No. 25-

IN THE

Supreme Court of the United States

KEMAL KOCAK,

Petitioner,

v.

HARMONY PUBLIC SCHOOLS,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether Title VII permits courts to require, as a threshold element of a prima facie case, a comparator outside the broader protected group when the plaintiff alleges discrimination against a disfavored subgroup within a national-origin community.

2. Whether a court may affirm summary judgment for an employer by crediting the employer's post-incident narrative over objective video evidence, witness testimony, and sworn declarations from which a reasonable jury could find pretext.

CERTIFICATE OF PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE

Undersigned counsel of record certifies that the following listed persons and entities have an interest in the outcome of this case. These representations are made in order that the justices of the Court may evaluate possible disqualification or recusal. Pursuant to Rule 29.6. Petitioner states that he is a natural person and not a corporation.

PETITIONER

Kemal Kocak — Petitioner

Edward Leonard Piña — Counsel for Petitioner
Edward L. Piña & Associates, P.C.

RESPONDENT

Harmony Public Schools — Respondent

Respondent is a Texas nonprofit corporation, has no stock ticker symbol, has no parent corporation, and no publicly held company owns 10% or more of its stock.

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STATEMENT OF RELATED PROCEEDINGS

Kemal Kocak v. Harmony Public Schools, No. 5:22-CV-00636-OLG, United States District Court for the Western District of Texas. Order granting summary judgment entered April 28, 2025.

Kemal Kocak v. Harmony Public Schools, No. 25-50426, United States Court of Appeals for the Fifth Circuit. Unpublished opinion filed January 14, 2026; judgment entered February 4, 2026.

No other proceedings in state or federal trial or appellate courts are directly related to this case.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Kemal Kocak respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

Title VII protects "any individual" from discrimination because of national origin. The decision below makes that protection disappear whenever discrimination occurs within a single immigrant community and the employer later offers a contrary internal narrative. Petitioner alleges that a publicly funded charter-school network turned against employees associated with the Gulen movement, protected the coworker who struck him in the head with a metal chair, and fired him eight days later. Yet the courts below held that no jury could hear his claim because he lacked a comparator outside the broader Turkish category and because Harmony's post-incident account defeated contrary video-based materials, witness testimony, and sworn declarations. This Court's review is warranted.

This Court's recent unanimous decision in *Ames v. Ohio Dept. of Youth Services* reemphasized that lower courts may not graft extra-statutory burdens onto Title VII's prima facie case and that *McDonnell Douglas* is not a rigid ritual. The decision below does precisely what *Ames* forbids. And it does so in tandem with a second error: treating summary judgment as a license to prefer the employer's narrative over record materials from which a reasonable jury could find pretext. Those questions recur far beyond this case.

OPINIONS BELOW

The unpublished opinion and judgment of the United States Court of Appeals for the Fifth Circuit is reproduced at App. 1a-7a; *Kocak v. Harmony Pub. Sch.*, No. 25-50426, 2026 LX 36102 (5th Cir. 2026). The order of the United States District Court for the Western District of Texas granting summary judgment is reproduced at App 8a25a; *Kocak v. Harmony Pub. Sch.*, No. SA-22-CV-00636-OLG, 2025 LX 243730 (W.D. Tex. 2025).

JURISDICTION

The Fifth Circuit Court of Appeals unpublished opinion and judgement were filed on January 14, 2026. This Court's jurisdiction is invoked under 28 U.S.C. § 1331.

STATUTORY PROVISIONS INVOLVED

Title VII makes it unlawful for an employer "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1).

Title VII further makes it unlawful for an employer to discriminate against an employee because he "has opposed any practice made an unlawful employment practice" by Title VII or "has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing" under Title VII. 42 U.S.C. § 2000e-3(a).

The courts below analyzed petitioner's parallel claims under Chapter 21 of the Texas Labor Code, including Tex. Lab. Code §§ 21.051 and 21.055, under the same standards they applied to Title VII.

STATEMENT OF THE CASE NECESSARY TO ARGUMENT OF THE ISSUES

This case presents a recurring Title VII question: whether discrimination within a single national-origin community becomes legally invisible when the plaintiff cannot identify a favored comparator outside the broader group. It also presents a recurring summary-judgment question: whether courts may allow an employer's internal account to override objective video-based materials and other record evidence from which a reasonable jury could find pretext.

Petitioner does not ask this Court to resolve the ultimate truth of every allegation in the summary-judgment record. The narrower question is whether the courts below could foreclose trial by applying an atextual comparator demand and by resolving competing factual inferences in Harmony's favor.

A. Factual Background

Petitioner is a Turkish-American former district manager of facilities for respondent Harmony Public Schools. In his declaration and summary-judgment filings, petitioner stated that Harmony had been founded by Gulen-inspired educators, that its administration later shifted toward non-Gulen actors, and that employees associated with the Gulen movement were increasingly

marginalized. He further testified that Harmony's administration had been infiltrated by actors aligned with the Turkish government's campaign against the Gulen movement. Whether a jury would ultimately credit those allegations is a merits question. For present purposes, they were part of the sworn record before summary judgment. ROA.696-699.

On August 5, 2021, Assistant Superintendent Riza Gurlek directed petitioner to create a purchase order for a new timekeeping system and to coordinate with Harmony's IT Coordinator, Hamza Cengiz. Later that day, while petitioner was in his office on a work-related call, Cengiz entered the office and negligently struck petitioner on the head with a metal chair. Harmony's own video cameras, accompanied by written minute-by-minute summaries, state that coworker Yunus Zengin looked toward petitioner's office, physically restrained Cengiz as Cengiz yelled and lunged, and that petitioner then emerged bleeding and left the building while coworkers sought emergency assistance for Mr. Kocak. ROA.1196;[1] ROA.703-716.

The video evidence was summarized in written minute by minute format and described the aftermath. One summary states that police initially handcuffed Cengiz, that Superintendent Selcuk Bakir and Gurlek then spoke privately with officers and whispered to Cengiz, and that Cengiz's handcuffs were later removed by police after

1. Filing transmitting plaintiff's Exhibits 4-10 and the written minute-by-minute summaries of Harmony's surveillance videos, *Kocak v. Harmony Public Schools*, No. 5:22-CV-00636-OLG, Dkt. 33 (W.D. Tex. Feb. 1, 2024).

the administrator's intervention. Petitioner also relied on Belinda Sanchez's testimony that she felt pressure from supervisors to add to or alter her written statement after helping petitioner. ROA.713-714; ROA.811-813, 815-817.

Harmony placed both petitioner and Cengiz on administrative leave on the evening of the assault. Eight days later, on August 13, 2021, Bakir terminated petitioner for supposed insubordination and for being aggressive, argumentative, and unprofessional during a heated confrontation about the timekeeping system. Harmony separately terminated Cengiz for injuring a coworker in a fight. Petitioner denied that he had ever refused a directive from a supervisor and stated in his grievances that Cengiz, who was not his supervisor, struck him without any provocation while petitioner was on a work call. ROA.201-205; ROA.235-241.

B. Proceedings Below

The district court granted summary judgment for Harmony on all claims. As relevant here, the court held that petitioner had failed to identify a comparator outside his protected class and had not shown that Harmony's stated reasons for firing him were pretextual. The court further discounted petitioner's declaration as conclusory and subjective, and it held that petitioner had not established retaliation because Bakir stated that he had no knowledge of any prior protected complaints. *See* ROA.1263-1280.

The Fifth Circuit affirmed in an unpublished summary-calendar opinion. The panel reiterated that petitioner had failed to identify a comparator outside his

protected class, had not produced evidence of pretext, and had not shown decisionmaker knowledge for retaliation. The panel then added that petitioner had not sufficiently engaged with the district court's analysis. App. A.

REASONS FOR GRANTING THE PETITION

The decision below warrants review for three reasons.

First, after *Ames*, lower courts may not transform comparator evidence into an atextual threshold requirement that eliminates Title VII protection for subgroup discrimination within a broader national-origin community.

Second, the decision below cannot be reconciled with this Court's summary-judgment precedents governing objective video evidence, witness testimony, and pretext.

Third, the question presented is nationally important, especially in publicly funded institutions where employment disputes may track factional or foreign-government pressure within immigrant communities.

I. After *Ames*, lower courts may not treat an outside-group comparator as an atextual threshold bar.

Ames rejected a heightened prima facie burden because Title VII protects "any individual" and because *McDonnell Douglas* is a practical, flexible method of organizing proof, not a rigid ritual or checklist. *Ames* 605 U.S. 303, 310-313 (2025); 411 U.S. 792, 93 S. Ct. 1817 (1973). The same principle controls here. A comparator outside the broader protected group may be one common

way to raise an inference of discrimination. But it cannot be converted into an absolute threshold rule whenever the plaintiff alleges discrimination against a disfavored subgroup within the same national-origin community.

The rule applied below does exactly that. Petitioner alleged that the relevant fault line inside Harmony was not simply Turkish versus non-Turkish; it was Gulen-associated employees versus non-Gulen administrators and employees who shared the same broader Turkish background. By requiring petitioner to identify a comparator outside the broader Turkish category, the lower courts allowed Harmony to define the protected class at the highest level of generality and thereby erase discrimination alleged to operate through creed, sect, political allegiance, regional affiliation, or dissident-versus-loyalist status within the group.

That approach cannot be squared with Title VII's text or this Court's decisions. Title VII condemns discrimination against individuals, not just groups in the abstract. *See Ames* 605 U.S. 303, 310-313 (2025); *Bostock v. Clayton County*, 590 U.S. 644, 659-660 (2020); *McDonald v. Santa Fe Trail Transp. Co.*, 427 U.S. 273, 278-280 (1976). And *McDonnell Douglas* supplies only a flexible evidentiary framework, not a mechanical barrier. *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-805 (1973); *Furnco Constr. Corp. v. Waters*, 438 U.S. 567, 577 (1978); *Texas Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 248, 253 (1981); *USPS Bd. of Governors v. Aikens*, 460 U.S. 711, 715 (1983). By making an outside-group comparator indispensable, the courts below converted one possible mode of proof into the very sort of atextual threshold bar *Ames* forbids.

II. The decision below cannot be squared with this Court's summary-judgment precedents.

This Court has repeatedly held that summary judgment is not a vehicle for weighing evidence, choosing between competing narratives, or drawing inferences in favor of the movant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000). *Scott v. Harris* did not weaken that rule. *Scott* allows departure from ordinary summary-judgment principles only when objective video evidence blatantly contradicts the nonmovant's account such that no reasonable jury could accept it. 550 U.S. 372, 380 (2007). And *Tolan v. Cotton* unanimously reversed the Fifth Circuit for failing to credit contrary evidence and for resolving disputed facts in the movant's favor. 572 U.S. 650, 657-660 (2014).

Here, Harmony's own video-based materials strongly support petitioner's account. The written summaries state that Cengiz walked toward petitioner's office, yelled and lunged after the assault, had to be physically restrained, and that petitioner emerged bleeding and left the building while coworkers sought medical help. Another video record and the written summary states that police initially handcuffed Cengiz, then the administrators can be seen privately speaking with officers and with Cengiz before the handcuffs were removed. ROA.703-716. The administrators told the officers that the altercation was mutual combat which is clearly refuted by the video and audio evidence. *See Estate of Aguirre v. City of San Antonio*, 995 F.3d 395 (5th Cir. 2021). Petitioner also offered sworn testimony that Harmony's administration was hostile to perceived Gulen adherents and testimony

from Belinda Sanchez that she felt pressure to alter her account. ROA.696-699; ROA.811-813, 815-817.

A reasonable jury could conclude from that record that Harmony's stated reasons for firing petitioner were not the real reasons. Yet the courts below treated Harmony's internal investigative narrative as decisive. That approach conflicts with *Anderson*, *Reeves*, and *Tolan; Scott* does not authorize it because Harmony's own video-based materials do not contradict petitioner's account, but rather support petitioner's account. And the error has consequences beyond this case: if employers may neutralize objective video and audio recordings with after-the-fact summaries or affidavits, summary judgment will increasingly displace the jury where video evidence should matter most.

III. The question presented is nationally important.

This case has importance beyond its unusual facts. Workplace discrimination often operates within, not between, broad protected groups. The real line of discrimination may run through sect, creed, caste, clan, political faction, regional identity, or dissident-versus-loyalist status within a shared national-origin community. A rule requiring a comparator outside the broader group would leave that entire category of discrimination effectively unreviewable.

The summary-judgment record here makes the point vividly. Petitioner alleged that Harmony, a publicly funded charter-school network founded by Gulen-inspired educators, later came under the control of administrators hostile to perceived Gulen adherents and aligned with the Turkish government's campaign against the movement.

He tied that account to sworn testimony, to video-based evidence from the day of the assault, and to materials in the record describing the broader conflict surrounding Gulen-inspired schools in the United States. Whether those allegations are ultimately proven is a trial question. Title VII must be available to test such allegations before a jury.

The stakes are heightened because the employer here is a publicly funded school system. The chief executive officer Fatih Ay is unelected and reports to a board of trustees he appoints. Employment decisions in such institutions affect not only the parties but also educational missions, taxpayer-supported operations, and communities that may already be vulnerable to transnational political pressure. Clarification from this Court would have immediate value in schools and other workplaces where subgroup discrimination allegations intersect with objective video evidence.

IV. This case is a suitable vehicle.

This case cleanly presents the two questions on which review is sought. The district court expressly held that petitioner failed because he lacked a comparator outside his protected class and because his evidence did not show pretext. The court of appeals then repeated those holdings in an unpublished opinion. Those federal questions were thus pressed, passed upon, and actually decided below.

Respondent may point to the Fifth Circuit's additional citation to *Brinkmann v. Dallas County Deputy Sheriff Abner*, 813 F.2d 744 (5th Cir. 1987), and its statement that petitioner had not sufficiently engaged with the

district court's analysis. That *Brinkmann* reference does not prevent review. The panel did not dispose of the appeal on waiver alone; it expressly resolved the merits as well. And the issues presented here were argued in petitioner's court-of-appeals brief, which challenged both the comparator rule and the lower courts' treatment of the video-based record.

The record is concrete and documentary. The key materials are the written district-court order, the written court-of-appeals opinion, petitioner's declaration, grievance documents, witness testimony, Harmony's own surveillance-video camera footage, and petitioner's written minute by minute summary of the video evidence. This Court need not resolve the truth of every factual dispute; it need only correct legal rules that now threaten to disable Title VII in a recurring class of cases.

CONCLUSION

The petition for a writ of certiorari should be granted. After *Ames*, this Court should make clear that Title VII does not tolerate atextual comparator barriers and that summary judgment does not permit courts to credit an employer's narrative over record evidence a jury could reasonably believe.

Respectfully submitted,

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APPENDIX

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, FILED JANUARY 14, 2026

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 25-50426
Summary Calendar

KEMAL KOCAK,

Plaintiff-Appellant,

versus

HARMONY PUBLIC SCHOOLS,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:22-CV-636

Before DAVIS, WILSON, and DOUGLAS, *Circuit Judges.*

PER CURIAM:*

After Plaintiff-Appellant Kemal Kocak was fired from his job, he brought this employment discrimination suit

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

against his former employer. The district court granted summary judgment for the employer. We AFFIRM.

I.

Kocak was employed by Defendant-Appellee Harmony Public Schools as a District Manager of Facilities. On August 5, 2021, Kocak's supervisor, Riza Gurlek, emailed him, requesting he create a purchase order for a new timekeeping system. Gurlek also asked Kocak to update his co-worker, IT Coordinator Hamza Cengiz, regarding the order. Kocak opposed the introduction of the new timekeeping system, because he feared that Harmony and the Turkish Intelligence Service would use the system to track him. So, Kocak went to Gurlek's office to confront him. By Gurlek's account, Kocak was "using aggressive and vulgar language" and "yelling and questioning why we were installing a timekeeping system." Kocak then went out to the hallway, where he began speaking with Cengiz about the matter. Eventually, Kocak went back to his own office and sat down at his computer. Cengiz then followed Kocak to the office and hit him in the head with a chair. The police were called, and Kocak was taken to the hospital. Cengiz was not detained on the spot but was ultimately prosecuted for the incident. Harmony immediately placed Cengiz on administrative leave and then fired him.

Harmony also terminated Kocak. As reasons for the termination, it cited Kocak's insubordination for refusing to enter the purchase order and his engagement in an unprofessional and heated confrontation. After exhausting

administrative remedies, Kocak brought suit. He asserted three claims under Title VII[1] and Chapter 21 of the Texas Labor Code: discrimination based on national origin, retaliation, and hostile work environment.

The district court granted summary judgment for Harmony. It explained Kocak had failed to present evidence on essential elements of each claim. As to discrimination based on national origin, Kocak failed to identify a comparator outside his protected class who was treated more favorably: the proffered comparators either shared Kocak's Turkish national origin or there was no record evidence of their national origin.[2] Moreover, the court observed that Kocak presented no evidence tending to show Harmony's stated reasons for his termination—insubordination and unprofessionalism—were mere pretext.[3]

Regarding retaliation, the court observed that even crediting Kocak's allegation that he had made prior

1. 42 U.S.C. §§ 2000e-2000e-17.

2. To bring a successful discrimination claim, an employee must show he "was replaced by someone outside of [his] protected group or a similarly situated employee outside of [his] protected group was treated more favorably." *Owens v. Circassia Pharms., Inc.*, 33 F.4th 814, 825 (5th Cir. 2022).

3. Once the employer articulates a legitimate, non-discriminatory reason for the termination, the employee "must present 'substantial evidence' that [the employer's] asserted reason for terminating [him] is pretext for discrimination." *Id.* (quoting *Watkins v. Tregre*, 997 F.3d 275, 283 (5th Cir. 2021)).

complaints of discrimination to school administration, he presented no evidence that such protected activity *caused* his termination.[4] Specifically, the Superintendent who fired Kocak had only held his position for a few days at the time of the termination and stated in uncontroverted deposition testimony that he had no knowledge of Kocak's complaints.[5]

Lastly, as to hostile work environment, the court found that Kocak had not presented sufficient evidence of harassment.[6] His only statement in support of the claim was the conclusory allegation that he was subject to "Turkish slurs" and "vulgarities." But when asked at deposition to describe specific examples of this harassment, Kocak could not provide an answer. Moreover, to the extent Kocak attempted to point to the attack by Cengiz as an example of harassment, the district court

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4. To bring a successful retaliation claim, the employee must show "that a causal link existed between the protected activity and the adverse action." *Badgerow v. REJ Props., Inc.*, 974 F.3d 610, 618 (5th Cir. 2020).

5. "[T]o establish the causation prong of a retaliation claim, the employee should demonstrate that the employer knew about the employee's protected activity." *Manning v. Chevron Chem. Co.*, 332 F.3d 874, 883 (5th Cir. 2003).

6. To bring a successful hostile work environment claim, the plaintiff must demonstrate that he was subjected to unwelcome harassment based on his membership in a protected group, and that the harassment affected a term, condition, or privilege of employment. *Ramsey v. Henderson*, 286 F.3d 264, 268 (5th Cir. 2002).

explained that this was unavailing because Harmony took immediate remedial action by terminating Cengiz.[7]

II.

Kocak appealed. But instead of addressing the district court's reasoning on appeal, Kocak re-summarizes in detail the events of the August 5, 2021 incident. He alleges that video footage shows Harmony administrators "favoring Cengiz" in the immediate aftermath of Cengiz's assault. Despite the lack of audio, he speculates about what administrators may have been saying to Cengiz after the incident. And he avers that Cengiz "should have been terminated and prosecuted rather than coddled" by administrators. But Cengiz *was* "terminated and prosecuted," as Kocak admits elsewhere in his brief. So, although Kocak alleges Harmony's immediate reaction was not sufficiently favorable, this does not ultimately help his case.

And fundamentally, Kocak does not engage with the district court's analysis. As to discrimination, he does not dispute that he offered no viable comparator outside his protected class. As to retaliation, he does not address the district court's conclusion that the relevant decisionmaker had no knowledge of his alleged past reports of discrimination. And on hostile work environment, he points to no further evidence of harassment. Kocak's failure to engage with the district court's well-reasoned

7. The employer must have known about the harassment and "failed to take prompt remedial action." *Id.*

opinion is fatal to his appeal.[8] For these reasons we AFFIRM the judgment of the district court.

8. *See Brinkmann v. Dal. Cnty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987) (holding that appellant's failure to identify any error in the basis for the district court's judgment "is the same as if he had not appealed that judgment").

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, SAN ANTONIO DIVISION, FILED APRIL 28, 2025

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

CIVIL NO. SA-22-CV-00636-OLG

KEMAL KOCAK,

Plaintiff,

v.

HARMONY PUBLIC SCHOOLS,

Defendant.

ORDER

Before the Court is the Motion for Summary Judgement (Dkt. No. 30) filed by Defendant Harmony Public Schools ("Harmony") on December 22, 2023. Plaintiff Kemal Kocak ("Kocak") has filed a response (*see* Dkt. No. 32), and Harmony has filed a reply (*see* Dkt. No. 34). After careful consideration of the briefing, the applicable law, and the record, the Court finds that the Motion should be and hereby is **GRANTED** for the reasons that follow.

Appendix B

I. BACKGROUND

This case arises out of the alleged wrongful termination of Kocak by Harmony, which resulted after an altercation took place between Kocak and another employee on August 5, 2021. (*See* Dkt. No. 1 at 3-4). Immediately following his termination, Kocak filed multiple grievances through Harmony for wrongful termination—all of which were denied. (*See* Dkt. Nos. 1 at 4; 30 at 5). Kocak then filed a charge of discrimination with the Texas Workforce Commission ("TWC")'s Civil Rights Division and the Equal Employment Opportunity Commission ("EEOC"). (Dkt. No. 32 at 13-14). Kocak's TWC and EEOC complaint alleged that Harmony discriminated against him based on his Turkish national origin, retaliated against him, and subjected him to a hostile work environment. (*See id.* at 14). The EEOC sent Kocak a right-to-sue letter on March 21, 2022. (*See id.*)

On June 19, 2022, Kocak filed suit in this Court, alleging national origin discrimination, retaliation, and workplace harassment against Harmony under Title VII as well as Chapter 21 of the Texas Labor Code. (*See* Dkt. No. 1 at 1-2). Harmony filed its answer (*see* Dkt. No. 12), and the parties engaged in discovery. Thereafter, Harmony filed a motion for summary judgment, asserting that no genuine issues of material fact exist and requesting the Court to dismiss—with prejudice—all of Kocak's claims. (*See* Dkt. No. 30 at 1, 20). Kocak filed a response in opposition (*see* Dkt. No. 32), and Harmony filed a reply (*see* Dkt. No. 34). Thus, the Motion is ripe for disposition.

Appendix B

II. SUMMARY JUDGMENT RECORD[1]

Kocak is a Turkish American with Turkish descent. (*See* Dkt. No. 32-1 at 5). He started working for Harmony in 2013 as a Cluster Operations Manager and eventually attained the role of District Manager of Facilities. (Dkt. No. 30-2 at 2). On August 13, 2021, Harmony terminated Kocak's employment, following an investigation which concluded that Kocak had exhibited insubordination and unprofessional conduct in the workplace. (*See* Dkt. No. 30-11 at 2). The investigation concerned a workplace incident that occurred between Kocak and former District IT Coordinator Hamza Cengiz in August 2021. (*See* Dkt. No. 30-10 at 2).

In July 2021, Selcuk Bakir began working as the Area Superintendent for Harmony's South Texas Region, which encompasses Harmony schools in San Antonio, Brownsville, and Laredo. (Dkt. No. 30-3 at 2). After beginning his new role, Bakir noted the absence of an employee-timekeeping system in the San Antonio District Office, and he decided, based on prior experience and observations, that such a system would be beneficial to implement. (*See id.*) Bakir directed Riza Gurlek, an Assistant Area Superintendent, to draft a

1. The Court notes that the facts are drawn from the pleadings as well as the parties' exhibits. *See* Fed. R. Civ. P. 56(c); *see also Barlow v. Allstate Tex. Lloyds*, 214 F. App'x 435, 436 (5th Cir. 2007) (per curiam) (citations omitted) ("Summary judgment is proper if the pleadings and discovery on file show there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.").

proposal regarding a timekeeping system for the San Antonio District Office. (*See id.*) Gurlek partnered with Cengiz, the two individuals reviewed the timekeeping systems employed by other Harmony regions, and Gurlek submitted a proposal to Bakir. (*See* Dkt. No. 30-4 at 3-4). On July 29, 2021, Bakir emailed the San Antonio District Office staff about the implementation of an employee-timekeeping system. (Dkt. No. 30-3 at 3).

On August 5, 2021, Kocak received a directive from Gurlek "to create a purchase order for the timekeeping system and to update [Cengiz] on the project." (Dkt. No. 30-4 at 4). That same day in the afternoon, Cengiz told Kocak that a purchase order needed to be created for the new timekeeping system. (*See* Dkt. No. 32-1 at 11). Gurlek overheard Kocak and Cengiz speaking Turkish in the office hallway and noted that Kocak was using aggressive and vulgar language. (Dkt. No. 30-4 at 4). Cengiz went to Gurlek's office and informed Gurlek that Kocak had refused to create a purchase order for the timekeeping system. (*See id.*) Kocak then visited with Gurlek in Gurlek's office and asked why Gurlek was "using [Cengiz] against me [Kocak] to want to replace me." (Dkt. No. 32-1 at 11). According to Gurlek, Kocak was "yelling and questioning why [Harmony] [was] installing a timekeeping system" and stated that "he [Kocak] was not going to create a purchase order for the timekeeping system." (Dkt. No. 30-4 at 4).

Kocak ultimately left Gurlek's office and went into his own office to create a purchase order regarding a Harmony school gate. (*See* Dkt. No. 32-1 at 11, 35). Shortly

thereafter, Cengiz came into Kocak's office and asked Kocak if they could talk. (*See id.* at 11). Based on Kocak's account, Kocak was facing away from Cengiz because he was turning on his laptop to create the purchase order for the gate. (*See id.*) As Kocak was powering on his laptop, Cengiz struck Kocak over the head with a chair. (*See* Dkt. Nos. 1 at 3; 32-1 at 11). Other Harmony staff members, including Gurlek, heard the altercation and observed blood coming from Kocak's head as he stepped out of his office. (*See* Dkt. No. 30-4 at 4). Harmony staff called 9-1-1 and the police and the paramedics arrived on scene. (*See id.*) Kocak was taken to the hospital by the paramedics, and Cengiz was sent home after being briefly detained and questioned by the police. (*See id.*)

On the evening of August 5, 2021, Bakir placed Kocak and Cengiz on paid administrative leave, pending an investigation of the workplace incident. (*See* Dkt. No. 30-3 at 3). During the investigation, Bakir "gathered incident reports and statements from several employees who were in the District Office at the time of the altercation between [Kocak] and [Cengiz]." (*See id.*) After completing his investigation, Bakir determined that Cengiz and Kocak's conduct on August 5th warranted termination. (*See id.*) On August 13, 2021, Kocak received a letter from Bakir stating that he had been terminated for (1) insubordination "in refusing a direct instruction from [a] supervisor," and (2) acting "aggressive, argumentative, and unprofessional in a loud and heated verbal confrontation . . . over a time clock system." (*See* Dkt. Nos. 30-3 at 3; 30-11 at 2). In a separate letter sent to Cengiz that same day, Bakir informed Cengiz that he had been terminated for

"engag[ing] in a fight with a coworker that resulted in injury to that coworker." (*See* Dkt. Nos. 30-3 at 3; 30-12 at 2).

Immediately after his termination, Kocak filed a level-one grievance concerning his termination and received a denial. (Dkt. No. 1 at 4). Kocak then filed a level-two notice of appeal and a level-three notice of appeal, which were both denied. (*See* Dkt. Nos. 1 at 4; 30-13 at 2; 30-14 at 2; 30-15 at 2). After exhausting his administrative remedies and receiving a right-to-sue letter from the EEOC, Kocak filed the instant lawsuit against Harmony. (Dkt. No. 1).

Kocak alleges that he was "subjected to harassment including Turkish slurs and vulgarities on a recurring basis" because of his national origin and "his vigorous opposition to discrimination in the workplace." (*See id.* at 5). Kocak contends that he repeatedly informed administrative officials of the unlawful treatment and abusive work environment that he experienced, and claims the officials did not take remedial action because the officials themselves "engaged in and condoned" the unlawful behavior. (*See id.*) Finally, Kocak alleges that Harmony discriminated against him based on his national origin and retaliated against him for opposing discrimination in the workplace. (*See id.* at 6).

III. LEGAL STANDARD

A party is entitled to summary judgment if the record shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of

law. FED. R. CIV. P. 56(a), (c). "A fact is material if it might affect the outcome of the suit under the governing law, while a dispute about that fact is genuine if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Owens v. Circassia Pharms., Inc.*, 33 F.4th 814, 824 (5th Cir. 2022) (internal quotation marks omitted). Notably, "the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986).

"The moving party bears the initial burden of 'informing the Court of the basis of its motion' and identifying those portions of the record 'which it believes demonstrate the absence of a genuine issue of material fact.'" *Adams v. Travelers Indem. Co. of Conn.*, 465 F.3d 156, 163 (5th Cir. 2006) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). To meet this burden, the movant must identify relevant portions of the pleadings or provide depositions, affidavits, or admissions that demonstrate "no genuine issue of material fact remains." *See Rodriguez v. PacifiCare of Tex., Inc.*, 980 F.2d 1014, 1019 (5th Cir. 1993) (citing *Celotex*, 477 U.S. 317). "For any matter on which the non-movant would bear the burden of proof at trial, however, the movant may merely point to the absence of evidence and thereby shift to the non-movant the burden of demonstrating by competent summary judgment proof that there is an issue of material fact warranting trial." *Transamerica Ins. Co. v. Avenell*, 66 F.3d 715, 718-19 (5th Cir. 1995).

Additionally, the Court must construe all "reasonable inferences . . . in favor of the nonmoving party, but the nonmoving party cannot defeat summary judgment with conclusory allegations, unsubstantiated assertions, or only a scintilla of evidence." *Hathaway v. Bazany*, 507 F.3d 312, 319 (5th Cir. 2007) (internal quotation marks omitted) (quoting *Turner v. Baylor Richardson Med. Ctr.*, 476 F.3d 337, 343 (5th Cir. 2007)).

IV. ANALYSIS

As a threshold matter, the Court recognizes that Kocak asserts claims of national origin discrimination, retaliation, and hostile work environment under Title VII and Chapter 21 of the Texas Labor Code. (*See* Dkt. No. 1 at 2, 4-8). "The Texas Supreme Court has held that [Chapter 21] 'is effectively identical to Title VII, its federal equivalent,' and therefore, 'analogous federal statutes and the cases interpreting them guide [judicial interpretation] of [Chapter 21].'" *Chhim v. City of Houston*, No. 4:23-CV-04850, 2024 WL 4446515, at *3 (S.D. Tex. Oct. 8, 2024) (quoting *Mission Consol. Indep. Sch. Dist. v. Garcia*, 372 S.W.3d 629, 633-34 (Tex. 2012)). Therefore, the Court will evaluate the merits of Kocak's Title VII and Chapter 21 claims under the same legal standards, and all references to Title VII also apply to Kocak's Chapter 21 claims.[2]

2. *See McReynolds v. Bell Textron, Inc.*, No. 4:22-CV-00194-O-BP, 2022 WL 2759848, at *2 (N.D. Tex. June 29, 2022) (identifying the same legal standards apply to Title VII and Chapter 21 of the Texas Labor Code), *report and recommendation adopted*, No. 4:22-CV-00194-O-BP, 2022 WL 2757631 (N.D. Tex. July 14, 2022); *see also Smith v. Univ. of Tex. at San Antonio*, No.

Appendix B

A. Discrimination Claims

Title VII makes it unlawful for an employer to "discharge any individual, or otherwise to discriminate against any individual . . . because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a). A plaintiff can establish Title VII discrimination through either direct or circumstantial evidence. *See Laxton v. Gap Inc.*, 333 F.3d 572, 578 (5th Cir. 2003). Because Kocak's employment discrimination action is based on circumstantial evidence, the Court must evaluate the action under the *McDonnell Douglas* burden-shifting framework.[3] *See id.* (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973)). Under this framework, a plaintiff bears the initial burden to establish a prima facie case of discrimination. *McDonnell Douglas*

SA-23-CV-00538-OLG, 2024 WL 4256461, at *23 (W.D. Tex. Aug. 21, 2024) ("Retaliation claims under the Texas Labor Code are guided by the same analysis that applies to claims of retaliation under Title VII." (citing *Gorman v. Verizon Wireless Tex., L.L.C.*, 753 F.3d 165, 170 (5th Cir. 2014))), *report and recommendation adopted as modified*, No. SA-23-CV-538-OLG, 2024 WL 4256444 (W.D. Tex. Sept. 18, 2024).

3. The Court recognizes that the parties' briefing assesses Kocak's Title VII discrimination under the *McDonnell Douglas* burden-shifting framework. (*See* Dkt. Nos. 30 at 7; 32 at 19). Kocak has also submitted numerous exhibits alongside his response to demonstrate that the alleged discrimination can be inferred from the evidence. Thus, Kocak's discrimination action is based upon circumstantial evidence. *See Sandstad v. CB Richard Ellis, Inc.*, 309 F.3d 893, 897-98 (5th Cir. 2002) ("If an inference is required for the evidence to be probative . . . the evidence is circumstantial, not direct.").

Corp., 411 U.S. at 802. If the plaintiff satisfies his burden, "the burden then shifts to the defendant 'to articulate some legitimate, nondiscriminatory reason' for its action." *Ross v. Judson Indep. Sch. Dist.*, 993 F.3d 315, 321 (5th Cir. 2021) (quoting *Id.*). Courts must abstain from assessing the credibility of the evidence because the "burden is one of production, not persuasion." *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 142 (2000). If the defendant can articulate a legitimate, nondiscriminatory reason for its adverse employment action, then the burden of proof shifts back to the plaintiff to show that the defendant's reason is merely pretextual. *Ross*, 993 F.3d at 321. "Summary judgment for the defendant is appropriate if the evidence demonstrates that the plaintiff cannot establish an element of [his] prima facie case or that the plaintiff cannot raise a genuine issue of material fact concerning pretext." *Lee v. Mission Chevrolet, Ltd., No.* EP-16-CV-00034-DCG, 2017 WL 4784368, at *18 (W.D. Tex. Oct. 23, 2017) (citations omitted).

To establish a prima facie case of discrimination, Kocak must show that: "1) [he] belongs to a protected group; 2) [he] was qualified for [his] position; 3) [he] suffered an adverse employment action; and 4) [he] was replaced by someone outside of [his] protected group or a similarly situated employee outside of [his] protected group was treated more favorably." *Owens*, 33 F.4th at 825 (first citing *Watkins v. Tregre*, 997 F.3d 275, 281 (5th Cir. 2021); and then citing *Vaughn v. Woodforest Bank*, 665 F.3d 632, 636 (5th Cir. 2011)).

The parties do not dispute elements one and three, concerning Kocak's status as a member of a protected group and his termination. (*See* Dkt. Nos. 30 at 8; 32 at 19-20). While Kocak claims he was "clearly qualified since he . . . was promoted from Facilities Manager to Facilities Director," Harmony does not address element two. (*See* Dkt. Nos. 32 at 19; 30 at 8). For the purposes of assessing the Motion, the Court assumes that Kocak was qualified for his position. Thus, the Court focuses on the dispute regarding element four—whether Kocak was replaced by someone outside of his protected group or whether a similarly situated employee outside of Kocak's protected group was treated more favorably. Kocak contends that he, a follower of the Gulen movement,[4] was replaced by Gurlek, a Turkish individual and an alleged non-Gulenist, and that Cengiz, also a Turkish individual and an alleged non-Gulenist, was treated more favorably. (*See* Dkt. No. 32 at 20). Harmony argues that Kocak cannot prove either inquiry of element four. (*See* Dkt. No. 30 at 8-9). The Court agrees with Harmony.

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4. "The Gulen movement or community (commonly known by supporters as *Hizmet*, or 'service' in Turkish) is an array of individuals, educational institutions, and other organizations in Turkey, the United States, and countries around the world with a connection to [Fethullah] Gulen or his teachings." Jim Zanotti & Clayton Thomas, Cong. Rsch. Serv., IF 10444, Fethullah Gulen, Turkey, and the United States: A Reference 1 (2017). Because the Gulen movement initially attracted support for youth educational initiatives, it amassed a large following, which further allowed the movement to exercise considerable influence in Turkey as well as through a number of Gulen-inspired charter schools within the United States. *See id.* at 1-2.

Here, the evidentiary record demonstrates that Kocak has failed to meet his burden of production concerning element four. Kocak cannot prove that he was replaced by someone outside of his protected class, namely someone not of Turkish origin or not a follower of the Gulen movement. In his response, Kocak points to Gurlek's deposition to support his claim that Gurlek, who Kocak alleges is a non-Gulenist, replaced Kocak after his termination. (*See* Dkt. No. 32 at 20). Although the evidence in the record establishes that Gurlek is of Turkish origin and did absorb Kocak's duties following his termination, Gurlek's deposition contains no information concerning whether he is a non-Gulenist. (*See* Dkt. Nos. 30-4 at 2, 4; 32-17 at 18).

Neither can Kocak assert that Cynthia Alvarado-Mendiola is a valid comparator for purposes of demonstrating that he was replaced by someone not of Turkish origin because Kocak has not provided any evidence of Cynthia Alvarado-Mendiola's national origin. *See Diaz v. Maximus Servs LLC*, No. EP-22-CV-463-DB, 2024 WL 3404809, at *5 (W.D. Tex. July 9, 2024) (concluding a plaintiff's prima facie discrimination claim fails because plaintiff did not provide the race or nationality of the comparators), *aff'd sub nom. Diaz v. Maximus Servs., L.L.C.*, No. 23-50914, 2025 WL 602166 (5th Cir. Feb. 25, 2025); *see also Palomo v. Action Staffing Sols., Inc.*, No. SA-21-CV-01145-XR, 2023 WL 4356071, at *5 (W.D. Tex. July 5, 2023) (determining an individual "cannot serve as a valid comparator in the context of [plaintiff's national origin disparate treatment claim" because plaintiff provided no evidence of the individual's national origin); (*see generally* Dkt. No. 32-14).

Furthermore, Kocak cannot satisfy element four of his prima facie case of national origin discrimination by using Cengiz as a comparator. To satisfy the fourth element of his prima facie case of discrimination, Kocak must demonstrate that Harmony provided preferential treatment to another employee outside of Kocak's protected class under "nearly identical circumstances." *See Lee v. Kan. City S. Ry. Co.*, 574 F.3d 253, 260 (5th Cir. 2009). The Fifth Circuit has stated that the employees being compared must have "held the same job or responsibilities, shared the same supervisor or had their employment status determined by the same person, and have essentially comparable violation histories." *Id.* Kocak, however, has not proven that he and Cengiz had the same responsibilities or shared comparable violation histories while employed by Harmony. Critically, Kocak cannot prove that Cengiz received preferential treatment for being an alleged non-Gulenist because he was also terminated by Harmony for the August 5th altercation. (*See* Dkt. No. 30-12 at 2). Therefore, Kocak's national origin discrimination claims necessarily fail because he has not provided that his comparators were (1) outside his protected group or (2) awarded preferential treatment while being similarly situated.

Even if the Court did find that Kocak had satisfied his initial burden and established a prima facie case of national origin discrimination, the Court would still be required to dismiss Kocak's national origin discrimination claims because Harmony has provided legitimate, nondiscriminatory reasons for terminating Kocak. *See Daigle v. Liberty Life Ins. Co.*, 70 F.3d 394, 396 (5th Cir.

1995) ("If the employer produces any evidence 'which, taken as true, would permit the conclusion that there was a nondiscriminatory reason for the adverse action,' then the employer has satisfied its burden of production." (quoting *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 509 (1993))).

Harmony fired Kocak for insubordination and exhibiting aggression and unprofessionalism in the workplace.[5] (*See* Dkt. No. 30-11 at 2). Harmony's reasons for terminating Kocak's employment are legitimate, nondiscriminatory grounds for termination. *See Collier v. Dallas Cnty. Hosp. Dist.*, 827 F. App'x 373, 376 (5th Cir. 2020) (per curiam) (concluding insubordination in refusing to follow directives from supervisors is a legitimate, nondiscriminatory reason for termination); *Crouch v. England*, No. CIV.A. C-05-391, 2006 WL 1663760, at *7 (S.D. Tex. June 14, 2006) (recognizing the use of vulgar and profane language may serve as a legitimate, nondiscriminatory reason for termination). Because Harmony's reasons for termination are legitimate and nondiscriminatory, the Court finds that Kocak's national origin discrimination claims fail as a matter of law because Kocak can neither prove his prima facie case of national origin discrimination nor rebut Harmony's reasons for termination with evidence of pretext.[6]

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5. In his deposition testimony, Kocak admits that he refused to do the purchase order for the timekeeping system and that he did use vulgar language. (*See* Dkt. No. 32-1 at 6-7) ("[Harmony] also accuse me of cussing. Yes, I did . . . I did swear. Two months ago before they assaulted me, I just used . . . bad words.").

6. Kocak has failed to establish pretext because he has not proffered competent summary judgment evidence in rebuttal of

B. Retaliation Claims

Title VII also makes it unlawful for an employer to discriminate against an employee "because he has opposed any practice made an unlawful employment practice . . . or because he has made a charge, testified, assisted, or

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Harmony's decision to terminate his employment. In his response, Kocak argues that his adherence to the Gulen movement is why he was subjected to workplace discrimination. (*See* Dkt. No. 32 at 3). Kocak also makes several assertions in his response and deposition that non-Gulenist individuals within Harmony's administration interfered with the police investigation of the August 5th assault and colluded with one another so that Kocak could be replaced by a non-Gulenist. (*See* Dkt. Nos. 32 at 3, 9-10 20-22; 32-1 at 13-14). Such allegations are insufficient to defeat summary judgment because Kocak's "subjective belief of discrimination, however genuine, cannot be the basis of judicial relief." *See EEOC v. La. Off. of Cmty. Servs.*, 47 F.3d 1438, 1448 (5th Cir. 1995) (citations omitted); *Davis v. Fanners Ins. Exch.*, 372 F. App'x 517, 519 (5th Cir. 2010) ("[S]elf-serving statements, however, are not competent summary judgment evidence and cannot create material issues of fact."). Kocak has also not provided any evidence that demonstrates Harmony's explanation for his termination is false or unworthy of credence. *See Delaval v. PTech Drilling Tubulars, L.L.C.*, 824 F.3d 476, 480 (5th Cir. 2016) (stating pretext can be established through evidence of disparate treatment or evidence showing the employer's explanation concerning termination is false). If Kocak did, however, provide some evidence of pretext, the clear lack of evidence regarding discriminatory intent would still compel the Court to dismiss Kocak's claims for national origin discrimination. *Cf. Harris v. City of Schertz*, No. SA-18-CV-1023-JKP, 2020 WL 4756350, at *8 (W.D. Tex. Aug. 17, 2020) (noting the Fifth Circuit requires evidence of discriminatory intent in order for a plaintiff's discrimination claim to survive, even if some evidence of pretext is provided), *aff'd*, 27 F.4th 1120 (5th Cir. 2022).

participated in any manner in an investigation, proceeding, or hearing." 42 U.S.C. § 2000e-3(a). Like discrimination claims, retaliation claims brought under Title VII, and based on circumstantial evidence, are subject to the *McDonnell Douglas* burden-shifting framework. *See Jones v. Gulf Coast Rest. Grp.*, 8 F.4th 363, 368 (5th Cir. 2021) (citations omitted) ("Both discrimination and retaliation claims under Title VII are subject to the *McDonnell Douglas* burden-shifting framework."). The plaintiff has the initial burden to produce evidence of a prima facie case of retaliation. *LeMaire v. La. Dep't of Transp. & Dev.*, 480 F.3d 383, 388 (5th Cir. 2007) (citing *Septimus v. Univ. of Houston*, 399 F.3d 601, 608 (5th Cir. 2005)).

"To establish a prima facie case of retaliation, an employee must demonstrate that (1) he engaged in an activity that Title VII protects; (2) he was subjected to an adverse employment action; and (3) a causal connection exists between the protected activity and the adverse employment action." *Id.* (citing *Harvill v. Westward Commc'ns, L.L. C.*, 433 F.3d 428, 439 (5th Cir. 2005)). Concerning the third element, the Fifth Circuit has articulated that a plaintiff establishes a prima facie case of retaliation by showing that "an adverse employment action occurs within close temporal proximity to protected activity *known to the employer*." *Badgerow v. REJ Props., Inc.*, 974 F.3d 610, 619 (5th Cir. 2020) (emphasis added); *see also Feist v. La., Dep't of Just., Off. of the Atty. Gen.*, 730 F.3d 450, 454 (5th Cir. 2013) ("In order to avoid summary judgment, the plaintiff must show 'a conflict in substantial evidence' on the question of whether the employer would

not have taken the action 'but for' the protected activity." (citing *Long v. Eastfield Coll.*, 88 F.3d 300, 308 (5th Cir. 1996))).

Under the *McDonnell Douglas* framework, Kocak's retaliation claims fail as a matter of law for two reasons. First, Kocak has failed to establish a prima facie case of retaliation because he has failed to show that a causal link exists between his alleged protected activity and Harmony's termination of his employment. Kocak claims, and Harmony unequivocally disputes, that he engaged in protected activity when he reported to administrative officials the unlawful treatment and workplace discrimination occurring in Harmony.[7] (*See* Dkt. Nos. 1 at 5; 32-1 at 26; 32-2 at 1, 3; 30 at 16; 34 at 5-6). In his declaration, Kocak alleges that during the last two to three years of his employment with Harmony, he was repeatedly subjected to workplace harassment and

7. The Court finds Kocak's alleged protected activity—reporting workplace discrimination and harassment—circumspect, given the contradictory responses offered by Kocak in his deposition and his declaration. (*Compare* Dkt. No. 32-1 at 27-28) ("Q. I was asking if you ever told HR you felt you were being mistreated because you are Turkish? A. No. . . . I just told them this is an illegal hiring system and HR knew about that already."), (*with* Dkt. No. 32-2 at 1, 3) ("During the last two or three years I worked for Harmony Public Schools I was constantly being subjected to a rude, crude and increasingly hostile work environment and [I] complain[ed] about this to my Assistant Superintendent Riza Gurlek and the Human Resource Department."). The Court need not determine whether Kocak engaged in protected activity because the Court can assess the validity of Kocak's prima facie case of retaliation based on the third element.

reported such conduct to Gurlek as well as the Human Resource Department. (*See* Dkt. No. 32-2 at 1). Kocak also alleges that in May 2021 he reported an issue to Dr. Bilgehan Yasar, a former Area Superintendent, regarding an allegation that Gurlek wanted another Harmony staff member to file a report against Kocak to create grounds for termination. (*See id.* at 3).

The problem for Kocak is that he has proffered no evidence, aside from the temporal relationship between his alleged reports and his termination, to rebut Harmony's evidence that its decision-maker, Bakir, lacked knowledge that Kocak engaged in protected conduct. *See Clark Cnty. Sch. Dist. v. Breeden*, 532 U.S. 268, 273 (2001) (citations omitted) (recognizing the "employer's knowledge of protected activity" is a prerequisite to establishing the causality element through a temporal relationship between the activity and the adverse employment action). Here, Bakir affirmed that he neither considered "any alleged reports of unlawful employment practices when deciding" Kocak's termination, nor was Bakir "aware of any complaints of unlawful employment practices filed by [Kocak]."[8] (*See* Dkt. No. 30-3 at 4). Because Bakir's

8. Aside from the conclusory assertions made in his declaration, Kocak has not produced any evidence demonstrating that he filed discrimination or harassment claims with Harmony prior to his termination. (*See generally* Dkt. No. 32-2). During his deposition, Kocak offered conflicting responses on whether he reported the alleged discrimination and harassment he experienced and witnessed in the workplace. (*See* Dkt. No. 32-1 at 26-28). Nonetheless, Kocak cannot defeat a properly supported motion for summary judgment by pointing to the assertions made within his declaration. *See Callahan v. Gulf Logistics,*

affidavit is uncontroverted on the matter, Kocak has failed to establish a causal link between his alleged reports and his termination. *See Thompson v. Somervell County*, 431 F. App'x 338, 342 (5th Cir. 2011) (per curiam) (finding a plaintiff failed to establish the causality prong of her prima facie retaliation claim because she failed to establish a "causal link between her request and her termination").

Second, and assuming that Kocak could establish the causal connection element of retaliation, Harmony is still entitled to summary judgment because Kocak has not presented competent evidence showing that Harmony's reason for Kocak's termination is pretextual. Harmony asserts that Bakir terminated Kocak for insubordination "in refusing a direct instruction from [a] supervisor" and unprofessionalism exhibited in the workplace. (*See* Dkt. Nos. 30-3 at 3; 30-11 at 2). In his deposition, Kocak testified that he is "against the time clock system," and Gurlek affirmed that Kocak stated that "he was not going to

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L.L.C., 456 F. App'x 385, 392 (5th Cir. 2011) ("It is correct that a 'nonmoving party cannot defeat a summary judgment motion by attempting to create a disputed material fact through the introduction of an affidavit that directly conflicts with his prior deposition testimony.'" (quoting *Albertson v. T.J. Stevenson & Co.*, 749 F.2d 223, 233 n.9 (5th Cir. 1984))). The only evidence Kocak has proffered as to filing a complaint against Harmony are the level-one grievance and notices of appeal—but these complaints came *after* Kocak's termination and his alleged reporting of workplace discrimination and misconduct. *But see Bautista v. MPII, Inc.*, No. SA-22-CV-00247-XR, 2024 WL 4800594, at *9 (W.D. Tex. Nov. 1, 2024) (allowing a plaintiff's retaliation claim to proceed because there was evidence that she was terminated for filing a complaint, which plaintiff filed prior to her termination).

create a purchase order for the timekeeping system." (Dkt. Nos. 30-18 at 22; 30-4 at 4). Once again, insubordination is a legitimate, nondiscriminatory reason for termination. *See Collier*, 827 F. App'x at 376.

Therefore, Kocak bears the burden to demonstrate that Harmony's legitimate reason for termination is a pretext for retaliation. *See LeMaire*, 480 F.3d at 391. However, Kocak has failed to create a genuine issue of material fact regarding this issue. In his declaration, Kocak claims that the "real reason [he] was terminated was because [he] had objected to discrimination . . . in May 2021." (Dkt. No. 32-2 at 3). This assertion is not enough because Kocak cannot rely solely on temporal proximity to establish pretext. *See Watson v. Esper*, No. SA-17-CV-1280-OLG, 2019 WL 937933, at *8 (W.D. Tex. Feb. 26, 2019) ("[T]emporal proximity . . . is insufficient, standing alone, to establish pretext and defeat a motion for summary judgment as to the requirement of but-for causation after [d]efendant has proffered evidence of its legitimate reason." (first citing *Hernandez v. Yellow Transp., Inc.*, 670 F.3d 644, 658 (5th Cir. 2012); and then citing *Washburn v. Harvey*, 504 F.3d 505, 511 (5th Cir. 2007))), *report and recommendation adopted*, No. 5:17-CV-01280-OLG, 2019 WL 13254201 (W.D. Tex. Mar. 18, 2019).

Neither can Kocak point to evidence in the record that "other employees who were similarly insubordinate received different treatment, or that other similarly situated employees were fired for pretextual reasons." *See Collier*, 827 F. App'x at 376. Cengiz, who is also of Turkish

national origin, was fired for his conduct on August 5, 2021. (*See* Dkt. Nos. 30-3 at 3; 30-12 at 2). Accordingly, Kocak's claims for retaliation fail as a matter of law because he has not established a prima facie case of retaliation or presented competent summary judgment evidence demonstrating that Harmony's legitimate reasons for his termination are pretextual.

C. Hostile Work Environment Claims

Kocak's remaining claims against Harmony concern allegations that Harmony harassed Kocak by creating a hostile work environment. (*See* Dkt. No. 1 at 4-5). In order to establish a claim for hostile work environment, Kocak must prove: "(1) [he] belongs to a protected group; (2) [he] was subjected to unwelcome harassment; (3) the harassment complained of was based on race; (4) the harassment complained of affected a term, condition, or privilege of employment; and (5) the employer knew or should have known of the harassment in question and failed to take prompt remedial action." *Ramsey v. Henderson*, 286 F.3d 264, 268 (5th Cir. 2002) (citations omitted). The Supreme Court has identified that the work environment must be "both objectively and subjectively offensive, one that a reasonable person would find hostile or abusive, and one that the victim in fact did perceive to be so." *Faragher v. City of Boca Raton*, 524 U.S. 775, 787 (1998) (citing *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21-22 (1993)). Courts can determine whether an employee's work environment was objectively offensive by considering the frequency of the discriminatory conduct, its severity, whether such conduct is physically

threatening, humiliating, or merely an offensive utterance, and whether the employee's work performance is affected by the conduct. *See Badgerow*, 974 F.3d at 618.

Kocak bases his hostile work environment claims on allegations that he was repeatedly subjected to Turkish slurs, vulgarities, and harassment because of his Turkish national origin and his opposition to discrimination in the workplace.[9] (*See* Dkt. No. 1 at 4-5). Such allegations, *paired with specific facts or examples of workplace harassment*, might lead a reasonable juror to conclude that the alleged harassment was based on Kocak's national origin. However, Kocak fails to provide specific facts or present any evidence in support of his conclusory allegations.

For example, when Kocak was asked about the Turkish slurs that were said to him in the workplace, Kocak testified that he and his family were "harassed by the Turkish Community in San Antonio"—without providing any further details of the alleged harassment.

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9. Though it is difficult to discern from the complaint, Kocak seems to allege that the physical assault he suffered on August 5th is also evidence of workplace harassment. (*See* Dkt. No. 1 at 5). The Court acknowledges that such conduct may constitute harassment. However, Kocak cannot depend on the physical assault to establish his claim for hostile work environment because Harmony took immediate remedial action by placing Cengiz on administrative leave on August 5th and terminating Cengiz after Bakir's investigation of the incident. *See Wyly v. W.F.K.R., Inc.*, 1 F. Supp. 3d 510, 514 (W.D. Tex. 2014) (determining an employer's termination of "the allegedly harassing employee within days of learning of his harassment is sufficient to avoid Title VII liability").

(*See* Dkt. No. 32-1 at 5). When he was asked again about the type of slurs or vulgarities that were said about him, Kocak began a discussion about the timekeeping system. (*See id.* at 6). After thoroughly reviewing the record and Kocak's deposition testimony, the Court cannot determine that Kocak's work environment was objectively offensive, considering the lack—or nonexistence—of discriminatory conduct. *See Arango v. Telemundo El Paso*, 20 F. Supp. 3d 559, 564 (W.D. Tex. 2013) (dismissing a plaintiff's hostile work environment claim because "the record is totally devoid of any evidence that suggests that age, gender, or national origin affected [p]laintiff's work environment"); *see also Woodson v. Lason Sys./HOV*, No. EP-07-CA-0420-KC, 2008 WL 11333778, at *5 (W.D. Tex. Nov. 4, 2008) (dismissing a hostile work environment claim because a plaintiff's submissions failed to allege any specific facts that would support such a claim).

Furthermore, Kocak's own evidence suggests that his national origin played no role in the workplace harassment he allegedly faced. In his deposition, Kocak testified that his emails to Bakir did not contain assertions that Kocak was attacked by Cengiz because of his national origin. (*See* Dkt. Nos. 32-1 at 18; 30-13 at 7, 12-13). Belinda Sanchez, who worked as an HR manager for Harmony in 2021, also testified that no one ever came to her with a complaint of race, gender, or national origin discrimination. (*See* Dkt. No. 32-15 at 42-43).

In sum, the Court cannot find any evidence in Kocak's submissions that he was subjected to workplace harassment. Even if Kocak could identify specific instances

of the harassment he allegedly faced, it is doubtful that the alleged conduct would be so severe and pervasive that it affected his work performance. *See Watson*, 2019 WL 937933, at *9 (recognizing the "Fifth Circuit has set a high bar of objectively offensive [behavior] that must be established in order to prove a hostile working environment"). Accordingly, the Court finds that Kocak's hostile work environment claim cannot survive summary judgment because he has failed to establish a prima facie case of hostile work environment.

V. CONCLUSION

For the reasons set forth herein, Harmony's Motion for Summary Judgment (Dkt. No. 30) is **GRANTED**.

It is **ORDERED** that Kocak's claims of national origin discrimination, retaliation, and hostile work environment, arising under Title VII and Chapter 21 of the Texas Labor Code, are **DISMISSED WITH PREJUDICE.**

The Clerk of Court is instructed to **CLOSE** this case.

It is so **ORDERED.**

SIGNED this 28 day of April, 2025.

/s/ Orlando L. Garcia
ORLANDO L. GARCIA
United States District Judge