

25-6826

No.

ORIGINAL

Supreme Court, U.S.
FILED

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IN THE

SUPREME COURT OF THE UNITED STATES

KELU SMITH

— PETITIONER

(Your Name)

vs.

UNITED PARCEL SERVICE, INC.

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

KELU D. SMITH

(Your Name)

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QUESTION(S) PRESENTED

1. UNDER THE "BUT FOR" CAUSATION, THE "MOTIVATING FACTOR" CAUSATION, OR APPLYING THE McDONNELL DOUGLAS FRAMEWORK, CAN A DEFENDANT BE GRANTED SUMMARY JUDGMENT IF AT SEVERAL STAGES BEFORE AND DURING PROCEEDINGS THE PLAINTIFF ESTABLISHED GENUINE DISPUTE REGARDING MATERIAL FACT(S), AS A MATTER OF LAW WITHOUT A FACT-FINDER, TRIAL, OR JURY?
2. WHETHER A PLAINTIFF CAN ESTABLISH COLLUSION, FRAUD, MISREPRESENTATION, AND MISCONDUCT BY OPPOSING PARTY IN JUNCTION WITH PLAINTIFF'S FORMER COUNSEL UNDER FEDERAL RULES OF CIVIL PROCEDURE 56(h) AND 60(b) IF PLAINTIFF [TIMELY] INFORMED/NOTIFIED A COURT OF CONDUCT SO EGREGIOUS THAT IT WAS NOT "EXCUSABLE NEGLIGENCE" BEFORE AND AFTER A JUDGMENT WAS ENTERED.

LIST OF PARTIES

- All parties appear in the caption of the case on the cover page.
- All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

- *Smith v. UPS*, No. 4:22-cv-4138, U.S. DISTRICT COURT SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION. JUDGMENT ENTERED JUN. 5, 2024.
- *Smith v. UPS*, No. 24-20299, U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT. JUDGMENT ENTERED NOV. 14, 2025.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

- reported at NOT APPLICABLE (N/A); or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

- reported at NOT APPLICABLE (N/A); or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix (N/A) to the petition and is

- reported at NOT APPLICABLE (N/A); or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the NOT APPLICABLE (N/A) court appears at Appendix (N/A) to the petition and is

- reported at NOT APPLICABLE (N/A); or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 14 NOVEMBER 2025.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: NOT APPLICABLE (N/A), and a copy of the order denying rehearing appears at Appendix (N/A).

An extension of time to file the petition for a writ of certiorari was granted to and including NOT APPLICABLE (N/A) (date) on NOT APPLICABLE (N/A) (date) in Application No. (N/A) A (N/A).

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

For cases from **state courts**:

The date on which the highest state court decided my case was NOT APPLICABLE (N/A). A copy of that decision appears at Appendix (N/A).

A timely petition for rehearing was thereafter denied on the following date: NOT APPLICABLE (N/A), and a copy of the order denying rehearing appears at Appendix (N/A).

An extension of time to file the petition for a writ of certiorari was granted to and including NOT APPLICABLE (N/A) (date) on NOT APPLICABLE (N/A) (date) in Application No. (N/A) A (N/A).

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Federal Rule of Appellate Procedure 10(e) – CORECTION or MODIFICATION of the RECORD provides:

- (1) if any difference arises about whether the record truly discloses what occurred in the district court, the difference must be submitted to and settled by that court and the record conformed accordingly.
- (2) if anything, material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded:
 - (A) on stipulation of the parties;
 - (B) by the district court before or after the record has been forwarded; or
 - (C) by the court of appeals.
- (3) All other questions as to the form and content of the record must be presented to the court of appeals.

Federal Rule of Civil Procedure 56(a) – MOTION for SUMMARY JUDGMENT or PARTIAL SUMMARY JUDGMENT provides:

A party may move for summary judgment, identifying each claim or defense-or the part of each claim or defense- on which summary judgment is sought. The court shall grant summary judgment 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. The court should state on the record the reasons for granting or denying the motion.

Federal Rule of Civil Procedure 60(b) – GROUNDS for RELIEF from a FINAL JUDGMENT, ORDER, or PROCEEDING provides:

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in the time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

Federal Rule of Evidence 201 – JUDICIAL NOTICE of ADJUDICATIVE FACTS provides:

- (a) SCOPE. This rule governs judicial notice of an adjudicative fact only, not a legislative fact.
- (b) KINDS of FACTS THAT MAY BE JUDICALLY NOTICED. The court may judicially notice a fact that is not subject to reasonable dispute because it:
 - (1) is generally known within the trial court's territorial jurisdiction; or
 - (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

Texas Labor Code § 21.001 (formerly the THCRA) provides:

- (1) for the execution of the policies of Title VII of the Civil Rights Act of 1964 and its subsequent amendments;
- (2) identify and create an authority that meets the criteria under 42 U.S.C. Section 2000e-5 (c) and 29 U.S.C. Section 633;
- (3) provide for the execution of the policies embodied in Title I of the Americans with Disabilities Act of 1990 and its subsequent amendments;
- (4) secure for persons in this state, including persons with disabilities, freedom from discrimination in certain employment transactions, in order to protect their personal dignity;
- (5) make available to the state the full productive capacities of persons in this state;
- (6) avoid domestic strife and unrest in this state;
- (7) preserve the public safety, health, and general welfare; and
- (8) promote the interests, rights, and privileges of persons in this state.

Texas Labor Code § 21.051 (formerly the THCRA) provides:

An employer commits an unlawful employment practice if because of race, color, disability, religion, sex, national origin, or age the employer:

- (1) fails or refuses to hire an individual, discharges an individual, or discriminates in any other manner against an individual in connection with compensation or the terms, conditions, or privileges of employment; or
- (2) limits, segregates, or classifies an employee or applicant for employment in a manner that would deprive or tend to deprive an individual of any employment opportunity or adversely affect in any other manner the status of an employee.

Title VII of the Civil Rights Act of 1964 Section 703(a) – 42 U.S.C. § 2000e-2(a) “in pertinent parts” provides:

- (a) it shall be an unlawful 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; or
 - (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin.
- (c) it shall be an unlawful employment practice for a labor organization –
 - (1) to exclude or expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;
 - (2) to limit, segregate, or classify its membership of applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual’s race, color, religion, sex, or national origin; or

- (3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.
- (h) notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful practice under this subchapter for an employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 206(d) of Title 29.
- (k) BURDEN of PROOF in DISPARATE IMPACT CASES
 - (1)
 - (A) An unlawful employment practice-based o disparate impact is established under this subchapter only if –
 - (i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or
 - (B)
 - (i) with respect to demonstrating that a particular employment practice causes a disparate impact as described in subparagraph (A)(i), the complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent’s decision-making process are not capable of separation for analysis, the decision-making process may be analyzed as one employment practice.
 - (2) A demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination under this subchapter.
- (m) except when as otherwise provided in this subchapter, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.

STATEMENT OF THE CASE

A. FACTUAL BACKGROUND and DISTRICT COURT PROCEEDINGS

Petitioner, Kelli D. Smith, was an employee of United Parcel Service, Inc., the respondent, from September 2017 to September 2022. During her tenure, Ms. Smith repeatedly raised concerns and filed formal complaints to UPS's management, HR, ethics hotline, and corporate office; to Teamsters Local Union No. 988's business representatives, trustees, and corporate office; and to the EEOC alleging payroll disparity in relation to, and as a result of racial and sexual discrimination, a violation of the Texas Commission on Human Rights Act (TCHRA) and Title VII of the Civil Rights Act of 1964. Ms. Smith engaged in a number of panel meetings with UPS's labor managers and Teamsters Local Union No. 988's stewards, business representatives, and trustees. Additional complaints and grievances were filed by Ms. Smith to the same above entities for the same on-going infractions, now to include excessive retaliation, also a violation of TCHRA and Title VII. Ms. Smith was terminated for the second and final time, two-and-a-half months after filing her second EEOC charge.

Ms. Smith filed suit in state court, which was timely removed by UPS to the United States Court Southern District of Texas Houston Division (case no. 4:22-cv-4138) under the TCHRA alleging race, gender, and disability discrimination, a hostile-work-environment, and retaliation. UPS testified Ms. Smith's termination was due to dishonesty. The district court granted UPS summary judgment on all claims.

B. COURT of APPEALS PROCEEDINGS

Ms. Smith timely appeared to the United States Court of Appeals for the Fifth Circuit (case no. 24-20299). The Fifth Circuit vacated the district court's summary judgment on Ms. Smith's hostile-work-environment claim and remanded for the district court to "state on the record its

reasons” in accordance with Federal Rule of Civil Procedure 56(a). In all other respects, Fifth Circuit affirmed the district court’s summary judgment on all other claims.

This interpretation deepened a significant, existing circuit split amongst several circuits regarding the standard of causation required to survive a summary judgment in specific areas of Federal law, particularly related to statutory interpretation as it relates to intersectional discrimination and compensation disparity. The split arises over how much evidence of causation Ms. Smith must present to meet her initial prima facie burden or that she was replaced by, or treated less favorably than others allowing Ms. Smith to move past summary judgment to trial.

C. THE QUESTION(S) PRESENTED

Ms. Smith’s petition for writ of certiorari follows the Fourth Circuit’s recent decision in *Finley v. Kraft Heinz Inc.*, 146 F. 4th 382 (4th Cir. 2025) which presents the following question for review: after UPS presents a ‘legitimate, non-discriminatory reason for firing Ms. Smith...dishonesty...’ could a reasonable jury conclude UPS’s decision-making process was influenced by Ms. Smith’s protected class and/or activity. In similar fashion, Ms. Smith has presented genuine dispute, particularly to, how investigations were conducted and how grievances were processed (to include throughout proceedings). Thereby summary judgment was and is improper.

REASONS for GRANTING the PETITION

The decision of the United States Court of Appeals for the Fifth Circuit presents a compelling reason for this Court's review. The ruling directly conflicts with this Court's strongly, reaffirmed, proper procedural standards for summary judgment motions and undermines Title VII's intent to provide protection under Federal and state laws (TCHRA). The ruling also deepens an existing, mature circuit split regarding the causation standard(s) of establishing a *prima facie* case and surviving summary judgment.

I. THE FIFTH CIRCUIT'S DECISION DEEPENS A CLEAR AND ACKNOWLEDGED CIRCUIT SPLIT ON A RECURRING FEDERAL QUESTION

The most critical function of this Court is to ensure uniformity in Federal law. FRCP 56(a) clearly reads summary judgment is appropriate only when "the movant is entitled to judgment by law." The Fifth Circuit vacated summary judgment on Ms. Smith's hostile-work-environment claim only, affirming all other claims of discrimination and retaliation. First, under Federal law, it is generally not possible to have a legally actionable hostile-work-environment claim without the presence of discrimination based on a protected characteristic (like race, gender, age, disability, or religion) or illegal retaliation. The law further states: while general bullying, rudeness, or a "toxic" culture can make a job unbearable, Federal law such as Title VII, does not function as a general "civility code". The key requirement for a hostile-work-environment claim, again quoting Federal law, is that the hostility must be "because of" the victim's inclusion in a legally protected class. Discrimination is the "lynchpin" of the claim; the necessary link that makes the severe or pervasive harassment unlawful. In the landmark case, *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57 (1986), this Court held that 'workplace harassment' can constitute unlawful discrimination under Title VII.

Affirming the district court's judgment, Fifth Circuit cited Ms. Smith established that "she (1) was a member of [a] protected class, (2) was qualified for the position at issue, (3) suffered a final adverse employment action," but failed to show she "was either (a) replaced by some one outside the protected class or (b) otherwise treated less favorably than others who were similarly situated but outside the protected class." See Appendix A. This ruling directly conflicts with Seventh Circuit's *Nichan v. Stratosphere's* ruling establishing, to prove [discrimination] based on a hostile-work-environment, Ms. Smith must only show (1) she was subjected to unwelcomed [harassment], (2) she was harassed because of [her protected class], (3) the harassment was so severe or pervasive as to alter the conditions of employment, and (4) some basis for holding the employer liable. Baffling is the ruling also conflicts with Fifth Circuit's own judgment (*Woodhouse v. Magnolia Hospital*), in that, Ms. Smith need not show she was replaced by someone non-African American, male, or nondisabled; only that there is evidence from which a jury can conclude that UPS intended to discriminate against her based in part on her protected class. This Court admonishes tribunals to always consider the context when assessing whether harassing conduct is severe and pervasive, and attention to context is equally important in determining whether conduct is [protected class] motivated. The real social impact of workplace behavior, as affirmed by this Court, often depends on a constellation of surrounding circumstances, expectations, and relationships which are not fully captured by a simple recitation of the words used or the physical act(s) performed. The full scope of Title VII should be considered in all its extensions in Ms. Smith's case as in *Okonwsky v. Garland*.

II. THE QUESTIONS PRESENTED ARE OF SUBSTANTIAL NATIONAL IMPORTANCE AFFECTING THE ENFORCEMENT of TITLE VII of the CIVIL RIGHTS ACT (1964) as COMPOUNDED with

INTERSECTIONAL DISCRIMINATION and the STANDARD of CAUSATION for a *PRIMA FACIE* CASE and SURVIVING SUMMARY JUDGEMENT

Summary judgment standards and Title VII are not isolated statutes nor are the provisions of the burden-shifting *McDonnell Douglas* framework which Ms. Smith's retaliation claims was also subjected to. See Appendix A. Ms. Smith demonstrated that: (1) she engaged in a protected activity; (2) an adverse employment action occurred; and (3) a causal link exists between the protected activity and the adverse employment action displayed by the two-and-a-half-month timeframe between Ms. Smith's EEOC charge and her termination. It has been held that "temporal proximity alone, when very close, can in some instances establish a *prima facie* case of retaliation. See *Strong v. Univ. Healthcare Sys. LLC*.

To add, the continuing violation exception to the statute of limitations provides that where evidence of an on-going discriminatory policy or practice is present, the court may consider all of UPS's action(s) allegedly taken pursuant to such a policy, even if some are time-barred. See *Huckabay v. Moore and estate of Martineau v. ARCO Chemical Co.* A "continuing violation", meaning, a series of related acts, one which falls within the limitation period can extend the time...under Title VII. See *Webb v. Cardiothoracic Surgery Associates of North Texas, P.A.*

Particularly, as with Ms. Smith's case, just because intent of discrimination is rarely overt, it does not diminish the fact of law that the TCHRA forbids "discrimination with respect to compensation," and it, too, covers "compensation issues...when they allege discrimination..." See *Allen v. Environgreen Landscape Pros., Inc.*

UPS proffered an [alleged] legitimate reason of 'dishonesty' for Ms. Smith's termination, shifting the burden back to her to show that the adverse action would not have occurred 'but for' UPS's retaliatory motive(s). See Appendix A. A widely accepted method of proving pretext, and thus liability, is to show that UPS's statements are false and unworthy of credence, just as Ms. Smith

has testified presenting bolstering evidence of the disparate treatment. See Appendix D. The divergent application creates a situation where the success of such a case as Ms. Smith's, depends entirely on geography, whereabout, circuits applying the stricter "but for" standard versus the more lenient "motivating factor" standard makes surviving summary judgment depend on where you live and/or work. Issues of material fact are "genuine" if they require resolution by a trier of fact and disputes over facts that might affect the outcome of a lawsuit, under governing law, will preclude entry of summary judgment especially if the evidence is such that a reasonable fact-finder could find in favor of Ms. Smith...summary judgment should not be granted. See *Nixon v. Mr. Property Management Co.* and *Anderson v. Liberty Lobby, Inc.* The true motivation for Ms. Smith's termination, in and of itself, is material to whether the termination was illegal and the dispute about intent needs to be resolved by a jury. The First Circuit recently vacated a \$93 million summary judgment in *SEC v. Commonwealth Fin. Network*, emphasizing the question of "materiality" is typically a fact issue for a jury. This is a classic, recurring issue that demands this Court's resolution.

III. THE FIFTH CIRCUIT'S RULING CONFLITS with the SUPREME COURT'S PRECEDENT IN *TOLAN V. COTTON*

Finally, the Fifth Circuit's opinion cannot be reconciled with this Court's decision in *Tolan v. Cotton* which serves as a strong example of an appellate court to properly acknowledge evidence that the lower court had ignored or mischaracterized when making its summary judgment decision. It was noted by the Fifth Circuit that Ms. Smith is "bound to the acts of here attorney" and that, generally, the "record on appeal should not be enlarged with evidence not before the district court. However, Fifth Circuit neglected to acknowledge or apply the few narrow exceptions, rules, and highly constrained procedural mechanisms initiated by Ms. Smith that allow for 'record on appeal' to be modified or supplemented under very specific

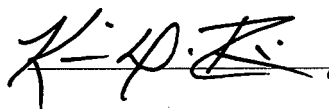
circumstances like correcting omissions or addressing undisputed facts, such as those alleged in this case. Key exhibits were referenced and relied on in district court but [accidentally] left out of the clerk's official compilation of record and certain facts were not subject to reasonable dispute because they were generally known and/or true. See *Federal Rule of Appellate Procedure 10(e)*; *Federal Rule of Evidence 201*; and *FRCP 60(b)*. Furthermore as, too, noted by the Fifth Circuit, UPS advances several arguments for summary judgment and, of which rationale was relied on is unclear nor in the official record. Though this, evidence was improperly weighed regarding: "...and even if it had, an error would be harmless...", essentially accepting UPS's version of events and disregarding Ms. Smith's all together. See *Bell v. Schexnayder*; *Chikkam Ammiraju v. Chikkam Seshamma*; *United States v. Ebel*; and *Walker v. Johnston*. This Court emphasizes, at the summary judgment stage, a judge's function "is not to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.

Review is necessary to clarify the proper application of due process and the relevant evidentiary standard of proof in accordance to the text of the law ensuring that because, there is conflicting evidence regarding the critical factual issue(s) of compensation, dishonesty, discrimination, a hostile-work-environment, and retaliation, that the strict summary judgment standard is applied instead of an erroneous grant of summary judgment. See *Antonin Scalia* ("*The text is the law, and it is the text that must be observed.*"). In closing, review is vitally necessary to establish a precedent and to provide the reinforcement needed for these existing legal principles to stand and serve as a precedent for future cases. One nation under God, in Jesus I trust.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

 KELLI D. SMITH

Date: 22 DECEMBER 2025