

No. 25-6745

IN THE
Supreme Court of the United States

LINDA SUN,

Petitioner

v.

D.C. OFFICE OF EMPLOYEE APPEALS, *ET AL.*,

Respondents

**On Petition for Rehearing of the Denial of
a Petition for a Writ of Certiorari to the
District of Columbia Court of Appeals**

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NO. 25-6745

IN THE

Supreme Court of the United States

Petition for Rehearing

Petitioner Linda Sun respectfully requests a rehearing of her Petition for a Writ of Certiorari (filed November 24, 2025; placed on the docket February 6, 2026; denied April 20, 2026). Pursuant to Supreme Court Rule 44.2, this petition rests on intervening circumstances of a substantial and controlling effect: the December 5, 2025 decision in *Ahmed S. Ismael v. Sheriff Richard Roundtree, et al.*, No. 25-10604 (11th Cir.). (App. 2a)

Because *Ismael* was decided on December 5, 2025—after Sun’s petition was originally filed on November 24, 2025, and precisely as it was undergoing standard clerical correction before being docketed on February 6, 2026—the resulting circuit split between the 11th Circuit’s “convincing mosaic” standard and the D.C. Circuit’s rigid *McDonnell Douglas* framework—as applied in *Linda Christine Sun v. District of Columbia Government, et al.*¹ which remains binding and on direct review—constitutes a substantial ground not previously capable of being presented.

Constitutional and Statutory Provisions Involved

The intervening circuit decision prompting this petition directly implicates 42 U.S.C. § 1981, the verbatim text of which is set forth in Appendix B (App 13a) of this petition. All other relevant provisions of Title VII of the Civil Rights Act of 1964

¹ *Linda Christine Sun v. District of Columbia Government, et al.*, No. 16-7032 (D.C. Cir. Feb. 14, 2017)

and the District of Columbia Human Rights Act (DCHRA) were set forth in the original Petition for a Writ of Certiorari.

Reasons for Granting Rehearing

I. Intervening Circumstances of Substantial or Controlling Effect

While the *McDonnell Douglas* framework requires an employee to prove pretext in the third prong of the test, *Ismael* instructs courts that under Federal Rule of Civil Procedure 56 courts must look for genuine issues of material fact in a totality of circumstantial evidence (the “mosaic” standard) of which pretext is a part. Under *Ismael* the issue is whether the *McDonnell Douglas* framework supplants Rule 56 at summary judgment. The court ruled the framework is simply a procedural method for establishing “an order of proof and production,” quoting *St. Mary’s Honor Ctr. v. Hicks*.²

The *McDonnell Douglas* test provides a three-prong process to review circumstantial evidence. In the first prong the employee must establish a *prima facie* case. In the second prong the burden shifts to the employer to state legitimate, nondiscriminatory reason for the adverse action. In the third prong, if the court believes the employer’s reasons, the employee needs to prove the employer’s rationale is pretextual in order to survive summary judgment.

The district court in *Ismael* granted summary judgment to the employer on Ismael’s § 1981³ retaliatory discharge claim because it held he failed to prove

² *St. Mary’s Honor Ctr. v. Hicks*, 509 U.S. at 521, 113 S. Ct.

³ (a) Statement of equal rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal

defendants' non-retaliatory reason was a pretext. The district court decided the *McDonnell Douglas* framework was identical to the standard of convincing mosaic of circumstantial evidence. On appeal, the employer similarly argued pretext, convincing mosaic, and summary judgment amounted to the same thing. The court disagreed. It stated evidence of pretext was a subset of the mosaic of circumstantial evidence. The court referred to the dissent in *Hittle v. City of Stockton, California*,⁴ where Justices Thomas and Gorsuch argued against the denial of certiorari, that the *McDonnell Douglas* test distorted the evidence of discriminatory intent which would have satisfied Rule 56.

The 11th Circuit held the district court improperly conflated the *McDonnell Douglas* framework and the standard of convincing mosaic, which equates with summary judgment as a standard for employment discrimination. If an employee presents enough "triable" issues of discriminatory intent in a convincing mosaic of circumstantial evidence, the court held, the employee will always survive a motion for summary judgment. An employee's inability to prove pretext at this point cannot be grounds for summary judgment because the mosaic of circumstantial evidence is broader than pretext.

Similarly, in Sun's case, the district court granted summary judgment to OTA under the *McDonnell Douglas* framework on her Title VII and D.C. Human Rights Act (DCHRA) claims. As in *Ismael*, the court found Sun "failed to produce probative

benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

⁴ *Hittle v. City of Stockton, California*, 605 U.S. ___, 145 S. Ct. 759, 763 (2025)

evidence to rebut defendants' legitimate nondiscriminatory reasons for her termination." The district court ruled Sun was an at-will employee, an error based upon OTA's misrepresentation to cover up Shreve's misconduct. As a result, the court could not find what public policy Sun was referring to in the first cause of action, Wrongful Termination in Violation of Public Policy—despite the fact that the Complaint plainly stated Sun was in the Career Service with due process rights

In misconstruing Sun's employee status as at-will, the court at first tried to apply exceptions to the at-will doctrine and then determined they did not apply. It also used the *McDonnell Douglas* test on the Whistleblower Protection Claim and dismissed it in the same manner it did the Title VII claim. The court relied on OTA's reasons for the second prong of the test, and quoted OTA legislative director Joel Cohn that "many judges only know of OTA through Ms. Sun's transgressions." Cohn's embellishment was entirely inconsistent with the record and without basis. D.C. Office of Administrative Hearings (OAH) judges Robert Sharkey, Margaret Mangan, and the late Paul Handy among others routinely provided for Sun to attend mediation and hearings at OAH, because 14 DCMR 4004.2 (2012) permits nonlawyers to give technical assistance to tenants at appearances before OAH.

The D.C. Circuit affirmed, conflating *McDonnell Douglas* with summary judgment:

Summary judgment on appellant's Title VII claim was proper. Appellees offered legitimate, nondiscriminatory reasons for appellant's termination. Appellant has failed to produce evidence sufficient for a reasonable jury to find that the asserted reasons were not the actual reasons, and that appellees intentionally discriminated against her....

Because the *McDonnell Douglas* framework also applies to claims under 42 U.S.C. § 1981 and the D.C. Human Rights Act, summary judgment on those claims was also proper.... Similarly, the District of Columbia Whistleblower Protection Act “adopts a burden-shifting scheme that in some ways parallels federal Title VII jurisprudence,” and the district court properly granted summary judgment on that claim because appellant failed to “come forward with credible evidence showing that the legitimate independent reason the defendant offered was pretext for an actual, discriminatory motive or did not actually motivate the challenged personnel action.”⁵

In one fell swoop the *McDonnell Douglas* apparatus extinguished Sun’s rights. The D.C. Circuit, however, did correct the district court’s “at-will” error.

Turning to appellant’s claim of wrongful termination in violation of public policy, the parties now agree that appellant was not an at-will employee. Thus, the common law claim of wrongful termination in violation of public policy is unavailable, and the District of Columbia Comprehensive Merit Personnel Act provides her sole remedy.⁶

Under the CMPA, rules for adverse action were specified in DPM sections 1601 through 1619.⁷ They applied to Career Service employees who completed a probationary period. In an order remanding to OEA, the D.C. Superior Court determined the applicable regulation expressing the public policy in question was DPM § 1616.2 (2012). The OEA hearing examiner did not have a D.C. Bar license required under D.C. Code § 1-606.01(m) to conduct the June 2020 remand hearing. OEA conceded. The OEA Initial Decision on Remand was void. (Pet. Cert. App 63a).

As a result of the void decision the claim of wrongful termination was never litigated under the CMPA. The D.C. Circuit’s correction of the district court’s error

⁵ *Sun v. District of Columbia Government, et al.*, No. 16-7032 (D.C. Cir. 2017)

⁶ Federal Rule of Civil Procedure 52 (a) provides findings of fact must not be set aside unless clearly erroneous.

⁷ The District of Columbia Personnel Regulations are published in the District Personnel Manual (DPM).

remains a hollow victory. Its judgment under the *McDonnell Douglas* framework is still binding and now conflicts with the intervening 11th Circuit's decision, deepening circuit splits. By waiving their right to respond and not responding, Respondents have elected not to contest that this case presents a clean vehicle to address the circuit splits.

Still open on direct review, the 2017 D.C. Circuit judgment is the proper subject of this Petition because it directly quashed Sun's claims under 42 U.S.C. § 1981. The lower court's application of the *McDonnell Douglas* framework stands in direct opposition to the Eleventh Circuit's intervening decision in *Ismael*. This conflict deepens a critical circuit split, making the intervening rule a substantial and controlling change in law.

II. Other Substantial Grounds Not Previously Presented

In the original petition, Sun addressed the problems in the first and second prongs of the *McDonnell Douglas* test. She noted the Court found the pretext (third) prong of the test in *Hittle v. City of Stockton*⁸ was improper. At the time Sun lacked a clarified standard to resolve the confusion and demonstrate how the record should survive summary judgment despite a supposed failure of the pretext prong. Like *Hittle* Sun presented ample evidence of discriminatory and retaliatory intent on the part of Taylor and Shreve who decided to terminate Sun.

The *Ismael* decision now provides this missing link. It allows Sun to present for the first time the specific evidentiary tool required to show that the district

⁸ *Hittle v. City of Stockton, California, et al.*, 604 U.S. ____ (2025)

court's focus on the third prong affirmed by the D.C. Circuit was a legal error that distorted the entire Rule 56 analysis on the record. *Ismael* explicitly holds that a court cannot grant summary judgment based solely on a failure to satisfy the pretext prong if the record as a whole establishes a genuine dispute of material facts. Rather, a court must evaluate whether an employee has produced a *convincing mosaic of circumstantial evidence*—the specific evidentiary tool—that would allow a jury to find for the employee.

A. Sun's Convincing Mosaic of Circumstantial Evidence Reveals Genuine Issues of Material Facts That Infer Discrimination and Retaliation.

When viewed through the lens of *Ismael*, the administrative record reveals a coordinated pattern of discrimination and retaliation. These are not isolated procedural lapses, but critical tiles in a convincing mosaic:

- The record is replete with instances of Taylor's harassment. (Pet. Cert. pp. 18-20). Taylor criticized Sun relentlessly for unauthorized practice of law (UPL) without any basis, creating a hostile and offensive work environment.
- D.C. Superior Court Civil Rule 9a permits nonlawyers to file continuances. Taylor berated Sun for filing a continuance for a tenant who was overseas at the time and could not return to D.C. in time for her court appearance.
- Sun was terminated without notice just four days after disclosing Shreve was still running her own company, reported on Dun & Bradstreet, DUNS No. 01-377-2608. (Pet. Cert. App. 86a).
- Sun had an implied contract. After a year's probation she had permanent

status as a Career Service employee. (App 14-17a).

- OTA Attorney Advisor Andrew Gibbs drafted a fake letter that was concealed from Sun for a year and subsequently rebutted by the tenant—hearsay evidence which the district court nevertheless relied on to grant summary judgment. (Pet. Cert. App. 88a)
- Discovery revealed the OTA Director secretly arranged Sun’s termination with DCHR a year in advance, demonstrating a long-term coordinated effort to circumvent the law. (Pet. Cert. App. 96a-97a)
- Taylor and Shreve commented that Sun did not know what was required in American culture. (Pet. Cert. p. 20)
- OTA objected to Sun’s unemployment benefits, an action only overturned after the D.C. Department of Employment Services found the agency lacked sufficient evidence.
- OTA terminated Sun’s health insurance prematurely in February 2012, depriving her of the statutory 31-day grace period and causing a months-long lapse in coverage and loss of term life insurance eligibility.
- OTA failed to provide the mandatory OEA appeal rights (OEA Rule 605) in the Summary Removal Directive, leading the OEA ALJ eventually to find jurisdiction over the five-year-late appeal. (Pet. Cert. App. 44a)
- The Summary Removal Notice contained at least seven counts involving an OTA tenant who refuted them in a Witness Statement. (Pet. Cert. App 71a)
But the district court used the counts for the second prong to grant summary

judgment to OTA despite the issues of material fact.

- The January 27, 2020 Order (2017 CA 007451 P(MPA)) remanded to OEA to review DPM § 1616.2 (2012).⁹ OEA altered it to 16B DCMR 1616.2 which did not exist. (Pet. Cert. App 11a).
- The OEA ALJ committed fraud on the court by misrepresenting the Superior Court's mandate and denied Sun her protected status under the CMPA. (Pet. Cert. App. 6a)
- D.C. Code § 1-606.01(m) requires OEA hearing examiners must be licensed to practice law in D.C. OEA conceded hearing examiner Joseph Lim was not licensed. The cause of termination was never adjudicated. (Pet. Cert. App. 63a)
- The court altered a word in Sun's evidence, "superficial," to "supervision" to favor OTA. (App. 18-19a)

B. Retroactive Application of *Ismael* is Required to Protect Sun's Property Interest

Under *Harper v. Virginia Dep't of Taxation*,¹⁰ when a court applies a rule of federal law to the parties before it, that rule is the controlling interpretation and must be given full retroactive effect in all cases still open on direct review. Because this case remains pending, the *Ismael* standard—which clarifies the mandatory application of Rule 56—must be applied retroactively to Sun's claims. The

⁹ "An agency head may summarily remove an employee under this section only if at the time the summary removal action is taken, a good faith effort has been made to determine that at least one (1) of the conditions described in §1616.1 is met; and only if the action is taken for cause pursuant to §1603. Otherwise, the employee shall be entitled to an advance written notice as specified in §1608."

¹⁰ *Harper v. Virginia Dep't of Taxation*, 501 U.S. 211 (1991)

Supremacy Clause of the U.S. Constitution reinforces this mandate, ensuring that federal standards are applied uniformly. Denying rehearing would leave Sun's Constitutionally protected property interest bound by an obsolete interpretation of the *McDonnell Douglas* framework that directly conflicts with the Rule 56 analysis established in *Ismael*. Retroactive application of *Ismael* will remedy the very harms that Sun suffered under a lower court's misapprehension of federal laws.

C. The "Human Loss" of Sun's Career Service Status Satisfies the *Muldrow* Standard

In *Muldrow v. City of St. Louis*,¹¹ this Court held that a plaintiff with a discrimination claim only had to show "some harm" regarding the conditions of employment. For several months following the summary removal, Sun suffered from overwhelming fatigue, severe headaches, and fainting spells that limited her ability to work only one hour at a time. Because her health insurance benefits were cut off before the statutory grace period ended, Sun was left without the necessary coverage to address these concerns ahead of the next enrollment period. The D.C. Circuit's dismissal of Sun's 42 U.S.C. § 1981, DCHRA, and WPA claims ignored her rights under the CMPA that created a property interest for employees in the Career Service who could not be terminated without cause. The cause for Sun's termination was never adjudicated. Combined with the mosaic of circumstantial evidence, the summary removal and the premature termination of Sun's life and health insurance constitute identifiable harm—facilitated by the third prong legal error—that satisfies the *Muldrow* standard with room to spare.

¹¹ *Muldrow v. City of St. Louis*, 601 U.S. 346 (2024)

Conclusion

For the foregoing reasons, the Court should grant the petition for rehearing and certiorari, vacate the judgment below, and remand this case to the D.C. Circuit. The substantial intervening authority of *Ismael v. Roundtree* directly conflicts with the decision below, thereby deepening a persistent¹³ circuit split regarding the proper application of the *McDonnell Douglas* framework at summary judgment—a conflict that only this Court can resolve.

Certificate of Petitioner

I, Linda Sun, *pro se* Petitioner, hereby certify that the above Petition for Rehearing is restricted to the grounds specified in Rule 44.2 (intervening circumstances of a substantial or controlling effect or other substantial grounds not previously presented), and is presented in good faith and not for delay.

Respectfully submitted,



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¹³ App A, page 9a – *Ismael* characterizes the persistent confusion as a "*McDonnell Douglas* game of whack-a-mole" where appellate courts must "strike down" new and creative misapplications of the framework as substantive doctrine.

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AHMED S. ISMAEL, Plaintiff-Appellant,

v.

SHERIFF RICHARD ROUNDTREE, in his individual and official capacity as Sheriff of the Richmond County Sheriff's Office, CAPT. EVERETTE JENKINS, in his individual capacity and acting under color of law as supervisor of the Richmond County Sheriffs Office, SGT. WILLIAM McCARTY, in his individual capacity acting under color of law as a supervisor of the Richmond County Sheriffs Office, COL. CALVIN CHEW, in his individual capacity acting under color of law as a supervisor of the Richmond County Sheriff's Office, Defendants-Appellees, AUGUSTA RICHMOND COUNTY COMMISSION, Defendant.

No. 25-10604, Non-Argument Calendar.

United States Court of Appeals, Eleventh Circuit.

December 5, 2025.

Appeal from the United States District Court for the Southern District of Georgia, D.C. Docket No. 1:22-cv-00108-JRH-BKE.

Before ABUDU, TJOFLAT, and ANDERSON, Circuit Judges.

TJOFLAT, Circuit Judge.

Ahmed Ismael appeals the District Court's grant of summary judgment, which dismissed his § 1981 retaliatory discharge suit. We hold that the District Court improperly conflated the *McDonnell Douglas* pretext analysis and the "convincing mosaic" standard. We reverse and remand for the District Court to, in the first instance, apply the correct standard.

I. BACKGROUND

The Richmond County Sheriff's Office ("RCSO") hired Ismael as a deputy sheriff on March 21, 2020. Shortly thereafter, Ismael was offered the opportunity to work an ongoing special, off-duty, assignment providing security at the Urban Air Adventure Park in Augusta, Georgia ("Urban Air"). By mid-2021, Ismael was promoted to "officer-in-charge" at Urban Air.

A. Ismael's Alleged Workplace Harassment

Lieutenant Everette Jenkins worked the Urban Air special assignment with Ismael. There, Ismael alleges that Jenkins frequently harassed him because of his race. Ismael was born in the Republic of Iraq and is a person of Arabic descent. Jenkins allegedly called Ismael a "terrorist," told him to "go play in the sand," and warned colleagues that Ismael "may have a bomb." Jenkins admitted to making the terrorist comment but denied all others.

The owner of Urban Air, William Gilbert, testified that he "frequently" witnessed Jenkins make racist remarks to Ismael. General Manager Jordan Chambliss said there was "not one instance" where Jenkins "did not refer to [Ismael] as a terrorist, or make some crude remark about sand, bombs or not being able to speak English."

Jenkins' job performance was allegedly less than stellar. Gilbert testified that he had to ask Jenkins at least five times to do his job instead of sitting in his car in the parking lot. He described Jenkins' work ethic as "unprofessional." Chambliss added that Jenkins "was late to most every shift," often left early, but always demanded a full paycheck.

At the same time, Jenkins was the commander of the RCSO SWAT team, which Ismael hoped to join. Though Ismael wanted to report Jenkins' racial harassment and poor job performance, Jenkins allegedly warned Ismael that it would sink his chances at making the SWAT team. According to Chambliss, Jenkins "made it abundantly clear that he could walk all over Ismael because he would be the determining factor as to whether he would ever make it onto 'his' team or approve any training."

B. Ismael's Formal Complaint and Firing

On September 13, 2021, Ismael attended a five-day SWAT team training course in Forsyth County. On the final day, Ismael failed the written exam, and, accordingly, Jenkins told him he could not join the team. Ismael's drive home was approximately two-and-a-half hours. Although he was driving his patrol vehicle and still in RCSO uniform, Ismael decided to briefly visit the Burke County Sheriff's Office ("Burke County") to inquire about job openings. He was told that he could apply online and completed his drive home.

Since Ismael was no longer a prospect for the SWAT team, Jenkins no longer had leverage over Ismael. Accordingly, Ismael filed an internal affairs complaint on Monday, September 20, 2021. He detailed Jenkins' offensive remarks, harassment, and general misconduct at Urban Air. Gilbert and Chambliss submitted letters corroborating Ismael's account. At the time he filed the complaint, Ismael was in good standing with RCSO and had no prior disciplinary infractions.

Sergeant William McCarty was assigned to investigate Ismael's complaint. McCarty's investigation included calls to at least seven officers and an interview with Jenkins. McCarty tried to call Gilbert and Chambliss but could not reach them. He issued his report on October 19, 2021, writing that he could not verify Ismael's allegations and concluding: "The complaint is not sustained."

On September 23, 2021, while the investigation into Jenkins was still ongoing, McCarty received an email from Jimmy Wylds of Burke County, inquiring about Ismael. First, McCarty forwarded the email to RCSO Captain Glen Rahn, writing "Lookie here." Then McCarty answered Wylds:

Ismael isn't very impressive. He failed swat school and Jenkins told him he had to turn his stuff in. So now Ismael has filed a complaint against Jenkins claiming hostile work environment among other things which I am having to deal with. I worked a special with him one night and he seems to have a big chip on his shoulder about something.

Discipline wise he ok...thus far.

3a

(emphasis added)

A few days later, RCSO Colonel Calvin Chew allegedly received a call from an anonymous Burke County deputy. According to Chew, the deputy told him about Ismael's brief pit-stop to Burke County to inquire about job openings. McCarty emailed Wylds to confirm this information, and Wylds responded affirmatively.

Here, the parties differ on a couple of facts. In discovery, Ismael received access to Chew's phone records, which show that no anonymous call was received in the timeframe alleged by Chew. Ismael, though, does not assert an alternative theory as to how McCarty and RCSO learned about his visit to Burke County. The parties also differ on whether Ismael was technically "on duty" or "off duty" when he stopped at Burke County, and whether his behavior violated an official RCSO policy. McCarty flip-flopped as to whether Ismael was on or off duty but eventually testified: "I would probably say that he was off duty." Nonetheless, Appellees contend that "[w]hether he was off duty or on duty, the act of using a patrol vehicle for personal errands is a violation of RCSO policy."

On September 28, 2021, Ismael was slated to begin work at 6:00 p.m. He scheduled an interview with Burke County at noon, believing he would have ample time before beginning his shift. Shortly before his interview, though, McCarty called Ismael and asked him to report to RCSO "as soon as possible." McCarty testified that the timing was merely "coincidental." Ismael attended the interview in uniform and then reported directly to RCSO. During the interview, Chew allegedly received a second anonymous call, informing him that Ismael had returned to Burke County.

At this point, Rahn emailed Chew and Sherriff Roundtree the following: "Just confirmed Deputy [Ismael] was in Burke County in our vehicle doing an interview to be hired. He will not be hired and we will have the DR for Termination ready by the time we finish talking with him." A few minutes later, McCarty began the termination paperwork. The report cited a violation of RCSO's "Manner of Conduct" policy Rule 4.4.^[1] It listed two incidents: (1) Ismael visiting Burke County on September 17, 2021, in his patrol car to inquire about employment opportunities while he was "still on Richmond County time" and (2) Ismael visiting Burke County on September 28, 2021, in his patrol car to interview for a position. Sherriff Roundtree signed the termination report that same day.

C. Lawsuit and Ismael's Evidence of Retaliation

Ismael claims he was fired in retaliation for his harassment complaint against Jenkins. On August 14, 2022, Ismael sued Roundtree, Jenkins, McCarty, and Chew for retaliation in violation of 42 U.S.C. § 1981 and Title VII of the Civil Rights Act of 1964.^[2] He amended his complaint twice, retaining only the § 1981 claim. Discovery commenced, and Defendants moved for summary judgment. In response to Defendants' motion for summary judgment, Ismael presented the following circumstantial evidence in support of his claim:

- McCarty's email to Wylds, where he improperly disclosed Ismael's hostile work environment complaint and wrote that Ismael's disciplinary status is "okay ... thus far," potentially suggesting it would not remain "okay" for long.
- Phone records showing that Chew did not receive any anonymous calls during the timeframe he alleges.

- Affidavits from former RCSO personnel stating that they often made personal detours in their patrol vehicles, that supervising officers knew of the practice, and that they were never investigated or punished.
- McCarty's testimony that he could not recall any other officer being investigated or punished for making personal use of their patrol vehicle.
- Roundtree's inability to find records or otherwise identify specific instances of officers disciplined for similar vehicle infractions, despite testifying that it happened in the past.
- Roundtree's testimony that he was "very good friends" with Jenkins for over twenty-five years.
- The fact that Ismael was fired only eight days after filing his complaint against Jenkins.
- Ismael's termination report, which was created before he was interviewed about or informed of an investigation into his potential misconduct, contrary to RCSO investigatory procedures.
- Roundtree and McCarty's early insistence that Ismael was fired for using his patrol car for personal errands while "on duty," followed by McCarty's acknowledgment that he was "probably ... off duty."
- The disparity between the investigations conducted into Jenkins and Ismael.

The District Court granted the motion for summary judgment. First, the Court found that Ismael had established a prima facie case under *McDonnell Douglas*. Then, the Court found that the defendants properly articulated a legitimate, non-retaliatory reason for Ismael's termination. Finally, the Court held that Ismael "failed to prove" that the defendants' articulated reason was a pretext for retaliation.

II. STANDARD OF REVIEW

We review a district court's grant of summary judgment de novo, conducting our inquiry with the same legal principles as the district court. *Batson v. Salvation Army*, 897 F.3d 1320, 1325 (11th Cir. 2018). Summary judgment is appropriate "if the movant 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). "A genuine issue of material fact exists when the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Quigg v. Thomas Cnty. Sch. Dist.*, 814 F.3d 1227, 1235 (11th Cir. 2016). All reasonable inferences must be drawn in favor of the nonmoving party, but a "mere scintilla of evidence ... will not suffice to overcome a motion for summary judgment." *Young v. City of Palm Bay*, 358 F.3d 859, 860 (11th Cir. 2004).

III. DISCUSSION

42 U.S.C. § 1981 provides that "[a]ll persons ... shall have the same right ... to make and enforce contracts ... and to the full and equal benefit of all laws ... as is enjoyed by white citizens." In 1975, the Supreme Court held that § 1981 "affords a federal remedy against discrimination in private

employment," notwithstanding other available remedies like Title VII.^[3] Johnson v. Ry. Express Agency, Inc., 421 U.S. 454, 457-61, 95 S. Ct. 1716, 1719-20 (1975). In 2008, the Court held that § 1981 also supports a private cause of action for employees who face retaliation for their complaints about workplace discrimination. CBOCS W., Inc. v. Humphries, 553 U.S. 442, 445, 128 S. Ct. 1951, 1954 (2008).

A. The District Court Conflated *McDonnell Douglas* Pretext and the Convincing Mosaic Standard

Employment discrimination and retaliation cases, including those brought under § 1981, are shaped by the famous yet ill-understood Supreme Court holding in McDonnell Douglas Co. v. Green, 411 U.S. 792, 93 S. Ct. 1817 (1973). There, the Court introduced a three-part evidentiary burden shifting framework:

1. First, the plaintiff demonstrates a prima facie case, which may be done by showing: (i) the plaintiff is in a protected group; (ii) the plaintiff was well qualified; (iii) the plaintiff suffered an adverse employment action; and (iv) the plaintiff was treated less favorably than similarly situated employees outside of the plaintiff's protected group.
2. Second, the burden shifts to the employer to articulate some legitimate, nondiscriminatory reason for the adverse action.
3. Third, if the employer provides an adequate reason, the plaintiff has the opportunity to demonstrate that the employer's proffered rationale is pretextual.

See *id.* at 802-04, 93 S. Ct. at 1824-25; see also Jenkins v. Nell, 26 F.4th 1243, 1249 (11th Cir. 2022). Retaliation claims (as opposed to direct discrimination claims) follow the same framework, but the prima facie case is modified. There, a plaintiff must show: (i) that she engaged in a protected activity, like filing a complaint for discrimination; (ii) that she suffered a material adverse action; and (iii) that there was a causal connection between the protected activity and the adverse action. Chapter 7 Tr. v. Gate Gourmet, Inc., 683 F.3d 1249, 1258 (11th Cir. 2012).

The *McDonnell Douglas* framework is canonical; it can be found in first order across employment law textbooks, treatises, and hornbooks. But burden-shifting regimes are hardly unique; many have existed for centuries at common law. See, e.g., Byrne v. Boadle, 159 Eng. Rep. 200 (Exch. 1863). Our Court has repeatedly intimated that *McDonnell Douglas* is not all it's cracked up to be. To understand what the framework does, we find it useful to begin by answering what it *does not* do.

1. *McDonnell Douglas* is Limited

Decisions from both the Supreme Court and our Circuit cabin the substantive application of *McDonnell Douglas*. First, *McDonnell Douglas* "is an evidentiary standard, not a pleading requirement," so it has no application on a motion to dismiss. Swierkiewicz v. Sorema N. A., 534 U.S. 506, 510, 122 S. Ct. 992, 997 (2002). Second, it plays no role at trial. Dudley v. Wal-Mart Stores, Inc., 166 F.3d 1317, 1322 (11th Cir. 1999) ("It is unnecessary and inappropriate to instruct the jury on the *McDonnell Douglas* analysis."); Postal Serv. Bd. of Governors v. Aikens, 460 U.S. 711, 715, 103 S. Ct. 1478, 1482 (1983).

(reversing bench trial findings because the court "erroneously focused on the question of *prima facie* case rather than directly on the question of discrimination"). This is because "once the *prima facie* case has 'fulfilled its role in forcing the defendant to come forward with some response,' it no longer has any work to do." Tynes v. Fla. Dep't of Juv. Just., 88 F.4th 939, 945 (11th Cir. 2023), *cert. denied*, 145 S. Ct. 154 (2024) (quoting St. Mary's Honor Ctr. v. Hicks, 609 U.S. 502, 510-11, 113 S. Ct. 2742, 2742 (1993)). Third, the framework is inapplicable on post-trial motions. Aikens, 460 U.S. at 715, 103 S. Ct. at 1482 (1983).

Most relevant here, our Court has held that *McDonnell Douglas* was "never was intended to be, the *sine qua non* for a plaintiff to survive a summary judgment motion in an employment discrimination case." Smith v. Lockheed-Martin Corp., 644 F.3d 1321, 1328 (11th Cir. 2011). In *Smith*, we held (1) that a "plaintiff will always survive summary judgment if he presents circumstantial evidence that creates a triable issue concerning the employer's discriminatory intent" and (2) that a "triable issue of fact exists if the record, viewed in a light most favorable to the plaintiff, presents a convincing mosaic of circumstantial evidence that would allow a jury to infer intentional discrimination by the decisionmaker." *Id.* (quoting Silverman v. Bd. of Educ., 637 F.3d 729, 733 (7th Cir. 2011)) (internal quotation marks omitted).

This holding adopted what is often referred to as the "convincing mosaic standard." See, e.g., Tynes, 88 F.4th at 946. We have applied it in equal measure to claims of discrimination and retaliation. Berry v. Crestwood Healthcare, 84 F.4th 1300, 1310 (11th Cir. 2023) ("An employee may rely on a convincing mosaic of circumstantial evidence to prove retaliation."). Initially, there was confusion as to whether we had created a new analytical framework, something of a *McDonnell Douglas* 2.0. In time, however, we made clear that the "convincing mosaic" analysis—despite its flowery language—is a stand-in for the Rule 56 summary judgment standard applied to employment discrimination. See *id.* at 1311 ("[A] 'convincing mosaic' is a metaphor, not a legal test and not a framework."); Tynes, 88 F.4th at 1311 (describing the convincing mosaic standard as a "rearticulation of the summary judgment standard").

As in other contexts, a plaintiff may avoid summary judgment by presenting a wide range of circumstantial evidence. Such evidence may include "(1) suspicious timing, ambiguous statements..., and other bits and pieces from which an inference of discriminatory intent might be drawn, (2) systematically better treatment of similarly situated employees, and (3) that the employer's justification is pretextual." Lewis v. City of Union City, Georgia, 934 F.3d 1169, 1185 (11th Cir. 2019) (quoting Silverman, 673 F.3d at 733-34) (internal quotation marks omitted).

2. Convincing Mosaic is Broader than Pretext

Our precedent, then, makes clear that a plaintiff who cannot establish the *McDonnell Douglas* *prima facie* case is entitled to a full review under the convincing mosaic standard. But here, Ismael *did* establish his *prima facie* case, and the District Court advanced to steps two and three of *McDonnell Douglas*. At step three, the Court held that Ismael failed to raise an inference of pretext. But the Court was confronted with one final question: should it *also* analyze the evidence under the convincing mosaic standard? It declined, reasoning that a separate analysis would be redundant. Relying on dicta in Ossman v. Meredith Corp., the District Court decided that "the convincing mosaic inquiry is identical to the final stage of the *McDonnell Douglas* framework," so it "need not decide if the convincing mosaic

framework also serves as an independent basis" to support Ismael's claim. 82 F.4th 1007, 1020 (11th Cir. 2023).

Appellees ask us to sign off on this interpretation. They argue that "the terms pretext, convincing mosaic, and summary judgment are substantively the same thing" and that "the pretext prong ... is the same as the ordinary summary judgment standard." We disagree. Though we recognize that both inquiries are probative of the same ultimate question, we are persuaded that they are not identical.

To show pretext, a plaintiff must show "*both* that the [employer's] reason was false, *and* that discrimination was the real reason" for the adverse action. *Hicks*, 509 U.S. at 515, 113 S. Ct. at 2752. The latter requirement unquestionably holds the same focus as the convincing mosaic standard. The former, however, does not. Requiring a plaintiff to negate the defendant's explanation on summary judgment has at least two defects. First, it is not required to succeed at trial. Second, it detracts from the plaintiff's affirmative case that the driving cause was illegal discrimination or retaliation.

In *Comcast Corp. v. Nat'l Ass'n of Afr. Am.-Owned Media*, the Supreme Court held that claims brought under § 1981 must show that an illicit motive was a "but-for" cause for the adverse action, rather than merely a "motivating factor." 589 U.S. 327, 340, 140 S. Ct. 1009, 1019 (2020). But it is not required, under either § 1981 or Title VII, to show that the unlawful purpose was the *only* contributing factor. "[T]he traditional but-for causation standard means a defendant cannot avoid liability just by citing some other factor that contributed to its challenged employment decision." *Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644, 656, 140 S. Ct. 1731, 1739 (2020).

A plaintiff can even succeed where there are multiple but-for causes: "so long as the plaintiff's [protected characteristic] was *one but-for cause* of [the adverse] decision, that is enough to trigger the law." *Id.* at 656, 140 S. Ct. at 1739 (emphasis added). In this situation, the employer's reason might be both factually grounded and directly causal—in other words, unassailable as pretext. If we require the plaintiff to negate their counterparty's rationale, we permit the absurd result of a plaintiff losing on summary judgment for failing to demonstrate a falsity that she would not need to show at trial.

Moreover, focusing on the defendant's justification can lead both litigants and the court down a rabbit hole that obfuscates the plaintiff's affirmative claim. This is precisely what we sought to avoid when we adopted the convincing mosaic standard. See *Smith*, 644 F.3d at 1328. In *Tynes*, we emphasized that, at summary judgment, "we ask only one question: whether there is sufficient evidentiary basis for the jury to find that the defendant internationally discriminated against the plaintiff." 88 F.4th at 947. In retaliation claims, we ask whether the defendant intentionally retaliated against the plaintiff because of the plaintiff's protected activity. *Berry*, 84 F.4th at 1310. These questions appropriately frame the inquiry on the plaintiff's asserted theory of the case. By contrast, the pretext inquiry lets the defendant's explanation take center stage, requiring the plaintiff to present contradictory evidence rather than direct or circumstantial evidence supporting an inference of discrimination.

Surely, the plaintiff might find it useful to attack the defendant's account. Evidence that their explanation is untruthful, inconsistent, or that the alleged conduct was not typically punished may all be probative of malfeasance. But, as we have explained before, the "entire evidentiary picture" goes further than pretext. See *Yelling v. St. Vincent's Health Sys.*, 82 F.4th 1329, 1242 (11th Cir. 2023). Our precedent specifically describes evidence of pretext as a *subset* of potentially relevant circumstantial evidence. *Id.* And, while this Circuit has no published opinion finding the requisite summary judgment

inference after a plaintiff failed on pretext,^[4] we have recognized the possibility, and we conduct both analyses accordingly. See *id.*; Berry, 84 F.4th at 1310.

Finally, we do not think the Supreme Court intended pretext to be the sole determinate at any stage of litigation, but especially at summary judgment. In *McDonnell Douglas*, the Court held that when a defendant's reason for the adverse action "suffices to meet the prima facie case," the plaintiff must "be afforded a fair opportunity to show that [the defendant's] stated reason for [the plaintiff's] rejection was in fact pretext." 411 U.S. at 804, 93 S. Ct. at 1825 (emphasis added). We do not take this language to reframe the dispositive question on summary judgment or at trial, but rather to emphasize that the "inquiry must not end" with a defendant's plausible explanation. See *id.* Even taken literally, the plaintiff is always given the "opportunity" to show pretext; our Court has simply elaborated that it is not the "exclusive means" to survive summary judgment. See Berry, 84 F.4th at 1310.

In *Burdine*, the Supreme Court further explained that the plaintiff's "opportunity to demonstrate that the proffered reason was not the true reason for the employment decision ... merges with the ultimate burden of persuading the court that she has been the victim of intentional discrimination." 450 U.S. at 256, 101 S. Ct. at 1095. "She may succeed in this either directly by persuading the court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence." *Id.* This appropriately categorizes pretext as an *avenue* to demonstrate the defendant's illicit motive, but not as the end-all be-all.

Most recently, Justices Thomas and Gorsuch dissented from a denial of certiorari, arguing that the *McDonnell Douglas* frame-work has spawned "widespread confusion" and that the Court should offer "clear guidance" on how lower courts should conduct their review on summary judgment. Hittle v. City of Stockton, California, 604 U.S. ___, 145 S. Ct. 759, 763 (2025) (Thomas, J., dissenting from denial of certiorari). The posture in *Hittle* matches the posture here; the district court granted summary judgment "on the ground that Hittle had not shown sufficient evidence of pretext." *Id.* at ___, 145 S. Ct. at 763-64. Thomas explained:

This case highlights how *McDonnell Douglas* may distort a lower court's analysis. Hittle presented "ample" evidence of discriminatory intent on the part of those who decided to terminate him. That evidence is more than likely sufficient for Hittle to establish a genuine dispute of material fact as required by Rule 56. Yet, after applying *McDonnell Douglas*, the District Court and the Ninth Circuit ruled for the city.

Id. at ___, 145 S. Ct. at 764. Though we lack clarity from the Supreme Court regarding *McDonnell Douglas*' appropriate role—if any—at summary judgment, we reaffirm that it is not the only game in town, and that it does not supplant Rule 56.

A plaintiff must be afforded the opportunity to confront her burden of proof head-on, if she so chooses. Our Court's convincing mosaic standard heeds this directive and preserves the plaintiff's opportunity at summary judgment to directly create an inference of discrimination or retaliation—"shorn of all [the] *McDonnell Douglas* prophylaxis." Tynes, 88 F.4th at 953 (Newsom, J., concurring). For these reasons, we hold that summary judgment should not be granted for failure to demonstrate pretext unless it also "reflects a failure to put forward enough evidence for a jury to find for the plaintiff on the ultimate question of discrimination" or retaliation. *Id.* at 947.

B. The Legal Error Stifled Review of Ismael's Evidence

The previous Section explains why, as a legal matter, the District Court was wrong to conflate a showing of pretext with the standard to survive summary judgment. If we could find that this error was in name only, and that the district court considered all appropriate evidence, it might have been a harmless error. See 28 U.S.C. § 2111 ("[T]he court shall give judgment after an examination of the record without regard to errors or defects which do not affect the substantial rights of the parties."). But the Court's language shows that it focused narrowly on the defendant's purported rationale and ignored other evidence probative of Appellees' illicit intent.

For example, Ismael presented evidence that other officers often ran errands in their patrol cars, such as picking up food, going to the gym, and picking up children, but were never punished. The Court found this immaterial:

[E]ven assuming the alleged personal errands were common and Defendants were aware of these practices, they do not show the reason for [Ismael's] termination was unworthy of credence because these are not appropriate comparators, nor do they establish conflicting testimony regarding the reason for [Ismael's] termination. Further, the fact that no other officer has been fired for similar conduct, without evidence another officer has actually engaged in sufficiently similar conduct, does not *prove* the stated reason was false.

(emphasis added). The Court treated just about all of Ismael's evidence this way: rejecting it unless it "negated the proffered reason" for his termination.

As a threshold matter, Ismael does not need to "prove" anything to defeat a motion for summary judgment. Moreover, comparator evidence can still be useful even where there are "material differences" between a plaintiff and her comparator. Tynes, 88 F.4th at 947. "[I]t is the jury's role—not ours—to determine how much weight comparator evidence should be given." *Id.* at 947; *see also Jenkins v. Nell*, 26 F.4th 1243, 1251 (11th Cir. 2022) (finding circumstantial evidence probative even when lacking a "strict comparator"). And, as we emphasize today, evidence does not need to attack—or even have anything to do with—the defendant's purported rationale to help raise an inference of discrimination.

Because the District Court only analyzed Ismael's claim through the narrow lens of *McDonnell Douglas* pretext, we reverse and remand with instruction to apply the correct summary judgment standard. Specifically, the Court should ask whether Ismael's circumstantial evidence, when artfully adhered together and viewed as one, allows a reasonable juror to envision an image of retaliation and find in Ismael's favor.

C. Proper Review on Summary Judgment

Today's holding takes one more swing at the *McDonnell Douglas* game of whack-a-mole, where we must strike down courts that find new and creative ways to incorrectly apply the framework as substantive doctrine. Correctly understood, *McDonnell Douglas* is a "procedural device, designed only to establish an order of proof and production." *Hicks*, 509 U.S. at 521, 113 S. Ct. at 2754. No more, no

less. Accordingly, we offer the following instruction for district courts to properly review summary judgment motions. The roadmap differs depending on whether the plaintiff can demonstrate a prima facie case or not.

1. Plaintiff Demonstrates Prima Facie Case

If the plaintiff can establish a prima facie case, she is entitled to a rebuttable presumption of illicit intent. This necessarily means that if the defendant fails to proffer evidence of a legitimate reason for the adverse employment action, summary judgment in favor of the plaintiff is appropriate.^[5]

Where, as is more common, the defendant comes forth with evidence and successfully rebuts the presumption, "the *McDonnell Douglas* framework—with its presumptions and burdens—is no longer relevant." *Hicks*, 509 U.S. at 510, 113 S. Ct. at 2749. It "simply drops out of the picture." *Id.* at 511, 113 S. Ct. at 2749. At this point, the court must proceed to ask whether "the record, viewed in a light most favorable to the plaintiff, presents a convincing mosaic of circumstantial evidence that would allow a jury to infer intentional discrimination [or retaliation] by the decisionmaker." *Smith*, 644 F.3d at 1328. A showing of pretext (or lack thereof) would certainly be relevant. But a plaintiff's inability to disprove the defendant's rationale cannot be the sole grounds for summary judgment.

2. Plaintiff Fails to Demonstrate Prima Facie Case

If the plaintiff cannot establish a prima facie case, she does not automatically lose on summary judgment. See *Smith*, 644 F.4th at 1328. In *Tynes*, we explained why this is so:

When the Supreme Court uses the term "prima facie case" in this context, it does so "in a special sense." The Court itself has explained that although that phrase may sometimes "describe the plaintiff's burden of producing enough evidence to permit the trier of fact to infer the fact at issue," within the *McDonnell Douglas* framework the term "prima facie case" has a different meaning—it marks "the establishment of a legally mandatory, rebuttable presumption."

88 F.4th at 945 (quoting *Burdine*, 450 U.S. at 254 n.7, 101 S.Ct. at 1094) (internal citations omitted). Rather than lose by default, the consequence is that the plaintiff must produce enough evidence, on her own and without any helpful evidentiary burdens or presumptions, to demonstrate a material issue of triable fact. A court, therefore, should advance directly to the convincing mosaic inquiry.

A helpful analogy can be drawn to the common law doctrine of *res ipsa loquitur* for negligence. If a plaintiff invokes that doctrine, the court must determine whether "the plaintiff's evidence is sufficient for a reasonable jury to find ... the accident is of the type that usually happens because of negligence." Restatement (Third) of Torts: Phys. & Emot. Harm § 17 cmt. j (A.L.I. 2010). If the court so finds, some jurisdictions employ a "rebuttable presumption, thereby requiring the defendant to come forward with some exculpatory evidence or suffer judgment as a matter of law." *Id.* This "level[s] the playing field and encourage[s] the defendant to disclose relevant evidence." *Id.* cmt. i. But a court would never grant summary judgment just because a plaintiff failed *res ipsa*'s threshold inquiry. Instead, it would evaluate the plaintiff's evidence under the appropriate summary judgment standard for ordinary negligence, without any inferences or presumptions.

McDonnell Douglas, like *res ipsa*, offers plaintiffs an evidentiary advantage if their case satisfies a preliminary assessment, namely, the prima facie case. If plaintiffs cannot satisfy that test, the inquiry does not end. Rather, a district court must turn to evaluate the evidence before it, applying the duly promulgated Rule 56 summary judgment standard.

IV. CONCLUSION For the foregoing reasons, we reverse and remand for the

District Court to apply the correct summary judgment standard in the first instance.

REVERSED and REMANDED.

[1] Rule 4.4 reads, in relevant part: "An off-duty employee will not conduct themselves in a manner as to reflect discredit upon the Sheriff's Office."

[2] Ismael also alleged a conspiracy to deprive him of equal protection under law in violation of both 42 U.S.C. §§ 1985 and 1986. These counts were later dropped.

[3] State and local government employees must bring their § 1981 claims under § 1983, because it serves as the "exclusive federal remedy for violations of the rights guaranteed in § 1981 by state governmental units." *Jett v. Dallas Indep. Sch. Dist.*, 491 U.S. 701, 733, 109 S. Ct. 2702, 2722 (1989). Here, plaintiffs appropriately brought their action under § 1983.

[4] In a 2023 unpublished opinion, however, we found exactly this. *See Brown v. Wrigley Mfg. Co., LLC*, No. 21-11328, 2023 WL 2386500, at *6 (11th Cir. Mar. 7, 2023). There, we concluded that the plaintiff did not show pretext under *McDonnell Douglas* but that he did present a convincing mosaic of discriminatory intent because that standard allowed him to add his "more general evidence of discriminatory intent to the equation." *Id.*

[5] Or, if only the defendant has moved for summary judgment, the court must reject that motion.

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A P P E N D I X B

42 U.S. Code § 1981 - Equal Rights Under the Law

(a) Statement of Equal Rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

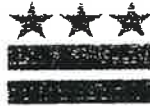
(b) “Make and Enforce Contracts” Defined

For purposes of this section, the term “make and enforce contracts” includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c) Protection Against Impairment

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Human Resources



A P P E N D I X C

September 6, 2007

Linda Sun
716 Madison Street, NW
Washington, DC. 20002

Dear Ms. Sun:

This is to confirm your September 6, 2007 oral acceptance of our offer of employment with the District of Columbia government. You were selected under Vacancy Announcement No. 6975 for the position of Program Support Specialist, DS-301-11/4, at an annual salary of \$53,639. This position is in the District of Columbia Department of Consumer and Regulatory Affairs, 941 North Capitol Street, NE #9500. As previously agreed, the effective date of your appointment is Monday September 17, 2007. You will be appointed in the Career Service.

Persons appointed in the Career Service are subject to the satisfactory completion of a one-year (1-year) probationary period, you will be required to complete the one-year (1-year) probationary period.

This position is not covered under collective bargaining.

You will be eligible to receive health insurance, retirement, and life insurance benefits. More information about these benefits is available on our website at www.dcop.dc.gov.

In accordance with the requirements of the Immigration Reform and Control Act (IRCA) of 1986, any person accepting employment in the United States is required to complete a Form I-9, Employment Eligibility Verification. This form must be completed when you report for processing. At that time you must present original documents that establish your identity and employment eligibility, as follows:

- One (1) document from List A on Enclosure A; or
- If you do not have one (1) of these documents, you will need to provide one (1) document from List B on Enclosure A to establish identity; and
- One (1) document from List C on Enclosure A to establish employment eligibility.

We will make copies of your documents for our records and return the originals to you.

Career Service Appointment
Linda Sun
Page 2

We have enclosed a copy of DC Form 300, Notification and Certification of Bona Fide Residency Requirements, for your review. The form must be signed and submitted to us not later than the effective date of your appointment.

You are also advised that if you accept this position and you are an annuitant under any District government civilian retirement system, your pay will be reduced by the amount of annuity allocable to this period of employment.

To ensure that you receive your pay in a timely fashion, please enroll in our Direct Deposit Program. Bring a voided check from the bank account you want to use for Direct Deposit when you initially report to work or to your scheduled new employee orientation meeting. A direct deposit form is enclosed for your convenience.

On Tuesday, September 4, 2007, at 9:00 a.m., please report to the D.C. Department of Human Resources, at 2000 14th Street, N.W., fourth floor, Washington, D.C., for processing and orientation, and submit the signed acceptance letter. After processing, you are to report to David Harris, Human Resources Specialist for the Department of Consumer and Regulatory Affairs, located at 941 North Capitol Street, N.E., Room 9500, Washington, D.C.

Please contact Kenya Harris, at (202) 671-1810 if you have questions concerning any aspect of this letter.

Sincerely,

Paul Simmons
Supervisory Human Resources Specialist

Enclosure(s)

A P P E N D I X D

43. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-(2)(a)(1), and as expressed in common law, prohibits employment discrimination on the basis of race, color, religion, sex, or national origin.

44. Defendants subjected Plaintiff to differential treatment because of her race and national origin, including terminating her because of her race and national origin.

45. As a result of the aforementioned actions, Plaintiff has suffered loss of employment and corresponding salary and benefits, including loss of vested retirement benefits, loss of employment opportunities due to damage to her professional reputation and employment record, and severe mental and emotional distress.

Fifth Cause of Action

Breach of Contract



46. Plaintiff re-alleges, adopts and incorporates by reference the allegations set forth in paragraphs 1-45 above as if fully set forth herein.

47. Pursuant to 42 U.S.C. § 1981, "all persons ... shall have the same right ... to make and enforce contracts ... and to the full and equal benefit of all laws and proceedings...."

48. Plaintiff had a contract for employment with the D.C. Government. *See Exhibit*

1.

49. At all times hereto, Plaintiff performed her obligations under her contract with Defendants. The stated cause for which Plaintiff was terminated is a pretext for race and national origin discrimination, and was done in retaliation for complaints against Defendants.

50. Therefore, Defendants intentionally breached its contractual commitments to Plaintiff by terminating her employment without cause.

51. At the time the parties entered into the contract, it was known and understood that in the event of a breach, Plaintiff would suffer present and future loss of earnings as a foreseeable and probable result thereof.

52. As a result of the aforementioned actions, Plaintiff has suffered loss of employment and corresponding salary and benefits, including loss of vested retirement benefits, loss of employment opportunities due to damage to her professional reputation and employment record, and severe mental and emotional distress.

Sixth Cause of Action

Intentional Infliction of Emotional Distress

53. Plaintiff re-alleges, adopts and incorporates by reference the allegations set forth in paragraphs 1-52 above as if fully set forth herein.

54. Defendants were aware that its actions were in violation of the law, and as a result, they were either intentionally or recklessly caused.

55. As a direct and proximate consequence of the actions of the Defendants, Plaintiff has sustained and continues to sustain injuries and damages in the form of severe emotional distress.

56. As a result of the aforementioned actions, Plaintiff has suffered loss of employment and corresponding salary and benefits, including loss of vested retirement benefits, loss of employment opportunities due to damage to her professional reputation and employment record, and severe mental and emotional distress.

A P P E N D I X E

From: Sun, Linda (OTA)
Sent: Thursday, February 12, 2009 9:16 AM
To: Taylor, Dennis (OTA)
Cc: Shreve, Johanna (OTA)
Subject: RE: Misleading Statement

Mr. Taylor:

I think your point is well taken if there had been no discussion with Parag and this is the first time we are communicating. However, at a meeting at OTA several weeks ago when Parag came over with another attorney, I explained extremely clearly that I was not an attorney, that when clients of OTA who do not speak English well need legal representation they are unable to get help from the legal services organizations because of the language barrier. We have communicated many times of the need for legal representation because there is none at OTA.

The danger in statements such as yours once again warn, charge, and insinuate wrongdoing without sufficient background knowledge. Unless you have been in on the discussions from the very beginning, going back to several months of communication, it is easy to jump to conclusions based on superficial information.

Please know that I am always happy to fill you in on the background of any event that is of concern to you. Having worked at law firms I fully appreciate your need to inform me of my role in order not to mislead – and rightly so. However, I think it is also important that you take the time to ask before reaching conclusions. One of my law professors who clerked for Justice Thurgood Marshall said he always told his clerks, "Never assume anything, because it makes an ass out of you and me."

Linda

Linda C. Sun
Government of the District of Columbia
Office of the Tenant Advocate
941 North Capitol Street, NE
Suite 7400
Washington, DC 20002
linda.sun@dc.gov
202-719-6575 tel

statements of being an attorney or a lawyer and we have addressed your previous practice of including 'J.D.' in your email signature. However, you must also think of how both a lay person and a lawyer would interpret your words. Please be very careful to not in any way imply that you are a lawyer. I do not want you to run afoul of District law." *Id.*

Plaintiff responded by acknowledging that Taylor's "point is well taken if there had been no discussion with Parag and this is the first time we are communicating." Sun Feb. 12, 2009 Email, Defs.' Ex. 9 [Dkt. # 64-9] at 3. Plaintiff explained that she had informed Khandhar in a meeting "several weeks ago" that she was not an attorney and conveyed the difficulties OTA clients "who do not speak English well" had in getting help from legal services organization because of the language barrier. *Id.* Plaintiff then admonished her supervisor:

The danger in statements such as yours once again warn, charge, and insinuate wrongdoing without sufficient background knowledge. Unless you have been in on the discussions from the very beginning going back to several months of communication, it is easy to jump to conclusions based on supervision information. . . . I think it is also important that you take the time to ask before reaching conclusions. One of my law professors who clerked for Justice Thurgood Marshall said he always told his clerks, "Never assume anything, because it makes an ass out of you and me."

Id.

No. 25-6745

IN THE
Supreme Court of the United States

LINDA SUN,

Petitioner

v.

D.C. OFFICE OF EMPLOYEE APPEALS, *ET AL.*,

Respondents

Declaration of Service

I, Linda Sun, do declare that on this 15th day of May, 2026 I served a copy of the Petition for Rehearing in the above-entitled case upon all parties by depositing a copy in the United States mail, Priority Mail postage prepaid, to:

Stacy L. Anderson, Esq., Senior Assistant Attorney General
Office of the Solicitor General
Office of the Attorney General for the District of Columbia
400 6th Street, NW, Suite 8100
Washington, DC 20001

Lasheka Brown Bassey, Esq., General Counsel
D.C. Office of Employee Appeals
955 L'Enfant Plaza, SW, Suite 2500
Washington, DC 20024

I declare under penalty of perjury that the foregoing is true and correct.

Date: May 15, 2026

Respectfully submitted,



Linda Sun, *pro se*, proceeding *in forma pauperis*
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