v. Granville*, 120 S. Ct. 2054 (2000), *Littlefield v. Forney Independent School District*, 268 F.3d 275 (5th Cir. 2001). Constitutional rights would be of little value if they could be indirectly denied, see *Gomillion v. Bidwell*, 182 U.S. 244 (1901).

Under the 5th Amendments, the substantive component of due process provides heightened protection against government interference with certain fundamental rights and liberty interest, *see Cook v. Gates*, 528 F.3d 42 (1st Cir. 2008). If a government benefit is a matter of statutory entitlement for persons qualified to receive them, then the government has created a due process property interest in that benefit. To show a 5th Amendment due process violation, an individual must prove that he or she was deprived of a protected interest and that the deprivation occurred without the “appropriate” level of process, *see Federal Lands Legal Consortium ex rel. Robart Estate v. U.S.*, 195 F.3d 1190 (10th Cir. 1999).

In addition, the respondent Tforce Freight did not provide “excusable negligence,” before the court allowed the respondent to file an answer pleading. Respondent Tforce Freight stated that their failure to file an answer pleading was a technical error caused by filing of a more definitive statement as an “affidavit” rather than an amended complaint which caused Tforce Freight’s counsel to fail to identify the filing as part of an amended complaint and calendar appropriate response deadline (App. M, p. 106).

Respondent Tforce Freight was aware that the district court ordered the petitioner to file an affidavit under oath for a more definitive statement no later than April 29, 2024 (App. M, p.99),

Petitioner’s filing of a more definitive statement does not set defendant’s time to file an answer pleading. It was the Court’s Order entered on April 9, 2024, denying defendant’s motion to dismiss and requiring

plaintiff to file a more definitive statement as an affidavit no later than April 29, 2024 (App. G, p. 54) which automatically set defendant's deadline to file an answer pleading on May 13, 2024. Therefore, the defendant fails to provide excusable negligence required by law.

Moreover, respondent Tforce Freight included a proposed answer pleading in response to the district court's order to show cause. Respondent Tforce Freight's proposed answer pleading contained bare bones responses where they failed to admit or deny allegations and denied petitioner's factual allegations where the respondent had **637 days** from petitioner's original complaint to review defendant's business records and admit or deny petitioner's factual allegations in his amended complaint.

The district court failed to address petitioner's reply to Tforce Freight's response to the Court's order to show cause (App. M, p.105 to p.116). Where petitioner alleged that respondent Tforce Freight's failure was willful and done in bad faith to delay the proceedings and that the bare bone answer pleading was evidence that they had no intentions to file an answer pleading.

Respondent Tforce Freight's proposed answer pleading fails to state a legitimate non-retaliatory reason for its decision. The responsive pleading failed to comply with the established principles of law and was done in bad faith as an instrument to delay and obstruct the fundamental fairness of these proceedings. FRCP 8(b)(2) a denial must fairly respond to the substance of the allegation. FRCP 8(e) states that

pleadings must be construed to do justice. The answer pleading failed to fairly respond to the substance of the allegation in their proposed answer pleading. It was void of any facts & substance, failed to admit their own business records and factual allegations that can be verified by their own business record. Respondent's proposed answer pleading violates FRCP 8(e) because it cannot be construed to do justice.

Willful failure in this context is reviewed under an excusable neglect standard, see *Beall v. Cockrell*, 174 F. Supp. 2d 512, 517 (N.D. Tex. 2001). In evaluating whether good cause exists, Courts consider the following factors: (1) whether the default was willful, including whether defendant acted expeditiously to correct the default; (2) whether setting the default aside would prejudice the adversary; and (3) whether a meritorious defense has been presented, see *Effjohn Int'l Cruise Holding, Inc. v A&L Sales, Inc.*, 346 F.3d 552, 563 (5th Cir. 2003), *Lacy v. Sitel Corp.*, 227 F.3d 290, 292 (5th Cir. 2000), *In re Dierschke*, 975 F.2d 181, 183-184 (5th Cir. 1992), *Pioneer Inv. Servs. Co. v. Brunswick Assoc. Ltd. P'ship*, 507 U.S. 380, 394-95, 113 S.Ct. 1489 (1993).

As evidence by the poorly written proposed answer pleading void of facts, substance and the required burden shift where the defendant failed to provide a meritorious defense to retaliation by stating a legitimate non-discriminatory reason for their decision, defendant was not prepared to answer plaintiff's factual allegations in plaintiff's amended complaint.

Respondent Tforce Freight had no intentions to answer petitioner's amended complaint is because they would be required to admit to their unlawful conduct

when they filed their false pretext in several administrative proceedings which were: (1) Teamster's grievance committee hearing, (2) the Labor Department – Office of Contract Compliance, (3) the EEOC. These false statements were all in violation of 18 U.S.C. § 1001. In addition, the defendant denied the sale of Tforce Freight to TFI International for \$800 million.

And that as part of the agreement UPS assumes managerial control over TForce Freight by providing freight volume, UPS's Ground with Freight pricing solutions, UPS's technology platforms for rating, shipping and visibility for the next 5 years. These facts are found in news reports see https://tfiintl.com/wp-content/uploads/2021/01/2021.01_TFI-International-Agrees-to-Acquire-UPS_F_vF.pdf.

The reason for the denial was to protect UPS from misleading the Court with their denial of the same fact in their answer pleading (App. M, p.99 to p.103), to admit to this factual allegation will require the Court to reverse its order to dismiss Respondent UPS from this litigation.

Denying a material facts in the answer pleading would be in violation of 18 U.S.C. § 1001 (1996). Where pleadings are not addressed to the judge/court, but to the opposing party and is an administrative matter, see 18 U.S.C. § 1001(b) representations to a judge or magistrate is a judicial function exception to avoid the chilling of advocacy. Only those misrepresentations falling within a court's administrative or housekeeping function can give rise to liability under 18 U.S.C. § 1001.

The petitioner is prejudiced by respondent's denials which lack the necessary supporting facts to

support their affirmative defenses, where the respondent's misrepresented

An answer to a complaint requires the respondent to provide a sufficient defense that can provide the petitioner with enough notice to prepare for trial.

Respondent's affirmative defense is unclear, with insufficient facts does not provide petitioner with enough notice to prepare for trial. Rules (8)(e) states that pleadings must be construed as to do justice. Pleadings are intended to serve as a means of arriving at fair and just settlement of controversies between litigants, see *Maty v. Grasselli Chem. Co.*, 303 U.S. 197, 200 (1938).

"An affirmative defense are pleadings and, therefore, are subject to all pleading requirements of the federal rules of civil procedures ...," see *Woodfield v. Bowman*, 193 F.3d 354, 362 (5th Cir. 1999).

As demonstrated above the respondent Tforce Freight has failed to provide an excusable negligent reason for failing to file a timely answer pleading. A party is entitled to entry of a default by the Clerk of the Court if the opposing party fails to plead or otherwise defend as required by law, FRCP 55(a). Under FRCP 55(a) a default must be entered before the court may enter a default judgment, see *New York Life Ins. Co. v. Brown*, 84 F.3d 137, 41 (5th Cir. 1996).

IV

The United States Court of Appeals sanctioned the decision of the District Court where the District Court

exceeded their authority and abused its discretion by dismissing appellant's causes of actions by applying the 2-year statute of limitations instead of 4-years of limitations to 42 U.S.C. § 1981 to the first count of retaliation and disregarded the other 3 retaliations counts, conflicting with 28 U.S.C § 1658(a) and *Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369 (2004) and *North Star Steel Co. v. Thomas*, 515 U.S. 29, 34 (1995).

The lower court dismissed & denied the petitioner's motion for rehearing on petitioner's claim under 42 U.S.C § 1981 stating that claims brought under § 1981 which in Texas is the two-year personal injury statute of limitations (App. H, p. 58, App. J, p. 61), but there were 4 independent counts of retaliation in petitioner's complaint and retaliation count #4 occurred on March 24, 2021, complied with the 2-year statute of limitations since this lawsuit was filed on August 15, 2022.

This decision directly conflicts with 28 U.S.C § 1658(a) where the U.S. Congress established a uniform four-year statute of limitations for federal causes of action arising from statutes enacted or substantively expanded after December 1, 1990, and expanded 42 U.S.C. § 1981 through the Civil Rights act of 1991.

Because petitioner's § 1981 claim was based on retaliation occurring after the employment relationship began, the four-year statute of limitations applies

rather than a borrowed two-year state injury statute of limitations, see *Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369 (2004) and *North Star Steel Co. v. Thomas*, 515 U.S. 29, 34 (1995).

CONCLUSION

The Court can review this writ *de novo* since there was no jury trial, and questions of law presented are purely legal in nature. The relentless pattern of abuse of discretion in the decisions by the Appellate and District Courts deviates from the rule of law, demonstrating a systematic bias against *pro se* litigants requiring strict scrutiny of the law.

The petitioner prays that the Court grants this writ or any other relief that the court may deem just and fair for the reasons above and reviews this case on the merits with equal application of the law.

Executed on October 13, 2026

Respectfully,

/s/ Efrain Areizaga

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