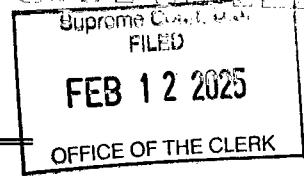


24-7287  
No. \_\_\_\_\_

ORIGINAL



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

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ANTHONY MICHAEL BRANCH,  
*Petitioner*,

v.

AIDAN T. KEARNEY & OTHERS,  
*Respondents.*

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On Petition for Writ of Certiorari to  
the Massachusetts Appeals Court

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**PETITION FOR A WRIT OF CERTIORARI**

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## INTRODUCTION

This petition presents a stark example of how online publishers can create their own “public figure,” insist on the heightened actual-malice standard, and escape liability under *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). The Massachusetts courts retroactively branded Petitioner a limited-purpose public figure based solely on defamatory publications about him. They then granted summary judgment without submitting actual malice, despite abundant evidence of knowing falsity and reckless disregard to a jury. That holding conflicts squarely with *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974), *Time, Inc. v. Firestone*, 424 U.S. 448 (1976), *Wolston v. Reader's Digest Ass'n*, 443 U.S. 157 (1979), and *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). This Court’s review is needed to restore predictable defamation standards in the digital age

## QUESTIONS PRESENTED

This Court has determined in *Time, Inc. v. Firestone*, 424 U.S. 448 (1976), rejected the argument that a person becomes a public figure merely because they are involved in matters of public concern. Similarly, in *Wolston v. Reader's Digest Ass'n*, 443 U.S. 157 (1979), this Court ruled that public interest in an individual's activities does not convert them into a public figure.

This case epitomizes self-proclaimed media defendants resorting to vindictive measures using their social media and cyber followers after the Petitioner did not settle a civil suit for defamation in the Massachusetts Courts. It is clear from the record that respondents intended to prejudice the community and any prospective jury should the case proceed to trial while ruining the Petitioner’s life. The respondents made that abundantly clear.

As Justice Thomas articulated, “...comes at a heavy cost, allowing media organizations and interest groups ‘to cast false aspersions on public figures with near impunity.’”

This case proceeded through the normal course of trial court proceedings, ultimately resulting in dismissal in favor of respondents. The Petitioner appealed, which was denied. The Massachusetts Appeals Court ruled the Petitioner was a public figure despite his public status emerging only after defamatory statements were made.

1. Whether a private individual who becomes the subject of defamatory online publications may be designated a “limited-purpose public figure” based solely on those publications and thus require proof of actual malice. Petitioner’s public visibility arose only after the publication of the defamatory statements.
2. Whether summary judgment is proper when the record contains direct and circumstantial evidence that a publisher knowingly disseminated false statements or acted with reckless disregard for the truth.

### **LIST OF ALL PARTIES**

All parties appear in the case caption on the cover page.

### **RELATED CASES**

*Anthony Michael Branch v. Turtleboy Digital Marketing & others, Plymouth County, No. 1983CV00920* (Case filed August 23, 2019).

*Anthony Michael Branch v. Aidan T. Kearney & others*, Massachusetts Appeals Court, No. 23-P-414 (Lower court judgment affirmed, July 24, 2024).

*Anthony Michael Branch v. Aidan T. Kearney & others*, Massachusetts Supreme Judicial Court, No. FAR-29928 (Further appellate review denied, November 14, 2024).

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## OPINIONS BELOW

The unpublished opinion of the Massachusetts Appeals Court affirming summary judgment (Pet. App. A). The Massachusetts Supreme Judicial Court denying further appellate review (Pet. App. B). The trial court's decision granting summary judgment (Pet. App. C) and the initial order denying dismissal (Pet. App. D).

## JURISDICTION

The Massachusetts Appeals Court issued its decision on July 24, 2024, and denied the Petitioner's motion for reconsideration on September 4, 2024. (Appendix A). The Massachusetts Supreme Judicial Court denied further appellate review on November 14, 2024. (Appendix B).

The jurisdiction of this Court will be invoked under 28 U.S.C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment of the United States Constitution protects the freedom of speech, religion, press, assembly, and petition.

## STATEMENT OF THE CASE

Petitioner, Rev. Anthony Michael Branch, is a Pentecostal minister who has served his community for decades through religious, civic, and educational outreach. On August 23, 2016, the website turtleboysports.com, operated by Respondent Aidan Kearney, published a headline falsely stating: "Fake Bishop Tony Branch Forces Brockton High School To Change Name From 'Housemasters' To 'Deans' Because....Slavery."

This publication falsely claimed that Petitioner fabricated his religious credentials, suggested he exploited race and civil rights issues for personal or political gain, and labeled him as a fraud. These false claims were not confined to a single blog post. They were disseminated on social media, tagged to Petitioner's name, and amplified through repeated online attacks. Petitioner's pleas for correction or retraction were ignored.

The damage was immediate and devastating. Three couples canceled wedding contracts with Petitioner. Churches revoked invitations for him to serve as a guest preacher. A job offer for a salaried pastoral role valued at over

\$42,000 annually was rescinded. Petitioner endured emotional trauma, ridicule in his community, and irreparable reputational harm.

Petitioner filed suit in Massachusetts Superior Court in 2019, asserting defamation and related claims. The trial court initially rejected respondents' anti-SLAPP motion and held that the allegations were properly directed at the publisher not merely third-party commenters. Discovery followed.

At summary judgment, however, the Superior Court reversed course, concluding that Petitioner was a "limited-purpose public figure" and had failed to present sufficient evidence of actual malice.

The Appeals Court affirmed that decision in full, and the Massachusetts Supreme Judicial Court denied further appellate review.

In addition, respondents launched a targeted online smear campaign, posting false commentary, banners at public meetings, and repeated social-media attacks explicitly to coerce Branch into settling his defamation claim.

That ruling left Petitioner without redress for proven economic and reputational injury caused by demonstrably false and malicious statements crafted and spread by the respondents themselves. This petition seeks this Court's review to clarify whether constitutional protection of free speech permits online actors to manufacture controversy around a private citizen, brand them a public figure, and escape liability through misuse of Sullivan.

## REASON FOR GRANTING PETITION

### I. Retroactive Public-Figure Classification Conflicts With *Gertz* and Due Process

Petitioner's visibility resulted from being targeted and defamed, not from any voluntary participation in public controversy. The limited-public-figure designation first arose during anti-SLAPP proceedings and was not pleaded or conceded initially. In *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974), and *Time, Inc. v. Firestone*, 424 U.S. 448 (1976), this Court has made clear that not all notoriety renders an individual a public figure. Nevertheless, the Massachusetts courts applied that label here merely because Petitioner once served on a local commission and was quoted in a newspaper. That conclusion squarely conflicts with *Wolston v. Reader's Digest Ass'n*, 443 U.S. 157 (1979), which held that media attention alone does not transform a private individual into a public figure.

The Superior Court's December 3, 2020 Memorandum of Decision first held that Branch was a limited-purpose public figure. In its February 8, 2023, summary-judgment order, the Superior Court proceeded under that designation and granted summary judgment to respondents only on the ground that Branch could not prove actual malice while expressly finding genuine issues of material fact on authorship and publisher liability (CDA immunity), falsity, damages/defamation-proof status, and the actionable character of the statements. Pet. App. C.

The Massachusetts Appeals Court then affirmed not only the summary judgment but also the underlying public-figure designation, treating Branch as one from the moment of respondents' defamatory publications. Pet. App. A. By applying the heightened actual-malice standard retroactively to claims that had accrued and were litigated under private-person rules, the Appeals Court deprived Branch of fair notice and predictable legal standards, in conflict with *Landgraf v. USI Film Prods.*, 511 U.S. 244, 269–74 (1994).

In *Landgraf v. USI Film Prods.*, 511 U.S. 244 (1994), this Court held that retroactively imposing new legal burdens offends principles of notice and fairness. Petitioner's defamation claims accrued while he was treated as a private individual, and only later, well into litigation, did the court

designate him as a limited-purpose public figure. Applying a heightened actual-malice standard after the injury and discovery phases violates *Landgraf*'s core holding and deprives him of fair warning and procedural predictability.

Defamation jurisprudence requires that a plaintiff be a public figure only if he "voluntarily thrusts himself" into a public controversy prior to or contemporaneously with the defamatory statements. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 351 (1974). Where, as here, "the media interest and notoriety" derive solely from false publications, retroactive reclassification is forbidden. *Time, Inc. v. Firestone*, 424 U.S. 448, 455–56 (1976); *Wolston v. Reader's Digest Ass'n*, 443 U.S. 157, 167–70 (1979).

The direct conflict between the Superior Court's fact-driven findings preserving almost every element for jury resolution except actual malice and the Appeals Court's broad, retroactive application of public-figure status undermines uniformity in defamation law and violates substantive due process. This Court's intervention is necessary to resolve these inconsistencies and restore fair, predictable standards for defamation claims.

## **II. Actual Malice Is a Jury Question Where the Record Shows Knowing Falsehood or Reckless Disregard**

*New York Times Co. v. Sullivan* held that actual malice defined as knowledge of falsity or reckless disregard of the truth is a factual question for the jury. *New York Times Co. v. Sullivan* 376 U.S. 254, 285–86 (1964). This principle has been repeatedly reaffirmed. In *Anderson v. Liberty Lobby, Inc.*, this Court held that summary judgment is improper where the evidence permits a reasonable jury to conclude the defendant acted with actual malice. *Anderson v. Liberty Lobby*, 477 U.S. 242, 254–55 (1986). Similarly, in *Harte-Hanks Communications, Inc. v. Connaughton*, the Court stressed that actual malice may be inferred from circumstantial evidence, especially where a defendant deliberately avoids verifying the truth. *Harte-Hanks Communications, Inc. v. Connaughton* 491 U.S. 657, 668 (1989). Also see *Masson v. New Yorker Magazine*, 501 U.S. 496, 517 (1991), which reinforces that "minor inaccuracies do not amount to falsity," but substantial falsehoods do.

Federal appellate courts have echoed this position. The First Circuit has emphasized that the question of malice must

go to the jury where a plaintiff presents facts that, if believed, would establish reckless disregard. See *Levesque v. Doocy*, 557 F.3d 87, 99 (1st Cir. 2009). The Second Circuit similarly held that credibility disputes and editorial choices warrant jury review when malice is alleged. See *Church of Scientology Int'l v. Behar*, 238 F.3d 168, 173 (2d Cir. 2001).

The record here is replete with facts supporting actual malice. Respondent Kearney admitted under oath that he “provide[s] hot takes” as an entertainer, not a journalist. He refused to investigate or correct known falsehoods, including the legitimacy of Petitioner’s religious ordination. He also began a smear campaign, repeatedly publishing defamatory claims, including an allegation of sexual misconduct with a minor without evidence. He repeatedly mocked Petitioner’s race and religion, reinforcing personal animus inconsistent with any legitimate journalistic purpose. These facts, if believed, would support a jury finding of actual malice under any of this Court’s precedents.

This case mirrors *St. Amant v. Thompson*, where the Court held that reckless disregard exists when a defendant publishes despite “obvious reasons to doubt the veracity of the informant or the accuracy of his reports.” *St. Amant v. Thompson* 390 U.S. 727, 732 (1968). The deliberate indifference, retaliatory intent, and documented refusal to correct false claims warrant jury consideration. Summary judgment under these circumstances is legally and constitutionally unjustified.

### **III. Sullivan Immunity Is Being Exploited to Shield Malicious Online Defamation**

Justice Thomas has warned that *New York Times Co. v. Sullivan* lacks any foundation in the Constitution’s text or historical understanding and now operates as a judicially created shield for defamers. See *Matal v. Tam*, 582 U.S. 218, 251 (2017) (Thomas, J., concurring). Justice Gorsuch has likewise questioned the doctrine’s viability in the modern era, observing that digital platforms permit reputational damage “on an entirely new scale and speed.” *Rehberg v. Paultk*, 566 U.S. 356, 371 n.11 (2012) (Gorsuch, J., dissenting).

This case powerfully illustrates both Justices’ concerns. Respondent Kearney manufactured controversy through false and inflammatory statements, unilaterally designated Petitioner as a public figure, and then claimed constitutional immunity under *Sullivan*. His conduct monetized

harassment, deliberate falsehoods, and retaliatory public attacks epitomizes the type of media abuse this Court never intended to shield when it crafted the actual malice standard.

Respondents did not engage in public discourse or journalistic inquiry. They weaponized the First Amendment: they fabricated controversy, falsely elevated Petitioner's public profile, and invoked Sullivan as a sword against accountability. This distortion of constitutional protection not only leaves victims without recourse but also erodes the States' interest in safeguarding individual reputations. It incentivizes malicious defamation under the guise of free speech, precisely the dynamic Justices Thomas and Gorsuch have warned against.

#### **IV. The Factual Record Confirms Actual Malice and Economic Harm**

The transcript of the preliminary injunction hearing and deposition excerpts from both Petitioner and respondent confirm not only the factual basis for harm but also clear circumstantial evidence of actual malice. Respondents did not merely publish harsh opinions they initiated a retaliatory smear campaign with economic and reputational consequences, fully aware of the falsehoods involved.

Respondent Aidan Kearney admitted under oath that his objective was not dispassionate journalism but entertainment and public shaming: "I'm like an investigative reporter, but also an entertainer and YouTuber and salesman... I provide hot takes to the community." He further testified that the Petitioner was a "two seed in ratchet madness," and justified his coverage by calling Petitioner a "public figure," despite no serious evidence of such status prior to publication.

In his deposition, Kearney repeated a baseless allegation: "[Plaintiff] was credibly accused of having sex with a 15-year-old girl..." a claim never proven and demonstrably false. This is not protected opinion. It is a reckless and damaging factual assertion, repeated for the purpose of humiliation, not reporting.

Petitioner, Rev. Branch, testified that he lost three wedding officiant contracts and a salaried church position worth over \$40,000 because of the false statements. He said plainly, "Economically, I really needed the job." He also described being suspended from the NAACP and ostracized

by organizations he had served for years. "Churches declined to hire me after seeing the post." The emotional toll included weight loss, insomnia, and depression clear consequences of reputational assault.

This record mirrors the facts in *Murphy v. Boston Herald*, 449 Mass. 42 (2007) 865 N.E.2d 746 where malicious exaggeration and a refusal to verify claims supported liability. As in *St. Amant*, the respondents showed "obvious reasons to doubt" the truth yet persisted. The refusal to retract or even investigate contradicting information, paired with profit-driven republishing, is precisely the kind of willful indifference to truth that constitutes actual malice.

Notably, Kearney's attacks were not limited to Petitioner's character but extended to his religious identity. In his deposition, Kearney stated, "He doesn't look like any bishop I've ever seen," a remark that reflects both religious and racial animus. Kearney questioned the legitimacy of Petitioner's Pentecostal faith, mocking his ministry credentials and presenting himself as an arbiter of what a bishop should be. Such statements suggest that Kearney's motives were not only personal but rooted in religious hostility, making this case more than defamation; it involves a pattern of targeted bigotry that raises broader First Amendment concerns.

Petitioner consistently raised these constitutional concerns throughout the proceedings, including in his Appellant's Brief (App. E), Reply Brief (App. F), Motion for Reconsideration (App. G), and Application for Further Appellate Review (App. H). Despite this, the state courts summarily dismissed key factual disputes and retroactively applied a heightened standard of proof inconsistent with settled precedent.

Respondent's refusal to investigate or correct demonstrably false claims, paired with his own on-record statements reflecting personal animus, retaliatory intent, and deliberate targeting, created a compelling record of actual malice. Under this Court's precedents, such evidence presents a question for the jury and should not have been resolved on summary judgment.

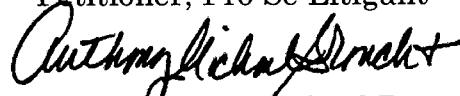
## CONCLUSION

This Court's intervention is necessary not merely to address a misapplication of defamation law but to resolve an urgent constitutional issue in the digital age: Whether individuals defamed online can be rebranded as public figures by the very publications that harm them and thus be denied any legal remedy. Only this Court can clarify the limits of *Sullivan* and ensure that due process and reputational rights are not sacrificed to modern misinformation.

Accordingly, the petition for a writ of certiorari should be granted.

Dated: May 20, 2025

Respectfully submitted,  
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## Appendix

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