

22-5180

No. \_\_\_\_\_

ORIGINAL

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SUPREME COURT OF THE UNITED STATES

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FILED

JUN 18 2022

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

General Akecheta Morningstar,

*Petitioner,*

Vs.

Kroger Company,

*Respondent*

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On Petition for a Writ of Certiorari to  
The United States Court of Appeals  
For the Fifth Circuit RE: Case #21-60361

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**PETITION FOR WRIT OF CERTIORARI**

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## **I. Question Presented**

The question is: Does section 704 (a) of Title VII of the Civil Rights Act of 1964 covers retaliation by employers against employees. The second question is: Did Morningstar allege such facts?? In addition, the 5<sup>th</sup> Circuit refused to publish the opinion of my case. They did not receive the Brief for the Respondent despite initially claiming they had done so. This case was not allowed to go through discovery at the District Court level and was unlawfully dismissed.

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### **III. TABLE OF AUTHORITIES**

#### **Cases:**

Flowers v. s. Reg 'l physician servs., 247 F. 3d 229, 235 (5<sup>th</sup> Circuit, 2001)

*Jackson v. Birmingham Bd. of Education*.....SCOTUS.....

*Thompson v. North American stainless, LP*...SCOTUS.....

#### **Statutes**

28 U.S.C. 1331.....

28 U.S. 1332.....

42 U.S.C.A. 1983.....

29 U.S.C. 1291.....

28 U.S.C. 1257.....

## IV. Petition for Writ of Certiorari

General Akecheta Morningstar, a disabled person who has been banned from working because he has OCD, respectfully petitions this Honorable Court for a writ of certiorari to review the judgement of the Fifth Circuit Court of Appeals.

## V. Opinions Below

The decision by the Fifth Circuit Court of Appeals to dismiss Morningstar's claim against the Kroger Company was decided upon by the Justices *not* to be published. That Order is attached at the Appendix A. The Order of the District Court is at appendix B.

## VI. Jurisdiction

General Morningstar's petition for relief against the Kroger Company was dismissed on May 23<sup>rd</sup> and filed on May 25<sup>th</sup>. General Morningstar invokes this Court's jurisdiction under 28 U.S.C. 1257, having timely filed this petition for a writ of certiorari within 90 days of the Fifth Circuit's COA's judgment.

## VII. Statement of the Case

Petitioner, Morningstar, filed his Complaint *against* the Kroger Company on 1-27-2021 in the District Court of the Northern District of Mississippi. He filed the case against the Kroger Company for violating Title VII of the Civil Rights Act of 1964. After several months of legal wrangling, the Defense was successful in having the case transferred to the Court in the Southern District. This was all to my dismay. By whatever means, I was able to foresee this case being dismissed in the Southern District, due to my past experiences with the Court. That was why I put up aggressive argument to keep the case in North Mississippi. Lo and behold, just as I predicted, the Court, under the direction of Judge Lee, unlawfully threw out my case. He claimed I didn't directly enunciate the evidence of retaliation, creating a hostile work environment, or constructive discharge. That is furthest from the Truth. I did, emphatically.

Judge Lee definitely went way beyond his authority and threw out this case before it could be properly investigated.

The following was the basis for my argument:

**A. The Trial Court erred when it granted Summary Judgment to Defendant as a matter of Law.**

**1. Standard of Review:**

This Court reviews judgments as a matter of law *de novo and in Flowers v. S. Reg'l*

*Physician Servs., 247 F. 3d 229, 235 (5th Cir. 2001), explained the standard as follows:*

*"We review *de novo* the district court's ruling on a motion for a judgment as a matter of law, applying the same legal standard as the trial court. See *id*; *Brown v. Bryan County, OK, 219 F.3d 450, 456 (5th Circuit 2000)*. Therefore, "judgment as a matter of law is proper after a party on a given issue, and there is no legally sufficient evidentiary basis for a reasonable jury to have found for that party with respect to that issue" *Ford, 230 F. 3d at 830* (internal quotations omitted) (quoting *foreman v. Babcock and Wilcox Co., 117 F.3d 800, 804 (5th Cir. 1997)*. Moreover, "we consider all of the evidence, drawing all reasonable inferences and resolving all credibility determinations, in the light most favorable to the non-movin g party." *Brown, 219 F. 3d at 456*. Although our review is *de novo*, we recognize that "our standard of review with respect to a jury verdict is especially deferential." *Id.* As such, judgment as a matter of law should not be granted unless the facts and inferences point"so strongly and overwhelmingly in the movant's favor that reasonable jurors could not reach a contrary conclusion." *Omnitech Int'l, Inc v. Clorox Co., 11 F. 3d 1316, 1322 (5th Cir. 1994)*.*

The most critical evidence I had against Kroger was the letter (**ROA.409**) that I delivered to all of management whereas I poured out my heart to them about the harassment I was receiving. Even Honorable Judge Lee called it my “parting letter”. Another piece of evidence I gave the Court was the email (**ROA.412**) that my European coworker sent me, subliminally suggesting how the White race was perfect and all others would be annihilated. The fourth piece of evidence I showed them was the medical notes (**ROA.396**) from my current Doctor. That goes in contrary to the notes they had that I think was fabricated. The fifth piece of evidence I showed them was about a declaration (**ROA.346**) that was made by a manager at another store that went contrary to my affidavit. That created a “genuine issue of material fact”. No cases should be thrown out under those circumstances.

The sixth point I made with the lower Court is that I testified to the Court that I didn’t receive a copy of the Deposition and that no testimony should have been used. They totally disregarded me. Please notice the certification form (**ROA.270**) that lacks my signature.

And lastly, the Honorable Judge claims “Plaintiff has admitted he has no direct evidence of discrimination based upon his race or national origin. That is furthest from the Truth. Quite the contrary, in my memorandum in support of my motion for summary judgment

(ROA. 425,426), I laid out my *prima facie* with reference to a case and several instances where discrimination took place. That were other actions the Court perpetrated upon me that tarnished my case, including degradation of me by calling me a mental patient and suggesting that I'm a terrorist. The Truth of the matter I'm a husband of 35 years and raised three grown children and 6 grandchildren- with no criminal history—all while suffering from post-traumatic stress.

## **VIII. Reason for granting Writ**

It is well established with solid cases before SCOTUS that retaliation via the discharging of an employee is a direct violation of Title VII of the Civil Rights Act of 1964. In the case of *Thomson v. North American Stainless*, Ms Thomson filed a discrimination claim against the company with the EEOC. Thomson was fired. In a unanimous decision, the Supreme Court held that Title VII of the Civil Rights Act of 1964 bans workplace retaliation against an employee who brings a charge of discrimination. Not only did Morningstar filed a complaint with the EEOC, he had also delivered to each Manager a

complaint in letter form about the harassment and death threats that he had received.

He was fired shortly thereafter. Additionally, with the past case before SCOTUS of

**Jackson v. Birmingham Bd. of Education** the Supreme Court ruled that retaliation is

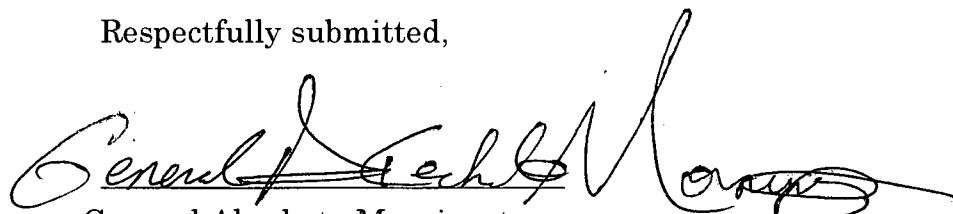
Unlawful.

## IX. Conclusion

For the foregoing reasons, General Akecheta Morningstar respectfully requests that this Court issue a writ of certiorari to review the judgment of the 5<sup>th</sup> Circuit Court of Appeals.

Dated, this the 20<sup>th</sup> day of July, 2022

Respectfully submitted,



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