

25-5810

No. 25

ORIGINAL

IN THE
Supreme Court of the United States

Supreme Court, U.S.
FILED

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DR. MANISHA SINGH,

Petitioner,

v.

**MEMORIAL SLOAN KETTERING CANCER CENTER,
SLOAN KETTERING INSTITUTE FOR CANCER RESEARCH,
DR. N.V. KISHORE PILLARSETTY, and**

DR. STEVEN M. LARSON,

Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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September 28, 2025

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QUESTIONS PRESENTED

1. Clarification of the “Severe or Pervasive” Standard.

Title VII prohibits discrimination in the “terms, conditions, or privileges of employment” because of sex. 42 U.S.C. § 2000e-2(a)(1). In *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986), and *Harris v. Forklift Sys., Inc.*, 510 U.S. 17 (1993), this Court held that a hostile work environment exists when harassment is “sufficiently severe or pervasive to alter the conditions of employment.” The circuits, however, apply this standard inconsistently: some require extreme or repeated conduct, while others allow juries to consider fewer but severe incidents or persistent gender-based slurs.

Question 1: Whether this Court should clarify or modify the “severe or pervasive” standard to ensure uniform national protection under Title VII.

2. Entrenched Circuit Conflict.

The Eighth Circuit in *Paskert v. Kemna ASA Auto Plaza, Inc.*, 950 F.3d 535 (8th Cir. 2020), held that repeated sexist remarks and unwanted touching were not actionable, while the Seventh Circuit in *Passananti v. Cook County*, 689 F.3d 655 (7th Cir. 2012), held that repeated use of the word “bitch” could establish a hostile environment. The First (*Gerald v. Univ. of P.R.*, 707 F.3d 7 (1st Cir. 2013)) and Ninth Circuits (*Ellison v. Brady*, 924 F.2d 872 (9th Cir. 1991)) have likewise adopted broader approaches.

Question 2: Whether review is warranted to resolve the entrenched circuit split regarding the application of Title VII’s “severe or pervasive” standard.

3. Contradictory Jury Verdict.

At trial, the jury found that petitioner endured repeated intentional sexual batteries, awarding both compensatory and punitive damages, yet rejected her Title VII hostile work environment claim. This outcome cannot be reconciled with *Meritor, Harris, and Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75 (1998), which recognize that unwanted sexual touching is harassment “because of sex.”

Question 3: Whether a jury may lawfully find intentional sexual battery while simultaneously denying a Title VII hostile work environment claim arising from the same conduct, and whether courts must correct such contradictions to preserve the integrity of anti-discrimination law.

4. Miscarriage of Justice in Damages.

Despite overwhelming medical evidence of post-traumatic stress disorder, repeated hospitalizations, long-term psychiatric treatment, and permanent disability, the jury awarded only \$50,000 in compensatory damages—far below comparable awards such as *Turley v. ISG Lackawanna, Inc.*, 774 F.3d 140 (2d Cir. 2014) (\$1.32 million). The District Court compounded the error by attributing petitioner’s condition to decades-old spousal abuse, unsupported by medical evidence.

Question 4: Whether such a grossly inadequate award constitutes a miscarriage of justice under Federal Rule of Civil Procedure 59, and whether due process is violated when verdicts rest on speculation rather than evidence.

5. Systemic Retaliation in Federally Funded Institutions.

Petitioner, an immigrant woman of color and cancer researcher, was retaliated against and silenced at a federally funded cancer research institution. Her career, dedicated to curing disease, was destroyed through harassment, retaliation, and institutional falsehoods.

Question 5: Whether this Court should grant review to address systemic retaliation against whistleblowers and vulnerable employees in federally funded STEM institutions, where unchecked misconduct not only silences truth-tellers but also undermines public trust in science and deprives society of critical discoveries.

6. Waiver, Forfeiture, and Access to Justice.

The Second Circuit concluded that petitioner had “waived” all grounds for a new trial except damages, despite the fact that her post-trial motions raised those issues. Waiver requires the intentional relinquishment of a known right, whereas mere forfeiture is the failure to timely assert one. *United States v. Olano*, 507 U.S. 725, 733 (1993). By treating preserved issues as waived, the court deprived petitioner of meaningful appellate review.

Question 6: Whether lower courts may mischaracterize preserved claims as waived, contrary to this Court’s precedent distinguishing waiver from forfeiture, and thereby deny litigants review of serious discrimination claims under Title VII.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit, entered October 28, 2024, is a summary order and is unpublished. (App. A). The judgment of the United States District Court for the Southern District of New York was entered on December 21, 2022. (App. B). The Court of Appeals denied petitioner's motion for rehearing on December 6, 2024. (App. C).

JURISDICTION

The judgment of the United States Court of Appeals for the Second Circuit was entered on October 28, 2024. (App. A). The court denied petitioner's timely motion for rehearing on December 6, 2024. (App. C). This petition is filed within 90 days of the denial of rehearing. See Sup. Ct. R. 13.1, 13.3.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. **Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a)(1):**

“It shall be an unlawful employment practice for an employer—(1) 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.”

2. **Title VII Anti-Retaliation Provision, 42 U.S.C. § 2000e-3(a):**

“It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a

charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.”

3. Federal Rule of Civil Procedure 59(a):

“The court may, on motion, grant a new trial on all or some of the issues—and to any party—... after a jury trial, for any reason for which a new trial has heretofore been granted in an action at law in federal court.”

4. Fourteenth Amendment to the United States Constitution:

- **Due Process Clause:** *“...nor shall any State deprive any person of life, liberty, or property, without due process of law...”*
- **Equal Protection Clause:** *“...nor deny to any person within its jurisdiction the equal protection of the laws.”*

STATEMENT OF THE CASE

A. Petitioner’s Background

Petitioner, **Dr. Manisha Singh**, is a biomedical scientist with a Ph.D. in cell biology and immunology. She is an immigrant woman of color and a cancer researcher who devoted her life to cancer research.

She completed her doctoral program in just over three years, publishing multiple peer-reviewed articles, including studies on naturally derived compounds with potential anti-cancer properties. She has authored and co-authored additional research in tumor biology and immunology.

In 2014, Dr. Singh joined **Memorial Sloan Kettering Cancer Center (MSKCC)** in New York as a postdoctoral research fellow in the laboratory of Dr. Steven Larson.

B. Alleged Workplace Conduct

According to her testimony, beginning in **September 2014**, Dr. Singh was subjected to repeated unwelcome physical contact by **Dr. Kishore Pillarsetty**, a senior colleague. (R-1132–44, 1156–57; Tr. 922–935).

- At the MSKCC faculty club, he mocked her for declining alcohol and hugged her tightly, placing his hand on her back and buttocks. (R-1132, 1134).
- After she declined further invitations, she was assigned work requiring late evenings. She testified that on those occasions, Dr. Pillarsetty invited her to review results at a computer and touched her thighs, shoulders, breasts, and buttocks. (R-1136–43).
- She further stated that he stood behind her, slid his hand down her body, grabbed her breast, and blocked her exit. (R-1143–44).
- On four or five occasions at the gamma counter during evenings or weekends, she testified that he hugged her from behind and touched her buttocks and breasts. (R-1156–57).
- Dr. Singh stated that this conduct continued into **2016**, including repeated hugging from behind and groping. (R-1828–29).

She testified that she objected to the contact, told Dr. Pillarsetty she was uncomfortable, and sought to avoid being alone with him. (Tr. 931, 934).

C. Health and Career Consequences

Dr. Singh testified that she had lived for more than a decade without psychiatric symptoms or treatment prior to joining MSKCC. Beginning in **2016**, however, she experienced severe anxiety, panic attacks, and related symptoms. (R-1836, 1873).

She was hospitalized on four to five occasions, completed a seven-week partial hospitalization program, and later enrolled in a continuing day treatment program. Her care has included ongoing psychotherapy and long-term prescription medication.

In 2018, Dr. Singh obtained a position mentoring graduate students at Long Island University but did not continue due to health limitations she attributed to her experience at MSKCC. (R-1874-75, 1972-73).

D. District Court Proceedings

In 2017, Dr. Singh filed suit in the **United States District Court for the Southern District of New York** (Daniels, J.), asserting claims under:

- Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.;
- Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d; and
- the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.

On summary judgment, the district court dismissed most claims, including retaliation and ADA claims, leaving a limited set for trial. (App. B).

After an **eight-day trial** in December 2022, the jury found **Dr. Pillarsetty liable for intentional battery** under the New York City Human Rights Law. It awarded **\$50,000 in compensatory damages** and **\$200,000 in punitive damages**, finding his conduct wanton and malicious. The jury did not find liability on Dr. Singh's Title VII hostile work environment claim. (Judgment, Dec. 21, 2022; App. B).

Dr. Singh moved for a **new trial** under **Federal Rule of Civil Procedure 59**, challenging the adequacy of damages and the consistency of the verdict. The district court denied the motion on **March 1, 2023**, reasoning that the compensatory award was not unreasonably low, that the jury

could have attributed some of her distress to other factors, and that emotional distress damages are within the jury's discretion. (R—Decision at 7).

E. Court of Appeals Proceedings

Dr. Singh appealed to the **United States Court of Appeals for the Second Circuit**, arguing that the district court erred in granting summary judgment on her retaliation and ADA claims, in limiting her trial presentation, and in denying her Rule 59 motion.

On **October 28, 2024**, the Second Circuit affirmed in an **unpublished summary order**. (App. A). The panel concluded that Dr. Singh had waived a new-trial request on all grounds other than damages and that the district court had not abused its discretion. See *Mhany Mgmt., Inc. v. County of Nassau*, 819 F.3d 581, 615 (2d Cir. 2016); *Rasanen v. Doe*, 723 F.3d 325, 330 (2d Cir. 2013).

On **December 6, 2024**, the Second Circuit denied rehearing and rehearing en banc. (App. C).

F. Posture of This Petition

This petition seeks review of the Second Circuit's judgment affirming the district court's rulings. The issues presented include:

1. Whether Title VII's "severe or pervasive" standard is applied consistently across the circuits.
2. Whether a jury may find intentional sexual battery while rejecting a related Title VII hostile work environment claim.
3. Whether the damages award constituted a miscarriage of justice under Rule 59.
4. Whether preserved issues may be treated as waived on appeal.

5. Whether retaliation and interference at federally funded research institutions raise questions of national importance.

REASONS FOR GRANTING THE PETITION

A. **There is a conflict among the Circuits regarding the Title VII standard's application of the severe and pervasive standard**

Title VII makes it unlawful “to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s... sex.” 42 U.S.C. § 2000e-2(a)(1). In *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 66 (1986), this Court held that sexual harassment may constitute discrimination where it creates a hostile or abusive work environment. To prevail, the plaintiff must show that the harassment was “sufficiently severe or pervasive to alter the conditions of [her] employment.” Id.

In *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 23 (1993), the Court explained that the standard requires consideration of the totality of the circumstances, including frequency, severity, whether the conduct was humiliating or threatening, and whether it interfered with work. *Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998), emphasized that the inquiry is “sufficiently demanding” to screen out trivial conduct, but not so strict as to leave employees unprotected.

Yet despite these guideposts, the circuits apply the “severe or pervasive” standard in **sharply divergent ways**.

1. Circuits That Raise the Bar to an Impossible Height

The Eighth and Fifth Circuits interpret “severe or pervasive” so narrowly that even repeated, humiliating, or physically invasive acts are dismissed as insufficient.

- In *Paskert v. Kemna-ASA Auto Plaza, Inc.*, 950 F.3d 535, 538 (8th Cir. 2020), a supervisor repeatedly disparaged women, bragged about sexual exploits, and rubbed the plaintiff’s

shoulders, yet the court held this was not actionable. Certiorari was denied despite the clear conflict. *Paskert v. Kemna-ASA Auto Plaza, Inc.*, 141 S. Ct. 894 (2020) (mem.).

- In *LeGrand v. Area Res. for Cmty. & Human Servs.*, 394 F.3d 1098, 1102–03 (8th Cir. 2005), a forcible kiss, groping of buttocks and genitals, and repeated sexual propositions were deemed “too isolated” to support a hostile work environment claim.
- The Fifth Circuit has taken a similar approach. See *Patton v. Jacobs Eng’g Grp., Inc.*, 863 F.3d 419, 427 (5th Cir. 2017).

Under this standard, employees must effectively endure serial assaults before federal law will protect them.

2. Circuits Applying a More Realistic Standard

By contrast, the First and Seventh Circuits have recognized that even a limited number of severe incidents—or repeated verbal abuse—can suffice.

- In *Gerald v. Univ. of P.R.*, 707 F.3d 7, 18–19 (1st Cir. 2013), the court held that three incidents—including breast touching and solicitation for sex in front of colleagues—were enough to reach a jury.
- In *Passananti v. Cook County*, 689 F.3d 655, 659, 668 (7th Cir. 2012), the court held that repeated use of the word “bitch” by a supervisor could create a hostile work environment, even absent physical touching.

These circuits recognize that Title VII protects against conduct that demeans and subordinates employees based on sex, regardless of whether it involves physical assault.

3. Circuits That Focus on the Victim’s Perspective

The Ninth and Eleventh Circuits have gone further by adopting standards that focus on the perspective of the victim.

- The Ninth Circuit pioneered the “reasonable woman” standard, holding that conduct constitutes harassment if “a reasonable woman would consider [it] sufficiently severe or pervasive to alter the conditions of employment.” *Ellison v. Brady*, 924 F.2d 872, 878 (9th Cir. 1991).
- The Eleventh Circuit held that gender-based epithets like “bitch” are inherently derogatory and can create a hostile environment. *Reeves v. C.H. Robinson Worldwide, Inc.*, 594 F.3d 798, 810–11 (11th Cir. 2010) (en banc).

4. The Resulting Patchwork

The result is an unworkable patchwork where identical conduct is treated as unlawful in some jurisdictions but tolerated in others. For example:

- **In the Eighth Circuit**, even forcible groping and sexual propositions may be deemed insufficient.
- **In the First, Seventh, Ninth, and Eleventh Circuits**, far less egregious conduct may permit a case to reach the jury.

Whether an employee has a remedy for harassment depends not on Title VII itself, but on geography. That outcome is incompatible with the uniform enforcement of federal law.

5. Why This Court’s Review Is Essential

This Court has emphasized that Title VII is intended to deter and redress harassment, not to impose a requirement that victims prove harassment was “extreme” before obtaining relief. *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 80 (1998). Yet the severe/pervasive standard, as applied in some circuits, trivializes harm and undermines deterrence.

Congress did not require plaintiffs to prove that harassment was constant or life-threatening; it prohibited discrimination “with respect to” conditions of employment. 42 U.S.C. § 2000e-2(a)(1).

By imposing heightened thresholds, some circuits have created barriers that are both **contrary to the statute’s text and out of step with evolving workplace norms**. Employees must not be forced to endure repeated degradation before invoking federal protection.

This Court’s intervention is required to restore coherence, ensure national uniformity, and reaffirm that Title VII protects all employees from harassment that is sufficiently serious to alter their working conditions—whether or not it fits a narrow or archaic conception of “severe or pervasive.”

B. One Can Not Find An Intentional Battery Was Committed Against Dr. Singh And, At The Same Time, Hold That Title VII Was Not Violated

The verdict below reflects a fundamental and irreconcilable contradiction. The jury found that Dr. Singh was subjected to **intentional battery** through repeated, unwanted, and explicitly sexual touching—conduct so egregious that it awarded both compensatory and punitive damages. Yet in the same breath, the jury declined to find that she suffered a hostile work environment under Title VII. Both conclusions cannot stand.

1. The Record Establishes Repeated Sexual Touching

The trial record makes the nature of the conduct indisputable:

- Dr. Pillarsetty leaned over Dr. Singh, pressed her shoulders, placed his hand on her thighs, and touched her breasts. (Tr. 922–923).
- He groped her buttocks in multiple laboratory locations, including the chemistry room, basement imaging area, and cell culture room. (Tr. 924).

- He hugged her from behind, slid his hands down her back, and grabbed her buttocks and breasts. (Tr. 930–931).
- He suggested she drink alcohol to become “less inhibited” and again placed his hands on her thighs when she refused. (Tr. 934–935).

Dr. Singh repeatedly objected, telling him his actions were “disgusting,” that she felt “very uncomfortable,” and that his behavior violated her values. (Tr. 931, 934). This was not isolated contact but it was a **pattern of sexually degrading and humiliating conduct**—the very essence of a hostile work environment.

2. Supreme Court Precedent Makes the Verdict Legally Impossible

This Court has made clear that **unwanted sexual touching constitutes harassment “because of sex.”**

- In *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 67 (1986), the Court recognized that **physical sexual advances and touching are at the core of Title VII sexual harassment**.
- In *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 22 (1993), the Court emphasized that harassment need not cause psychological injury to be actionable; it is enough if it is “humiliating” or “offensive.”
- In *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 80 (1998), the Court held that Title VII covers all forms of unwanted sexual conduct in the workplace, regardless of the sex of the harasser or victim.

Circuit courts agree that **unwanted groping alone is sufficient to create a hostile work environment**. See, e.g., *Hostetler v. Quality Dining, Inc.*, 218 F.3d 798, 808 (7th Cir. 2000) (grabbing of breasts and attempted kiss could constitute actionable harassment even if isolated);

Redd v. N.Y. Div. of Parole, 678 F.3d 166, 179 (2d Cir. 2012) (repeated breast touching by supervisor is “plainly” actionable under Title VII).

Thus, once the jury found intentional battery based on repeated sexual touching, a finding of harassment under Title VII necessarily followed as a matter of law.

3. The Lower Courts Ignored the Contradiction

Neither the District Court nor the Second Circuit addressed this inconsistency. Instead, they allowed a verdict to stand that is legally incoherent: recognizing battery while simultaneously denying harassment. This failure undermines the **truth-seeking function of trials** and the **remedial purpose of Title VII**. Courts cannot permit verdicts that contradict both **binding precedent** and **common sense**. See *United States v. Powell*, 469 U.S. 57, 65 (1984) (courts must guard against irrational verdicts).

4. Broader Importance of Correcting This Error

If allowed to stand, this verdict creates a dangerous precedent:

- Victims of sexual assault in the workplace could be told that repeated groping is tortious battery but **not harassment under Title VII**.
- Employers could exploit this gap to argue that conduct actionable under state law does not violate federal anti-discrimination law.
- Title VII’s core purpose—to root out sex-based harassment in the workplace—would be severely undermined.

This Court’s intervention is necessary to reaffirm that **unwanted sexual touching in the workplace is harassment “because of sex” under Title VII**. A jury that finds battery cannot, consistent with law or logic, absolve an employer of liability for creating a hostile work environment.

C. The Erroneous Jury Verdict Given Appellant's Damages And Comparable Cases Constitute A Miscarriage Of Justice

Federal Rule of Civil Procedure 59(a) authorizes a new trial where “the jury’s verdict is seriously erroneous or constitutes a miscarriage of justice.” This Court has long emphasized that courts must act when verdicts are “**against the weight of the evidence**” or when they “**shock the judicial conscience**.” See *Montgomery Ward & Co. v. Duncan*, 311 U.S. 243, 251 (1940); *Aetna Cas. & Sur. Co. v. Yeatts*, 122 F.2d 350, 352–53 (4th Cir. 1941). The verdict here—\$50,000 for catastrophic, life-altering injuries—is such a case.

1. Petitioner’s Injuries Were Extraordinary and Well-Documented

The record establishes that petitioner endured **repeated sexual assaults** over a period of more than two years, leaving her permanently disabled. Her condition is not speculative—it is supported by voluminous medical evidence, testimony, and expert evaluation:

- **Psychiatric diagnoses:** severe anxiety, major depressive disorder, and post-traumatic stress disorder.
- **Debilitating symptoms:** nightmares, panic attacks, flashbacks, hypervigilance, chest pain, nausea, weight loss, inability to concentrate, hopelessness, and suicidal ideation.
- **Functional impairment:** inability to work or perform daily life activities.

Her medical record includes:

- Four **emergency hospitalizations**, including a five-day inpatient admission.
- A **seven-week partial hospitalization program** in cognitive and behavioral therapy.
- Continuous psychotherapy for more than six years.
- Prescribed antidepressant and anti-anxiety medications for over seven years.
- Participation in an ongoing **rehabilitation program** for symptom management.

These injuries are catastrophic, permanent, and supported by undisputed evidence.

2. The Jury’s \$50,000 Award Is Grossly Inadequate Under Precedent

Despite overwhelming proof, the jury awarded petitioner only **\$50,000 in compensatory damages**—a sum wholly inconsistent with the nature and scope of her injuries and far below precedent.

- In *Turley v. ISG Lackawanna, Inc.*, 774 F.3d 140 (2d Cir. 2014), the Second Circuit affirmed **\$1.32 million** in compensatory damages for emotional distress from two years of racial harassment and PTSD—juries similar in duration but less severe in medical documentation.
- In *Lore v. City of Syracuse*, 670 F.3d 127 (2d Cir. 2012), an award of **\$250,000** for emotional distress was upheld despite less extensive medical evidence than here.
- In *Patterson v. P.H.P. Healthcare Corp.*, 90 F.3d 927, 940–41 (5th Cir. 1996), the Fifth Circuit recognized six-figure awards for harassment producing ongoing psychological harm.
- In *Cush-Crawford v. Adchem Corp.*, 271 F.3d 352 (2d Cir. 2001), this Court acknowledged that substantial emotional distress damages are essential to the remedial purpose of Title VII.

When viewed against these precedents, the \$50,000 award is not merely inadequate—it is irrational.

3. The District Court’s Reliance on Spousal Abuse Was Arbitrary and Capricious

The District Court sought to justify the limited award by attributing petitioner’s injuries, in part, to alleged spousal abuse from 2002. This reasoning fails for multiple reasons:

- Petitioner has lived separately from her former husband since 2004.
- She **never sought medical treatment** for spousal abuse, then or later.

- **No medical records** connect her current PTSD, hospitalizations, or therapy to that decades-old event.
- **All treatment records** are directly tied to the harassment and assaults at MSKCC.

By invoking a decades-old, irrelevant event to reduce damages, the court relied on speculation wholly unsupported by evidence. This Court has made clear that verdicts cannot rest on “**arbitrary and capricious**” reasoning. See *St. Louis Southwestern Ry. Co. v. Dickerson*, 470 U.S. 409, 411 (1985).

4. The Verdict Undermines Constitutional and Statutory Principles

The damages award offends both constitutional and statutory protections:

- **Due Process:** It denies petitioner meaningful redress by disregarding undisputed medical evidence in favor of unfounded speculation. See *Goldberg v. Kelly*, 397 U.S. 254, 271 (1970).
- **Equal Protection:** Women, immigrants, and minorities—who disproportionately experience workplace harassment—are especially vulnerable when courts trivialize proven injuries with token awards. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).
- **Title VII’s remedial purpose:** This Court has emphasized that remedies under Title VII must “make persons whole for injuries suffered.” *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 418 (1975).

A \$50,000 award for life-shattering harm does the opposite.

5. A New Trial on Damages Is Required

The jury’s verdict is a miscarriage of justice under Rule 59. It materially deviates from comparable awards, disregards overwhelming medical evidence, and rests on arbitrary reasoning unrelated to the record.

This Court should grant review to make clear that damages in Title VII and related cases must reflect **the true scope of proven harm**, not speculation or minimization. A new trial on damages is essential to vindicate both petitioner's rights and the integrity of Title VII.

D. The Second Circuit's Treatment of Preserved Issues as "Waived" Conflicts with Precedent

This Court has long distinguished between **waiver**, the intentional relinquishment of a known right, and **forfeiture**, the mere failure to timely assert a right. *United States v. Olano*, 507 U.S. 725, 733 (1993). Issues properly raised in post-trial motions are preserved for appellate review. Courts of appeals may not recharacterize them as waived simply to avoid reaching the merits.

1. Petitioner Preserved Her Claims in Post-Trial Motions

After the jury verdict, petitioner filed a Rule 59 motion for a new trial. She argued that the damages award was grossly inadequate, that the verdict was internally inconsistent, and that preserved retaliation and ADA claims had been wrongly excluded. These arguments were presented to the district court in a timely and specific manner.

Under Rule 59 and established appellate practice, such arguments are preserved. See *Kallai v. DirectTV, LLC*, 16 F.4th 1072, 1079 (6th Cir. 2021) (issue preserved when raised in Rule 59 motion); *Mendez v. County of San Bernardino*, 540 F.3d 1109, 1123 (9th Cir. 2008) (same).

2. The Second Circuit Misapplied the Law

The Second Circuit nevertheless held that petitioner had "waived" all issues except the adequacy of damages. (App. A). In so ruling, it conflated waiver with forfeiture and disregarded this Court's instruction in *Olano*.

Other circuits have recognized this distinction and permitted review of preserved claims. See *United States v. Zubair*, 88 F.4th 320, 333 (5th Cir. 2023) (forfeiture may be excused; waiver may not be inferred absent clear intent). The Second Circuit's approach deepens an inter-circuit conflict and strips litigants of review to which they are entitled.

3. The Error Has Systemic Consequences

If left uncorrected, the decision below would encourage courts of appeals to avoid difficult issues by recasting preserved claims as "waived." This practice threatens due process and undermines confidence in appellate review. Litigants who diligently raise claims in post-trial motions will be denied meaningful consideration on appeal, contrary to this Court's precedent and the rule of law.

4. This Case Is an Ideal Vehicle

This case cleanly presents the issue. The record is undisputed that petitioner raised her claims in a Rule 59 motion. The Second Circuit nonetheless declared them waived and declined review. This Court's intervention is needed to restore the distinction between waiver and forfeiture and to ensure uniform treatment of preserved claims across the circuits.

E. Retaliation and Tortious Interference in Federally Funded Research Institutions Present Questions of Exceptional National Importance

This Court has long emphasized that retaliation is unlawful precisely because it deters employees from exercising rights protected by federal law. *Burlington Northern & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006). When retaliation occurs within federally funded institutions, the harm is magnified: not only is an individual silenced, but the integrity of taxpayer-supported research is compromised.

1. Retaliation Extended to Tortious Interference with a Scientific Career

At Memorial Sloan Kettering Cancer Center, retaliation went beyond professional hostility.

It included deliberate **tortious interference** with petitioner's career:

- Blocking collaborations with colleagues.
- Denying authorship credit on scientific work.
- Spreading defamatory statements to outside scientists.

These actions directly undermined petitioner's ability to contribute to life-saving cancer research. They were not mere workplace slights but calculated acts that sabotaged both an individual scientist and the broader scientific mission.

2. Harm to Both the Individual and the Public

Where federally funded institutions retaliate against whistleblowers, the harm is twofold:

- **To the individual:** careers, health, and livelihoods are destroyed.
- **To the public:** taxpayer investment in science is squandered, and misconduct goes unaddressed.

Other circuits have recognized the seriousness of retaliatory acts beyond termination. See *White v. Burlington Northern & Santa Fe Ry. Co.*, 364 F.3d 789, 802 (6th Cir. 2004) (en banc), aff'd, 548 U.S. 53 (2006) (retaliation includes acts short of discharge that deter protected activity). Yet the Second Circuit minimized reputational harm, exclusion, and interference as inconsequential—contrary to precedent and the broad protective purpose of Title VII.

3. Chilling Effect on Whistleblowers in STEM

If petitioner—an accomplished scientist with a proven record of contribution—can be silenced, others will inevitably remain silent. The chilling effect is particularly grave in STEM:

- Women, immigrants, and minorities—already underrepresented—will see that speaking out ends careers.

- Misconduct will remain hidden, shielded by institutional power.
- Public trust in federally funded science will erode, undermining the credibility of the nation's premier research institutions.

4. The Stakes for Truth and Justice

Petitioner's experience was not only retaliation but systemic humiliation—what she described as slavery-like voicelessness. Courts' refusal to confront this reality sends a dangerous message: powerful institutions may bury truth without consequence.

5. This Court's Intervention Is Required

This case is not about one researcher. It is about whether federally funded institutions are subject to accountability when they retaliate, interfere with careers, and suppress truth. Only this Court can ensure that:

- Retaliation in federally funded science is treated with the gravity it deserves.
- Tortious interference and reputational sabotage are recognized as forms of retaliation.
- Whistleblowers are safeguarded, not punished.
- The public's investment in science is protected from corruption by retaliation and lies.

F. Truth Must Prevail: Courts Cannot Ratify Misrepresentation

This Court has long recognized that "tampering with the administration of justice ... involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public." *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944). When courts ratify falsehoods, the injury is systemic: the integrity of the judicial process itself is compromised.

1. Petitioner's Claims Were Distorted at Every Stage

- **At MSKCC:** supervisors circulated false statements, attributed errors to petitioner that were not hers, and erased her scientific contributions.
- **In the District Court:** disputed facts were resolved against petitioner at summary judgment, contrary to *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000), which holds that credibility determinations and weighing of evidence are for the jury, not the court.
- **In the Second Circuit:** preserved issues were deemed waived, silencing petitioner's claims without meaningful review.

At each stage, misrepresentation replaced fact, leaving petitioner without a fair opportunity to be heard.

2. This Court Has Rejected Justice Built on Falsehood

This Court has intervened where judicial tolerance of falsehood undermined the truth-seeking function:

- *Mooney v. Holohan*, 294 U.S. 103, 112 (1935) (due process violated by use of false evidence).
- *Napue v. Illinois*, 360 U.S. 264, 269 (1959) (false testimony “corrupts the truth-seeking function of the trial process”).
- *Hazel-Atlas*, 322 U.S. at 246 (fraud on the court is a wrong against the public itself).

The same principle applies here. Allowing verdicts and appellate rulings to stand on a foundation of misrepresentation erodes both due process and public confidence in the judiciary.

3. The Stakes Are Institutional, Not Merely Individual

Petitioner's voice was erased by a false narrative. Unless corrected, the message will be that truth can be buried without consequence, especially when powerful institutions are involved.

This Court’s review is essential to reaffirm that justice cannot rest on falsehoods, that juries—not judges—must resolve disputed facts, and that courts must safeguard the integrity of the truth-seeking process.

G. Blatant Lies and Policy Violations Undermine Due Process and Equal Protection

The retaliation petitioner endured was not limited to professional harm. It was a campaign of systemic humiliation that stripped her of dignity. Human Resources failed to act, promises of support were broken, and at one point she was left literally sitting outside, waiting for HR representatives who never arrived.

This treatment created conditions of slavery-like voicelessness: petitioner was expected to endure lies, degradation, and retaliation in silence. When courts condone such conduct, they erode fundamental constitutional guarantees.

1. Due Process

Due process requires “an opportunity to be heard at a meaningful time and in a meaningful manner.” *Goldberg v. Kelly*, 397 U.S. 254, 271 (1970). Here, petitioner was denied fair procedures at every stage:

- Misrepresentation of facts distorted the trial record.
- Preserved claims were disregarded as waived on appeal.
- Courts resolved credibility disputes against petitioner without jury determination.

These actions deprived her of a fair hearing, undermining the truth-seeking purpose of due process.

2. Equal Protection

Retaliation disproportionately silences vulnerable groups—immigrants, women, and people of color—who already face systemic barriers to advancement. As this Court held in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), equal protection principles embedded in Title VII require that minorities and women be afforded genuine remedies against discrimination and retaliation.

By trivializing petitioner’s experience and denying meaningful redress, the courts below validated a system in which vulnerable employees are left without protection and powerful institutions escape accountability.

3. The Broader Stakes

If institutions may silence whistleblowers through lies and HR failures, and if courts may disregard these violations, constitutional guarantees become hollow promises. Only this Court can reaffirm that:

- Lies cannot substitute for fact.
- Retaliation cannot be normalized.
- Due process and equal protection remain bedrock guarantees even within the most powerful institutions.

H. Circuit Conflict on Waiver, Retaliation, and ADA Protections

The Second Circuit concluded that petitioner had waived all grounds for a new trial except damages, based solely on her counsel’s unilateral decision—made without her knowledge or informed consent. That ruling conflicts with this Court’s precedents and deepens an existing circuit split.

1. Waiver vs. Preservation of Claims

This Court has held that true waiver requires the “intentional relinquishment or abandonment of a known right.” *United States v. Olano*, 507 U.S. 725, 733 (1993). Petitioner did not intentionally abandon her claims; she preserved them in her post-trial motions. Treating counsel’s unilateral litigation choice as binding waiver—without client knowledge or consent—misapplies *Olano* and denies petitioner meaningful appellate review.

Other circuits make clear that issues are preserved when raised in substance, even if imperfectly:

- *Kallai v. DirecTV, LLC*, 16 F.4th 1072, 1079 (6th Cir. 2021) (arguments fairly presented are preserved for appeal).
- *Mendez v. County of San Bernardino*, 540 F.3d 1109, 1123 (9th Cir. 2008) (courts should not elevate form over substance in determining preservation).

By contrast, the Second Circuit deemed preserved claims waived, creating a conflict over the scope of waiver and undermining fairness in appellate practice.

2. Retaliation and ADA Protections

The split extends beyond procedure to substance. The Sixth and Ninth Circuits recognize that retaliation includes exclusion, humiliation, and reputational harm that materially affect employment opportunities. See *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006) (retaliation standard extends beyond economic harms); *Miller v. Illinois Dep’t of Transp.*, 643 F.3d 190, 200 (7th Cir. 2011) (reputational harm and exclusion from projects may constitute retaliation).

The Second Circuit, however, minimizes these harms, treating them as inconsequential and declining to review petitioner’s claims under Title VII, Title VI, and the ADA. The result is that whistleblowers and disabled employees in the Second Circuit are denied protections available elsewhere.

3. The Need for This Court’s Review

These conflicts have profound consequences:

- Employees in different circuits face radically different protections against retaliation.
- Disabled workers and whistleblowers are left unprotected in some jurisdictions solely because of geography.
- Fundamental appellate fairness is undermined when preserved claims are disregarded as waived.

Only this Court can restore coherence by reaffirming that:

- Waiver must be knowing and intentional, not imposed through attorney error or judicial fiat.
- Retaliation and ADA protections extend to reputational harm, exclusion, and humiliation.
- Federal civil rights statutes must be applied uniformly nationwide.

I. This Court’s Role: Justice Must Be Rendered Where It Leads

The lower courts treated petitioner’s case as routine error correction. It is not. This Court has long emphasized that its role is not limited to resolving technical disputes, but to ensuring that fundamental principles of justice are not subverted by institutional power or judicial abdication.

In *Brown v. Board of Education*, 347 U.S. 483 (1954), the Court intervened despite entrenched precedent because systemic injustice required correction. In *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944), the Court recognized that tampering with the truth in litigation “involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public.” More recently, in *Staub v. Proctor Hospital*,

562 U.S. 411 (2011), the Court reaffirmed that retaliation undermines the integrity of federal protections and must be addressed decisively.

The systemic stakes here are profound:

- **Truth:** Whether courts will tolerate falsehoods and contradictions that erase a whistleblower's voice.
- **Accountability:** Whether federally funded institutions can retaliate with impunity against scientists who speak out.
- **Justice:** Whether constitutional guarantees of due process and equal protection will be upheld for vulnerable employees, including women, immigrants, and minorities in STEM.

This case transcends petitioner's individual harm. It presents a test of whether truth can survive within powerful institutions, whether science can remain accountable to the public, and whether federal courts will stand against misrepresentation and retaliation.

Only this Court can correct the systemic failures that silenced petitioner. Only this Court can reaffirm that truth, dignity, and fairness are not optional—but indispensable to both science and law.

J. Broader Implications for STEM, Whistleblowers, and Society

If retaliation at MSKCC—one of the world's premier cancer research centers—can silence a scientist like petitioner, the chilling effect is profound. The consequences extend far beyond one individual and reach into the heart of science, public trust, and democracy itself.

- **For Science:** Retaliation destroys careers, suppresses innovation, and allows misconduct to thrive. Research cannot advance when truth-tellers are driven out and wrongdoing is shielded from scrutiny.

- **For Whistleblowers:** The message is unmistakable—speaking up about misconduct will end careers, health, and livelihoods. Future truth-tellers will remain silent, to the detriment of accountability and progress.
- **For Society:** Public trust in science depends upon integrity. When federally funded institutions retaliate against those who expose wrongdoing, taxpayers lose confidence that their investment serves the public good.

This case is not about error correction in a single dispute. It is about whether the legal system will safeguard those who risk everything to uphold truth in federally funded institutions. Whistleblowers are indispensable to accountability; silencing them undermines both democracy and the constitutional guarantees of equal protection and due process.

Petitioner's experience—marked by horror, humiliation, and slavery-like voicelessness—is a warning. If left uncorrected, future generations of scientists, especially women, immigrants, and minorities, will face the same fate. The resulting loss of talent, innovation, and public trust is incalculable.

This case presents the Court with an opportunity to declare unequivocally: **truth must prevail, retaliation cannot be normalized, and justice must extend even to the most powerful institutions entrusted with public resources.**

Broader Significance

This case is not only about one researcher's suffering. It is about whether the law will protect vulnerable employees and whistleblowers at federally funded institutions, or whether retaliation, humiliation, and institutional falsehoods will be allowed to silence them.

A. Impact on Science and Public Health

Memorial Sloan Kettering Cancer Center is a world leader in cancer research, entrusted with taxpayer funds to advance cures. When such institutions retaliate against scientists who speak the truth, the consequences extend far beyond one career:

- **Research is compromised.** Critical projects are delayed or distorted when voices of integrity are removed.
- **Careers are destroyed.** Talented scientists are silenced or driven out of the profession.
- **Patients suffer.** Promising discoveries that could save lives are lost.

The stakes are profound. Harassment and retaliation in federally funded STEM not only devastate individuals but also undermine the nation’s investment in curing disease and advancing public health.

B. Chilling Effect on Whistleblowers

If petitioner—an immigrant woman of color with impeccable credentials and lifelong dedication to cancer research—can be silenced, the message is unmistakable: truth-tellers will be punished.

The chilling effect is especially destructive in STEM:

- **Women, immigrants, and minorities**—already underrepresented—will be even less likely to come forward.
- **Whistleblowers will remain silent**, rather than face humiliation, retaliation, and career destruction.
- **Misconduct will fester unchecked**, shielded by institutional power and indifference.

This Court’s intervention is necessary to ensure that whistleblowers are **protected, not punished**—that integrity in science is preserved, not destroyed.

C. Broader Constitutional Values

This case also implicates core constitutional guarantees:

- **Due Process** is undermined when misrepresentations dictate judicial outcomes and preserved claims are dismissed without review.
- **Equal Protection** is denied when vulnerable employees—particularly women, immigrants, and people of color—are rendered voiceless by systemic retaliation.
- **Truth and Justice** are eroded when powerful institutions can bury facts while courts refuse to confront contradictions.

Petitioner's experience—marked by humiliation, horror, and slavery-like voicelessness—is incompatible with constitutional guarantees and with the rule of law itself.

D. This Court's Responsibility

The courts below treated this case as routine “error correction.” It is not. At stake is whether:

- Truth can survive inside powerful, federally funded institutions.
- Retaliation will be tolerated in science that serves the public good.
- Justice will protect those courageous enough to speak out.

By granting review, this Court can reaffirm:

- **Truth must prevail.**
- **Whistleblowers must be safeguarded.**
- **Institutions must be accountable.**

This case is a test of whether the law will stand with **truth and integrity**—or with **silence and impunity**. Only this Court can provide the answer.

CONCLUSION

For the foregoing reasons, the petition should be granted.

This case presents questions of exceptional importance. First, the fractured application of the “severe or pervasive” standard across the circuits has created an inequitable and inconsistent framework under Title VII. Victims of identical harassment face starkly different outcomes depending solely on geography—contrary to Congress’s intent to provide uniform protection from workplace discrimination.

Second, the jury’s contradictory verdict—finding intentional battery yet denying Title VII liability—reflects a miscarriage of justice. This Court has made clear that unwanted sexual touching is actionable harassment “because of sex.” The verdict below, upheld by the District Court and affirmed by the Second Circuit, cannot be reconciled with that precedent. The injustice was compounded by an inadequate damages award, resting on speculation unrelated to the record, and by the mischaracterization of preserved claims as waived. The result is a petitioner left voiceless and institutions left unaccountable.

But the stakes extend beyond petitioner. This case highlights systemic failures in federally funded STEM institutions: harassment and retaliation silence whistleblowers, derail scientific careers, and deprive society of discoveries that could save lives. The destruction of petitioner’s promising cancer research career is not only her loss—it is a loss to the nation. When science is corrupted by retaliation and falsehoods, public trust is eroded and human progress is diminished.

Accordingly, this Court should grant the petition and provide such further relief as it deems just and proper. Intervention is necessary to resolve entrenched circuit conflicts, correct the fundamental contradictions in the verdict below, and reaffirm that Title VII and the Constitution safeguard truth, dignity, and justice in the workplace. Only this Court can restore uniformity to the

law and ensure that federally funded institutions remain accountable to the principles of fairness and integrity.

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Respectfully submitted.

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