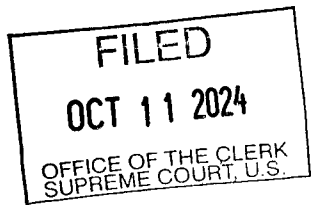


24-6725  
NO. \_\_\_\_\_



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SUPREME COURT OF THE UNITED STATES

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FERNANDO YATES

Petitioner,

vs.

SPRING INDEPENDENT SCHOOL DISTRICT

Respondent,

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ON PETITION FOR A WRIT OF CERTIORARI IN THE UNITED COURT OF  
APPEALS FOR THE FIFTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI

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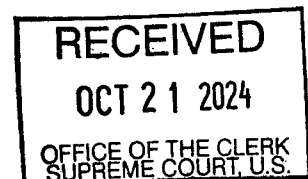
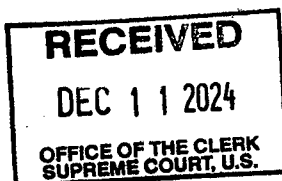
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## QUESTIONS PRESENTED

1. Where the Fifth Court of Appeals erred in ignoring relevant evidence, and failed to properly consider the Equal Employment Opportunity Commission Amicus Brief?
2. Where the Civil Rights of Petitioner violated?
3. Where attorneys are allowed to use sworn perjured evidence to win a case?

## I. Questions Presented

1. Where the Fifth Court of Appeals erred in ignoring relevant evidence, and failed to properly consider the Equal Employment Opportunity Commission Amicus Brief?
2. Where were the Civil Rights of Petitioner violated?
3. Where attorneys are allowed to use sworn perjured evidence to win a case?

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## IV. Petition for Writ of Certiorari

Fernando Yates was discriminated and demoted by the Spring Independent School District, Petitioner respectfully petition this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

## V. Opinions Below

The decision by the United States Court of Appeals Fifth Circuit affirming the trial Court summary judgment is attached in Appendix 1

## VI. Jurisdiction

The United States Court of Appeals Fifth Circuit affirmed the trial court summary judgment on August 26, 2024. Mr. Yates invokes this Court's jurisdiction under 28 U.S.C. § 1257, having timely filed this petition for a writ of certiorari within ninety days of the United States Court of Appeals Fifth Circuit.

## VII. Constitutional Provisions Involved

Article First, Section 20 of the Connecticut Constitution

Title VII of the Civil Rights Act

The Equal Protection Clause

The due process law V. Amendment

The Equal Protection Clause of the Fourteenth Amendment

## VIII. Statement of the Case

STATEMENT OF THE CASE A. Statement of the Facts 1 Plaintiff Fernando Yates—a math teacher in his late sixties—filed this suit alleging that the Spring Independent School District (“the District”) discriminated and retaliated against him in violation of the ADEA. 2 R.1; R.22; R.98 at 3. Yates began working at the District’s Spring Leadership Academy during the 2021-2022 school year as one of two eighth-grade math teachers. R.87-2 at 2. A few weeks into the school year, the District 1 EEOC presents these facts in the light most favorable to Yates, consistent with the standard of review for an award of summary judgment. See *Aryain v. Wal-*

Mart Stores Tex. LP, 534 F.3d 473, 478 (5th Cir. 2008). 2 Yates also brought claims under Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act of 1990. R.1, R.22, R.98 at 3. EEOC does not take any position on these claims or on any other issue in this appeal.

3 placed Yates on a “support plan,” allegedly based on concerns with his performance and preparation. R.87-2 at 2, 7. The plan required Yates, among other measures, to have coaching sessions with other educators at least three times a week, observe another teacher modeling the first-period lesson daily, and receive regular walkthroughs from the instructional leadership team. R.87-2 at 2-3, 7. Shortly after, the other eighth-grade math teacher resigned, and District combined the two eighth-grade math classes and assigned a different teacher as the lead teacher. R.87-2 at 3. Around this same time, the District placed Yates on a second support plan, which required him to observe other teachers daily, complete observation notes and practice activities, and undergo daily coaching sessions with other educators. R.87-2 at 3, 9. This plan additionally entailed “moving Mr. Yates to provide ‘pushin’ services for the classroom of the 6th grade math teacher.” R.87-2 at 3. In this “push-in” role, Yates was no longer a lead teacher responsible for his own classroom but was instead located inside the sixth-grade math teacher’s classroom working with some of that teacher’s students. R.87-2 at 3. The District describes Yates’ role as “work[ing] with smaller groups of students to deliver targeted instruction designed to help those students 4 catch up to their peers.” R.87-2 at 3. Yates describes this role as effectively a long-term substitute position, where he was frequently called out of the classroom to monitor metal detectors and restrooms or to cover for other teachers’ classrooms. R.87-1 at 9. Yates served in this role for a few weeks, until the seventh-grade math teacher resigned. R.87-2

at 3. The District initially assigned Yates to fill that teacher's position but then replaced him soon after with Melissa Lugo, "a brand new teacher straight out of teach[er] college" who was in her twenties. R.87 at 21; R.87-1 at 14; R.87-2 at 3; R.89 at 35. Yates was sixty-seven years old at the time. R.87 at 21; R.89 at 35. The District moved Yates back to the sixth-grade "push-in" position, which he occupied for about two months. R.87-2 at 3. In March 2022, however, after a dispute between Yates and the sixth-grade math teacher, the District assigned Yates to "report to the [school's] Media Center . . . while [it] developed a new support/intervention plan for him to continue doing push-in support." R.87-2 at 4. Yates began a new role providing support for three eighth-grade math students, whom he instructed separately in the library. R.87-1 at 35-36. The District also placed Yates on a new support plan that required him to undergo 45-minute 5 planning and 45-minute professional development sessions each day, review a series of videos and other resources, and submit lesson plans and other materials to the District for review. R.87-2 at 4, 44-46. Yates requested to transfer to another school and began working at Bailey Middle School, also in the District, for the 2022-2023 school year. R.87-1 at 40-41; R.87-2 at 5. In October 2022, the District received complaints that Yates was yelling at students and not letting them use the restroom or visit the nurse's office. R.87-4 at 2. The District placed Yates on paid administrative leave for roughly four months while it conducted an investigation. R.87-4 at 2. Under the terms of this administrative leave, Yates could not visit his school or any District facility; participate in any District activities; or have any contact with students, parents, or colleagues. R.87-6 at 2. The District ultimately cleared Yates to return to work following the investigation. R.87-1 at 46; R.87-7 at 5. Yates still works at Bailey Middle School. R.87-1 at 46

B. District Court's Decision Yates alleged that the District discriminated and retaliated against

him in violation of the ADEA by reassigning him to the “push-in” position, 6 putting him on a support plan, and putting him on administrative leave for four months. See, e.g., R.89 at 30, 32-33. The court granted summary judgment to the District. R.98. First, the court rejected Yates’ ADEA discrimination claim on the ground that none of the employment actions Yates challenged amounted to actionable discrimination. R.98 at 5-9. The district court reached this conclusion by relying on this Court’s former “ultimate employment decision” standard for Title VII discrimination claims, R.98 at 6-8, even though this Court had, weeks prior, issued its en banc decision in *Hamilton v. Dallas County*, 79 F.4th 494 (5th Cir. 2023) (en banc), abandoning this standard. First, the district court found Yates’ reassignment not actionable because it did not amount to an “ultimate employment decision[] such as hiring, granting leave, discharging, promoting, or compensating.” R.98 at 6 (quoting *McCoy v. City of Shreveport*, 492 F.3d 551, 559 (5th Cir. 2007)). Second, with respect to the support plans imposed on Yates, the court concluded that an “employer’s decision to place an employee on a performance improvement plan is not an adverse employment action,” quoting a pre-*Hamilton* decision that applied the “ultimate employment decision” standard. R.98 at 6 (quoting *Welsh v. Fort Bend Indep. Sch. Dist.*, 941 F.3d 818, 824 (5th Cir. 7 2019)). Third, with respect to Yates’ four-month administrative leave period, the court held that placing a plaintiff “on paid leave—whether administrative or sick—[is] not an adverse employment action,” again quoting a pre-*Hamilton* decision that applied the “ultimate employment decision” standard. R.98 at 8 (quoting *McCoy*, 492 F.3d at 559) (alteration in original). The district court also rejected Yates’ ADEA discrimination claim on the separate ground that he failed to “make out a prima facie case of age

discrimination.” R.98 at 11. But, in reaching this conclusion, the court recited the elements required for a prima facie case of ADEA retaliation. See R.98 at 11 (stating that a plaintiff must show protected activity, an adverse employment action, and a causal link). The court then found that Yates failed to satisfy the “causal connection” element of this test as concerned his reassignment from the seventh-grade math teacher position to the “push-in” position<sup>3</sup> because he established only that his replacement “was 3 It is not clear whether the district court was additionally analyzing the imposition of a support plan in concluding that Yates failed to establish a prima facie case. See R.98 at 11 (discussing the decision to replace Plaintiff with a younger teacher but then referencing the decision to place him on a support plan). 8 younger in age (in her 20’s)” and adduced no evidence of “age-related statements” or of “a pattern or practice of hiring younger applicants.” R.98 at 11. The court thus held that Yates could not establish a prima facie case of age discrimination. R.98 at 11. The court acknowledged that Yates brought a retaliation claim, R.98 at 3, but did not separately discuss this claim. Accordingly, the court never considered whether the actions in question—the reassignment, support plans, and administrative leave—“well might have dissuaded a reasonable worker from making or supporting a charge of discrimination,” so as to constitute actionable retaliation under the governing standard. *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006) (internal quotation marks omitted). SUMMARY OF ARGUMENT The district court made several errors in granting summary judgment. First, the district court erred by relying on this Court’s former “ultimate employment decision” standard for Title VII discrimination claims in holding that the conduct Yates challenged was not actionable discrimination under the ADEA. This was error because this Court had, weeks prior, issued its en banc decision in *Hamilton v. Dallas County*,



79.

Besides that, the court erred in not considering Principal Banks perjured sworn testimony. Banks placed Yates in a "support plan" on the spot. Yates was placed on a support plan alleging poor performance. SISD recognized that Banks never visited Yates classroom the first five days of school.

Banks based the support plan and demoted Yates. He discriminated Yates based on race, national origin and age.

THE UNITED STATES COURT OF APPEALS STATED:

A few weeks into the school year, Spring ISD placed Yates on a "support plan" based on alleged concerns with his performance and preparation.

August 26, 2024 United States Court Fifth Circuit decision page 1, Ins. 7-8.

PETITIONER RESPONSE:

The United States Court of Appeals Fifth Circuit during all the time is reciting Respondent's assertions and ignoring Petitioner relevant documentary evidence.

THE COURT STATED:

"A few weeks into the school year, Spring ISD placed Yates on a "support plan" based on alleged concerns with his performance and preparation"

PETITIONER RESPONSE:

Nothing could be further from the truth, the "support plan" was given to Yates on the spot the first five days of school, based on Yates race, age and national origin.

The Court ignored relevant evidence of Yates since the beginning, on Yates reply brief, page 2, Ins. 10-12. "Principal Banks blatantly lied to the trial Court, he declared: "observed performance concerns regarding Mr. Yates" preparation regarding specifically a lack of board configuration" How was he able to see my board configuration? Banks recognized that he did not visit Yates classroom. (Appellee page 11, line 12)". APPENDIX 1

Furthermore, on Yates reply brief page 4, Ins. 2-5. "Defendant and Defendant's Attorney continue deceiving, lying and presenting arguments without evidence against Plaintiff {Defendant is repeating the same lies regarding Yates performance, all his TTESS evaluations overall scores are proficient since the beginning. Plaintiff respectfully asks this Court to the Texas Education Agency to corroborate Yates contentions". APPENDIX 2

THE COURT OF APPEALS STATED:" This plan additionally entitled "moving Mr. Yates to provide "push in" services for the classroom of the sixth-grade teacher? "Around the same time, Spring ISD placed Yates on a second support plan...This plan additionally entitled "moving Mr. Yates to provide "push in" services role, Yates was no longer a lead teacher"

United Court of Appeals for the Fifth Circuit decision August 26, 2024.

#### PETITIONER RESPONSE:

Yates was discriminated and demoted, there was no reason for his demotion, Yates TTESS evaluation overall scores showed that it was a proficient teacher. APPENDIX 3

And the United States Court of Appeals for the Fifth Circuit erred by ignoring relevant evidence on the brief of the Equal Employment Opportunity Commission Amicus Brief. i.- B. Under the correct standard a jury could reasonably find that each of the employment actions Yates challenged amounts to actionable age discrimination.... Page 12,14,17,18. APPENDIX 4

#### THE COURT STATED:

On page of the United States Court of Appeals decision August 26, 2024, page 8, the Court erroneously stated: " the district court did not err in alternatively concluding that Spring ISD rebutted any prima facie case by providing a nondiscriminatory reason for an adverse action"

#### PETITIONER RESPONSE:

Nothing could be further from the truth. Yates a sixty-six-year-old teacher was replaced by a twenty-year-old teacher without a justified reason. Yates TTESS evaluation overall scores showed since the beginning of the school year that Yates was a proficient teacher. APPENDIX 3

The Court continues to make mistakes of law. On page 10, lines 8-14, "The court correctly determined that Spring offered legitimate, nondiscriminatory evidence to show that the reasons offered were a pretext

for age discrimination

#### PETITIONER RESPONSE:

Where is that evidence? Yates TTESS evaluation overall scores showed since the beginning of the school year that Yates was a proficient teacher. APPENDIX 3

#### UNITED STATES COURT OF APPEALS STATED:

The court continues reciting unfounded Responded claims. page 11, lines 12-20."But because these scores were recorded at the end of the school year, after Yates had been in the support plans"

#### PETITIONER RESPONSE:

Nothing could be further from the truth. The court erred by being careless and not review that Yates TTESS evaluations were proficient since the beginning of the school year.

#### THE COURT STATED:

On page 12, lines 4-6, "We agree with the district court's alternative conclusion that Spring ISD rebutted any prima facie case by providing a nondiscriminatory reason for any adverse action. So, we AFFIRM the summary judgment"

#### PETITIONER

The United State Court of Appeals erred by making its decision. Spring ISD has been unable to provide until this date any evidence of Yates poor performance, on the contrary, Yates always provided to the court evidence of his TTESSS overall scores. Since the beginning of the school year the scores show that Yates was a proficient teacher.

It would be a miscarriage of justice to uphold the United States Court of Appeals decision, based in perjured testimony from Respondent, and lack of evidence by Respondent of Yates poor performance, and ignoring Petitioner's relevant evidence.

#### IX, REASONS FOR GRANTING THE WRIT

To avoid erroneous deprivations of Petitioner civil rights, and avoid the court to allow sworn perjured testimony by Defendant

#### X. CONCLUSION

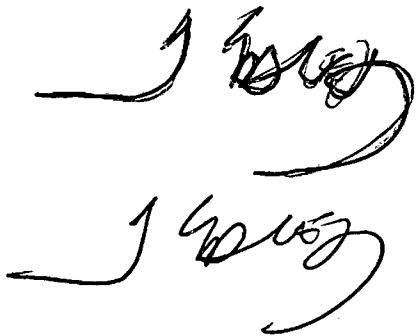
For the foregoing reasons, Mr. Yates respectfully request that this Court issue a writ of certiorari to

review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully Submitted,

Fernando Yates, Petitioner

DATED: October 11, 2024

Two handwritten signatures in cursive script, likely of Fernando Yates, are positioned one above the other. The signatures are fluid and stylized, with the first signature appearing slightly larger and more prominent than the second.