

No. 24-5742

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In the Supreme Court of the United States

JASMINE OLIVER, *Plaintiff- Petitioner*,
v.
AMAZON.COM SERVICES LLC, *Defendant- Respondent*,

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

FILED

JAN 18 2025

OFFICE OF THE CLERK
SUPREME COURT, U.S.

PETITION FOR REHEARING

PRO SE, SELF REPRESENTED PARTY
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RULE 44.2 CERTIFICATE

Rule 44.2 requires the undersigned party to certify that the enclosed petition for rehearing regarding an order denying a writ of certiorari complies with the guideline that indicates it is limited to intervening circumstances of a substantial or controlling effect, or to other substantial grounds not previously presented.

Furthermore, Petitioner certifies that the following petition is brought forth in good faith and not for delay.

Signed:

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**PETITION FOR REHEARING
REASONS FOR GRANTING REHEARING**

The Supreme Court must grant a rehearing based on the petitioner, Jasmine Oliver, requests and should highly consider the contents attached within the appendix that affirms that a genuine dispute still exists based on the Court of Appeal very own words within its decision and remand the case to be heard at trial because summary judgement was not appropriate when the defendant failed to show that NO genuine dispute, not SOME genuine dispute, of material fact exists and therefore, in light of *liberty v. Anderson* rather than concluding the case based on the courts own opinion of evidence construe the review based on the FRCP, which outlines that the court should send a case to trial to handle a dispute rather than deciding it upon summary judgement. (Appendix excerpts may or may not be available based on the costs associated with providing such evidence, the court will have to consider the contents herein only; however, the petitioner can certify that all statements here are true to the best of her knowledge and the record, so although, it may not be provided to you today it should not undermine the truth in her statements.)

The supreme court should grant rehearing because the petitioner has demonstrated the grounds sufficient for rehearing consistent with the rules of this court and because it would be an extreme miscarriage of justice in light of the FRCP that were not followed when deciding if a case should be dismissed on summary judgement. A rehearing would allow an opportunity for justice to be provided where it is necessary. The rehearing should be commenced because no evidence was ever required by the defendant regarding any of its assertions because it claimed it was destroyed, which impacted the petitioner's ability to provide the evidence it claimed was required from her based on her motion FRCP 56 D asking the court to remedy the loss of evidence prior to a decision being made on summary judgement, which the petitioner made relevant on appeal. The court system loses its integrity when its decision is not based on the FRCP with justice in mind. As a result, of my mental health this rehearing is requested to provide insight into the miscarriage of justice that occurred when the court knowingly placed an evidentiary burden on the petitioner when the defendant claimed the evidence had been destroyed, with no regard to the petitioner's plea for justice. There is no secret that 24/7 surveillance at a facility would have affirmed the claims of the Plaintiff, which is why it was not available for this proceeding, and it is evident that other factors played a major role in whether the petitioner was discriminated and retaliated against while being sexually harassed. As an extraordinary circumstance I'm requesting a rehearing but if you decide that it should not be granted, I will have no other choice but to accept the fact that at a time evidence existed, which could have allowed my case to be heard, was unavailable conveniently when it was required to facilitate justice. I'm

writing this knowing that I've had to relive the events that I cannot receive justice on because my case was dismissed in a manner that was not integral if it knew that the court could have construed the unavailability of evidence as a sign that just maybe surveillance was not available because I was telling the truth. It is not far-fetched that bias does exist, and it is clear that maybe my race and disability played a role in the outcome of this proceeding because I believe the outcome would have been different if I was not pro se, or disabled or black. I will never be at peace with a decision that does not take into account justice because this is a justice system after all. I will patiently and anxiously await your decision and urge you to reconsider and issue a rehearing.

The greatest enemy of knowledge is not ignorance, it's the illusion of knowledge. As a petitioner I present not only intervening circumstances of substantial and controlling effects, but other substantial grounds not previously mentioned to promote the granting of a rehearing, based on the contents contained herein stated briefly and distinctly.

Substantial Grounds Not Previously Mentioned

The Petitioner moves for the court to grant this rehearing based on substantial grounds not previously mentioned such as the supreme court decided the framework regarding employment discrimination cases, which were not utilized during the determination of granting or denying summary judgement nor was the evidentiary standard mentioned regarding how the court of appeals decided that there was no genuine issue of material fact based on admissible evidence. The court of appeals did not apply this standard when deciding whether a genuine issue exists, however, its decision relied upon whether or not the court believed the evidence provided by the Petitioner. The Court of Appeals decision did highlight whether a genuine issue exists only to some extent which stated that a dispute does exist then proceeded to decide who was and who was wrong, which is not a task for summary judgement but trial. It appears that the court of appeals did not take into account that there is more than one way an employee can prove discrimination when an employee lacks direct evidence, it instead granted summary judgement; although, the petitioner made arguments based on the McDonnell framework, which according to the supreme court is allowed in employment discrimination cases where no direct evidence exists. The court of appeals in its decision does not address the controlling and intervening circumstances that McDonnell frameworks provide rather than just stating that the employee failed to provide direct evidence regarding a claim and dismissing a complaint by stating the employee failed to provide direct evidence as if the supreme court did not establish that direct evidence was not the only way that an employee could establish discrimination. Contrary to the Court of Appeals decision it noted within its response that the petitioner made relevant and litigated many of the case contents in the complaint alone, which

confirms that the record does provide evidence consistent with the McDonnell framework outside of direct evidence, which should have been utilized in deciding if an issue exists. The Court of Appeals decision suggests that the McDonnell-Douglas framework is not sufficient to defeat a motion for summary judgment, because it requires direct evidence as stated in decision on why it affirmed the district court decision to dismiss the Petitioners complaint. Even if it appeared that the petitioner did not have direct evidence it did not justify the absence of a framework that was designed specifically for employees without direct evidence as a controlling effect enacted by the supreme court in McDonnell Douglas v. Green. The court of appeals does imply within their opinion that the Petitioner relied upon the McDonnell Douglas framework even if the petitioner had not expressly cited the case, when it noted that the petitioner refuted the respondents defenses by establishing a pretext and quote stated, the petitioner, " argues that the district court overlooked evidence that Amazon's proffered reason for firing her was pretextual, but her evidence was insufficient to create a dispute of fact; however, the McDonnell framework does not require the petitioner to present direct evidence when the McDonnell framework is utilized, which is an oxymoron. Is the Petitioner able to utilize the McDonnell framework, which does not require direct evidence or is the petitioner required to provide direct evidence which is the opposite of the McDonnell framework. The petitioner requests that a rehearing be granted in light of McDonnell Douglas v. Green, which states that the framework is utilized when an employee lacks direct evidence of discrimination, which the burden shifts to the defendant not the petitioner or the court to articulate a nondiscriminatory reason for the employment action, the plaintiff must then demonstrate that the employers reason was a pretext of discrimination, which occurred but was merely addressed in the appeal as not sufficient and does not describe how the petitioner established a pretext. The petitioner was able to demonstrate according to the appendix of her appeal and response to the defendant's motion for summary judgement that she was able to establish a pretext and simply stating that the Petitioner was not able to establish a pretext in no way follows the framework established by the supreme court if the petitioner was able to establish the employers reasoning was false; therefore, the court of appeals requirement of direct evidence is contrary to the McDonnell Douglas framework, which is another avenue to prove discrimination, which should have been utilized when it became evident that the defendant who admitted to each claim and that it failed to preserve the necessary evidence pertaining to this case see Appendix A Petitioners summary judgement motion regarding her lack of access to surveillance which corroborated every claim and refuted the defendant's defenses, which was according to the defendant destroyed and never preserved, although, it admits that it was aware of pending litigation when the Petitioner filed a EEOC complaint. Furthermore, regarding the Petitioner's section 1981 race claim, the court utilizes the McDonnell Douglas framework although, it was evident that

the supreme court established that the framework regarding race claims can be proven utilizing the but for standard, in light of Comcast Corp. v. National Association of African American Owned Media, which should be reheard utilizing the standard established by the supreme court and met by the petitioner when she provided a direct statement of the defendant admitting that it provided no suspension or termination for white employees and a declaration of another white employee who was not terminated for the same actions sufficient to highlight that but for race she did not enjoy the same rights to enforce and enjoy the benefits of a contract that states within the defendant's handbook that an employee would be given an opportunity to correct its action by reason of corrective action, not termination. All white employees benefited from the opportunity to correct their actions which was not afforded to the petitioner but for race. The record reflects that the Petitioner provided direct evidence in the form of declarations from herself and others and simply stating that the evidence was vague and not disclosing the content of how the evidence was vague did not mean that the petitioner failed to meet the standard set out by the court but confirmed a genuine issue of dispute for trial. The appendix highlighted the appeal that provided the court with information which should have been construed in favor of the non-moving party. A rehearing should be issued in light of Comcast Corp. v. National Association of African American Owned Media, because simply stating that the evidence was vague does not affirm that the petitioner failed to meet the standard to defeat summary judgement based on an genuine issue if a jury could find that the non-moving party presented evidence that could return a verdict in her favor, which made summary judgement inappropriate and should not have been utilized by the court to determine if an issue exists for trial. The court of appeals decision rests solely on how strong or convinced they are by the evidence, which is not a standard for summary judgment but for trial, the petitioner met her requirements when she demonstrated that evidence exists to allow a jury to potentially return a verdict in her favor and whether or not the evidence is convincing and the quality of such evidence should be sufficient enough for a jury to decide creating a genuine issue of material fact; therefore, making summary judgement improper. Accordingly, the petitioner requests a rehearing in light of Anderson v. liberty that outlines that imposing a greater evidentiary burden at the stage of summary judgement is not consistent with the fact that a jury could provide a verdict in favor of the non-movant. In First National Ban of Arizona v. cities Service co., concluded that the summary judgement rule 56(c), the court stated, " it is true that the issue of material fact required by 56 (c) to be present to entitle a party to proceed to trial is not required to be resolved conclusively in favor of the party asserting its existence; rather all that is required is sufficient evidence supporting the claimed factual dispute be shown to require a jury to resolve the parties differing versions of the truth at trial. It is evident based on the court of appeals decision that its aim was

not to determine whether the petitioner provided enough evidence to support her claim of factual dispute but rather to decide the case conclusively in favor of the party asserting the existence.

The Court of appeals determined regarding the Petitioners sexual harassment claim that the claim should be dismissed because no jury would find the defendant liable because its size not if a genuine issue of material fact exists. A genuine issue of material fact regarding this claim rests between if the defendant knew who had been harassed and by whom, which confirmed by declaration that it was aware of both as highlighted by the petitioner. The court claimed that the petitioner requested for an investigation to not be completed, which the petitioner disputed with direct evidence of a statement provided to HR following the events that stated that no follow up or investigation had been completed and that the sexual harassment was still occurring. The jury could decide a verdict in favor of the petitioner because evidence affirmed that the petitioner identified herself and the harasser as well as another harasser whose name is unknown, which is sufficient for a jury to find a verdict in favor of the petitioner making summary judgement improper because of a genuine issue of material fact.

The Court of appeals determined, regarding the Petitioners ADA claim that, no genuine issue exists because the petitioner was not disabled because the court not the defendant claimed the petitioner was only disabled when placed near the individuals within her complaint, which conclusively decided the case but did not test whether there was a genuine issue of material fact for a jury to decide a verdict in favor of either party. The standard at summary judgement according to *Anderson v. liberty* is not to decide who is right or wrong but if there is evidence provide of a genuine dispute, which occurred when the petitioner provided proof of her disability, which was never disputed by the defendant with admissible evidence of the only qualified individual to make the assertion against medical evidence is an expert witness, because FRCP requires the support of denial of a claim to be made on admissible evidence and the testimony of the court is not admissible evidence sufficient to determine that the petitioner is not disabled, especially when the determination of disability was made with admissible evidence by the Petitioners prior treating physicians. The crux of the court's determination lies not if the Petitioner is disabled but when she experiences symptoms relating to her disability, which is not a genuine issue of material fact but rather the fact that the court has determined that the Petitioner is disabled even if it only relates to being stationed near co-workers. The genuine issue was met when the defendant stated that the petitioner was not disabled according to the ADA, which outlines that an individual can be disabled based on having a history of a disability, which the petitioner provided evidence of her medical history of a medical provider in 2009 expressly classifying the petitioner as disabled, which created a genuine issue of material fact

sufficient to make summary judgement improper because a jury could find that the petitioner is disabled without regard to when she experiences symptoms based on triggers. The genuine issue is not when the petitioner experiences symptoms relating to her disability but if she has provided evidence that she is disabled according to the standards set by the ADA, which she had shown. The court of appeals attempt to decide the case based on when an individual is disabled versus if an individual is disabled, which is a separate issue and neither needed to establish a genuine issue of material fact which is if the petition is disabled not when the petitioner experiences symptoms relating to her disability. Appendix G demonstrates the determination of more than three psychiatrists and mental health professionals dating as far back as 2009 determining the petitioner to be disabled.

The Court of appeals determined, regarding the Petitioners race discrimination claim that, although the court affirms that the petitioner highlighted evidence of a genuine issue of material fact regarding if others outside of race enjoyed the benefits relating to employment that were not afforded to her because of race that no genuine issue exists solely based on the denial of an assertion, which is contrary to FRCP 56. The genuine issue of material fact is that the defendant claims it made an employment decision to terminate the petitioner for a threat of violence, which the genuine issue regarding the Petitioners race claim of material fact a genuine dispute exists because a dispute exists if the petitioner threatened or did not threaten a co-worker, which was made known on appeal; however, the defendant failed to dispute the Petitioners claim that she did not threaten a co-worker by supporting her claim with admissible evidence and the record reflecting that the Petitioner never stated that she intended to harm anyone. The court held an evidentiary standard against the petitioner but did not hold any standard for the defendant regarding its claims because Appendix I demonstrates the defendants interrogatory answer within the record stating that it terminated the Plaintiff not based on a threat but profanity. Appendix H demonstrates the defendant's policy that states that corrective action would be the disciplinary steps taken to address the action. The petitioner demonstrated a genuine issue of material fact and utilized the but for standard when she provided declarations, and evidence of the defendant's own statements admitting that its white employees were not terminated or suspended for similar conduct. The summary judgement stage is simply to address if there is a genuine dispute, which is what the petitioner highlighted when she provided evidence that the defendants' actions were merely a pretext based on grounds of pretext that has been established within multiple circuits such as an employer's failure to comply with its own policy, and other forms of pretext within her appeal. The defendants claim that it followed its policy regarding terminating the petitioner's employment was a genuine issue still in dispute because the Petitioner was able to not only show that it failed to terminate

white employees based on the same policy but that the policy itself was not followed when the policy states that corrective action and not termination would be enforced.

The Court of appeals determined, regarding the Petitioners retaliation claim, that the petitioner failed to demonstrate a connection between her protected activity and the adverse action, which did not highlight all of the protected activity only some. The genuine issue regarding if the defendant took adverse action in response to her protected activity was provided when the petitioner demonstrated the correlation between her participation in her EEOC investigation in May and the Decision to terminate her in May. The Crux of the court of appeals argument is that the initial filing was the only protected activity that occurred months prior to her termination, but did not highlight that participating in an EEOC investigation is protected activity and occurred the same month the defendant decided to terminate the petitioner's employment, which created a genuine issue of dispute for trial based on the evidence provided by the petitioner that her participation for her EEOC filing began in May, which established a connection and a genuine dispute for a jury to determine that the defendant could have retaliated against the Petitioner if her protected activity consists of not only merely filing a complaint but participating and providing evidence in an investigation opposing discrimination and retaliation. Appendix I affirms that the petitioners protected activity began in May consistent with the metadata that was derived from the employment termination letter. In addition, the petitioner highlights that she was terminated the same day as her participation in an eeoc investigation which a jury could find that the defendant terminated the Petitioners employment when it waited until the day her response was due to terminate her three weeks after an event it claimed was the reason for her termination.

Ms. Oliver writ failed to raise grounds that would have aided the court in issuing a rehearing and vacating the order regarding Oliver V. Amazon, such as the procedures that are to be utilized by any judge when deciding to grant or deny a Federal Rule of Civil Procedure 56 motion for summary judgement, which expressly set the standard in, which motions for summary judgement are to be decided stating, "A party may move for summary judgement identifying each claim or defense- or the part of each claim or defense in which summary judgement is sought. The court shall grant summary judgement if the movant shows there is no genuine dispute as to any material fact and the movant is entitled to judgement as a matter of law. The court should state on the record the reasons for granting or denying the motion. The District court granted summary judgement on all claims; however, it only stated why it granted summary judgment on all claims, which is why the Petitioners appeal was limited to the reason on record provided by the district court. The district court provided summary judgement on all claims;

although, the defendant failed to identify each claim that had no genuine dispute and was decided based on an assertion not evidence.

Based on Federal Rule of Civil Procedure 56, motion for summary judgement should have addressed whether there was a genuine issue for trial it instead, based on a controlling effects and substantial grounds not previously listed the petitioner request a rehearing in light of the Supreme Court opinion regarding Federal Rule of Civil Procedure summary judgement motions, where the supreme court clarified in *Anderson V. Liberty Lobby*, that a court should not use its own opinion of the evidence in deciding whether a case should be dismissed on summary judgement.

The Appendix highlights that the court of appeals for the seventh circuit frequently decided the case based on its opinion and not evidence of whether there is a material issue of fact as well as other controlling effects, which includes FRCP outlining that the procedure stating that a party asserting that a fact cannot be or is genuinely disputed must support that assertion by citing particular parts of materials in the record, or that the material cited do not establish the absence or presence of a genuine dispute that an adverse party cannot produce admissible evidence to support the fact. The courts decision does not follow the procedure when it determined: that the Petitioners reporting of sexual harassment was reported and remained anonymous, because its ruling was based on claims that were objected to according to FRCP, regarding admissible evidence supporting or denying a claim. The record does not hold any evidence that the report remained anonymous but does contain evidence that the report was made which is sufficient for a jury to find the defendant liable for failing to cease sexual harassment that it had knowledge of, which creates a genuine issue of material fact that can allow a jury to provide a verdict in the petitioners favor because she provided enough evidence to show that there is a dispute of versions of events of material facts, which is the only requirement regarding a motion for summary judgement, not for the court to decide the case in favor of the party making the claims.

The defendant provided on record 50 statements of facts all, which were refuted by the Petitioner following the federal rules of procedure 56, when she provided evidence within the record indicating that all facts are genuinely disputed and supported that assertion by citing particular parts in the record that the material establishes the presence of a genuine dispute that an adverse party cannot produce admissible evidence to support the fact.

How can an order based on a motion for summary judgement fail to mention the statements of material facts and whether it created a genuine issue for trial if the court fails to mention all disputed material facts that could affect the outcome of the case. Appendix B highlights the respondent Amazon material facts, while Appendix C highlights the Petitioner, Jasmine Oliver assertion of disputed facts based on

FRCP 56 admissible evidence standard, which were never mentioned in the courts decision to affirm summary judgement because the procedure was not a standard utilized in the determination of granting summary judgement. Furthermore, the FRCP indicates that the nonmoving party may present 100 additional statements of material fact, all of which were objected to by the Petitioner because the defendant failed assertions could not be supported by evidence that would be admissible, which is a substantial controlling effect and intervening circumstances. As Appendix D, the Petitioner highlights the Petitioners' statements of facts and Appendix E indicates the respondents failed assertions based on evidence that would be admissible.

Appendix F outlines the Petitioners appeal outlining genuine issues of material fact that were not decided in a manner consistent with FRCP motion for summary judgement regarding admissible evidence. On Appeal the petitioner highlighted that it was impossible for the defendant's motion to be granted on summary judgement because it did not comply with FRCP that outlines that motion must not be made on mere assertions that evidence does not exists or denials but shall be supported by evidence that would be admissible that no genuine issue exists, which the petitioner highlighted on appeal. The controlling effects of the supreme court decision explained

Based on this controlling effect, it has been brought to this court attention that the order provided in Oliver v. Amazon was decided based on the court interpretation and opinion of evidence rather if the claim in factually insufficient and requests that this court remand the case for further proceedings in a lower court.

CONCLUSIONS

In conclusion, the petitioner requests a rehearing and for the court to consider the contents attached within the appendix and petition that affirms that a genuine dispute still exists based on the Court of Appeal very own words within its decision and remand the case to be heard at trial because summary judgement was not appropriate when the defendant failed to show that NO genuine dispute, not SOME genuine dispute, of material fact exists and therefore, in light of liberty v. Anderson father than concluding the case based on the courts own opinion of evidence construe the review based on the FRCP, which outlines that the court should send a case to trial to handle a dispute rather than deciding it upon summary judgement.

Signed,

Certificate of Service

[I hereby certify that on January 10th, 2025, I utilized a third-party delivery service provider and filed the foregoing with the Clerk of the Court for the Supreme Court of the United States.

I further certify that I have served the respondent in the case at the following below by mail.

Amazon.com
33 East Main Street
Suite 610
Madison, WI 53703

Signed,

01/10/2025

