

No. 25 - 6828

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SUPREME COURT, U.S.

In the Supreme Court of the United States

ABRON TOURÉ,
Petitioner.

v.

AMERICAN EXPRESS NATIONAL BANK,
Respondent.

On Petition for a Writ of Certiorari
to the Supreme Court of the State of Hawai'i

PETITION FOR A WRIT OF CERTIORARI

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January 26, 2026

I. CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, the petitioner is not a corporation, has no parent corporation, and no publicly held company owns 10% or more of any interest in the petitioner.

II. QUESTIONS PRESENTED

1. Whether a state court violates the Due Process Clause of the Fourteenth Amendment by granting summary judgment based on materially identical, verbatim affidavits submitted by multiple affiants, where those affidavits lack individualized personal knowledge and conflict with the creditor's own contemporaneous documentary records.

2. Whether a state court violates due process by resolving disputed issues of agency, authority, or the identity of the real party in interest at the summary judgment stage by crediting coordinated affidavit statements over conflicting documentary evidence, thereby engaging in arbitrary fact-finding and denying a meaningful opportunity to be heard.

III. PARTIES TO THE PROCEEDING

The petitioner is Abron Touré, proceeding *pro se*.

The respondent is American Express National Bank.

Counsel for respondent in the court below was Jason Oliver, Counsel of Record, along with Marvin Dang and Renee Furuta-Barnum, of Nelson & Kennard.

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<i>Scott v. Harris</i> , 550 U.S. 372, 380 (2007)	2, 5
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Heinz <i>et al.</i> , <i>Unchanging Rates of Pro Se Litigation in Federal Court</i> , 41 Law & Soc’y Inquiry 1 (2016)	6

VI. OPINIONS BELOW

The order of the Supreme Court of the State of Hawai‘i denying discretionary review is unpublished and is included in the Appendix. *American Express National Bank v. Touré*, No. SCWC-23-0000408 (Haw. Nov. 4, 2025). See App. 1.

The opinion of the Hawai‘i Intermediate Court of Appeals dismissing petitioner’s appeal from summary judgment entered by the District Court is unpublished and is included in the Appendix. *American Express National Bank v. Touré*, No. CAAP-23-0000408 (Haw. Ct. App. Aug. 11, 2025). See App. 2-4.

The judgment of the District Court was entered in *American Express National Bank v. Touré*, Case No. 1DRC-21-0003357.

VII. JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1257(a) because the judgment of Hawai‘i’s highest court finally adjudicates a case in which petitioner asserts rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, as interpreted by this Court.

The decision of the Hawai‘i Intermediate Court of Appeals dismissing petitioner’s appeal from the summary judgment entered by the District Court was entered on August 11, 2025. *American Express National Bank v. Touré*, No. CAAP-23-0000408.

This petition is timely filed within 90 days of the entry of the Hawai‘i Supreme Court’s order, as required by Supreme Court Rule 13.1.

VIII. CONSTITUTIONAL & STATUTORY PROVISIONS

The Fourteenth Amendment to the United States Constitution provides, in relevant part:

“No State shall ... deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1.

This case implicates the Due Process Clause of the Fourteenth Amendment, which imposes constitutional limits on state-court adjudication, including the requirement that courts refrain from arbitrary fact-finding and afford litigants a meaningful opportunity to contest material factual disputes.

This case further implicates the constitutional principles governing summary adjudication as articulated by this Court, including the prohibition against resolving genuine disputes of material fact, weighing evidence, or making credibility determinations at the summary judgment stage. See, e.g., *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133 (2000); *Scott v. Harris*, 550 U.S. 372 (2007).

Although state courts are not governed by the Federal Rules of Civil Procedure, many state summary judgment regimes—including Hawai‘i’s—are modeled on and expressly informed by this Court’s summary-judgment jurisprudence. Where a state court purports to apply those standards, due process requires that they be applied in a manner consistent with the constitutional limitations recognized by this Court.

IX. STATEMENT OF THE CASE

This case arises from a summary judgment motion in a debt-collection action. Petitioner received communications regarding an alleged debt assigned by a creditor. The creditor assigned the debt to Zwicker & Associates, a debt collection law firm for handling, which lacked an in-state office, and Zwicker & Associates coordinated with another debt collection law firm, Nelson & Kennard to pursue collection activity. See App. 20, 22, 25. Nelson & Kennard submitted letters and multiple affidavits in materially identical language asserting direct retention by the creditor while simultaneously disclaiming authority to negotiate the debt. The creditor's contemporaneous records, however, do not acknowledge retaining Nelson & Kennard, and Zwicker & Associates' involvement is omitted entirely from notification letters and affidavits. See App. 12, 24, 26.

The district court credited these verbatim affidavits in granting summary judgment, holding that they demonstrated no genuine dispute of material fact. On appeal, the court affirmed, relying on the affidavits despite clear contradictions with the creditor's contemporaneous records. The decision departed from the constitutional limits on summary adjudication recognized by this Court's precedents and resulted in arbitrary fact-finding in violation of due process. The legal issues presented are whether materially identical affidavits submitted by multiple affiants can support summary judgment, whether summary judgment may rest on affidavits that conceal agency relationships or the identity of the real party in interest, and whether the lower courts properly reconciled conflicts between affidavits and documentary evidence. This case provides an ideal vehicle for review because the lower court credited verbatim affidavits that directly conflicted with the record, and the procedural posture presents no barrier to addressing these issues.

By way of background, the account entered default due to the business strategy of and during a period in which Petitioner had engaged a third-party provider for debt-relief services. On January 8, 2020, Petitioner entered into a thirty-nine-page agreement with Canyon Legal Group concerning such services, including anticipated negotiations with American Express National Bank. That engagement was at fault and has since concluded. See App. 17, 18-19, 21.

X. REASONS FOR GRANTING THE WRIT

This case presents a question of exceptional importance concerning the integrity of summary judgment practice and the constitutional limits on adjudication under the Due Process Clause of the Fourteenth Amendment. Specifically, it asks whether materially identical, verbatim affidavits submitted by multiple affiants may support summary judgment—particularly where those affidavits conflict with contemporaneous documentary evidence and obscure agency relationships or the identity of the real party in interest.

A. Coordinated Verbatim Affidavits Cannot Support Summary Judgment Consistent with Due Process

This Court's precedents recognize that affidavits used to support dispositive rulings must reflect personal knowledge and competent evidence. Materially identical affidavits submitted by multiple affiants cannot satisfy these requirements. By their nature, verbatim affidavits reflect scripted advocacy rather than independent, personal knowledge.

Permitting such affidavits to serve as the basis for summary adjudication undermines due process and allows form to substitute for proof. This Court has repeatedly emphasized that factfinding at the summary stage must rest on competent evidence, not conclusory or manufactured

submissions. See *Lujan v. National Wildlife Federation*, 497 U.S. 871, 888 (1990); *Sartor v. Arkansas Natural Gas Corp.*, 321 U.S. 620, 627–28 (1944).

B. Summary Judgment Cannot Depend on Credibility Determinations or Evidence Weighing

Summary judgment may not rest on credibility determinations, the weighing of evidence, or the drawing of inferences—functions reserved exclusively to the jury. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). When courts treat coordinated, verbatim affidavits as dispositive evidence, they necessarily credit the coordination and uniformity among affiants, thereby engaging in impermissible credibility assessments contrary to this Court’s precedent.

C. Verbatim Affidavits Cannot Override Contemporaneous Documentary Evidence

This Court has made clear that testimony need not be credited when it is blatantly contradicted by the record. *Scott v. Harris*, 550 U.S. 372, 380 (2007); *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 151 (2000). In this case, the creditor’s own contemporaneous business records directly contradict the affidavits relied upon below.

Accepting post hoc affidavit narratives over objective documentary evidence permits manufactured testimony to displace the evidentiary record and deprives the petitioner of the jury trial guaranteed by the Seventh Amendment.

D. Coordinated Verbatim Affidavits Were Used to Conceal Agency and True Party Identity

Here, Nelson & Kennard coordinated the submission of multiple identical affidavits to assert authority it did not possess and to omit Zwicker & Associates’ involvement. Agency, authority, and the identity of the real party in interest are material facts. *Poller v. Columbia*

Broadcasting Sys., Inc., 368 U.S. 464, 473 (1962). Disputes over such material facts cannot be resolved in a manner that deprives a party of the constitutional guarantee of fair adjudication under the Due Process Clause of the Fourteenth Amendment.

E. Coordinated Affidavits Permit a Reasonable Inference of Concerted Misrepresentation

The coordinated submission of verbatim affidavits that misstate agency relationships and conflict with contemporaneous records constitutes circumstantial evidence from which a reasonable jury could infer concerted misrepresentation. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 588 (1986). At a minimum, these facts create a genuine dispute of material fact, precluding summary judgment.

F. The Sham-Affidavit Doctrine Is Inadequate to Address This Problem

The sham-affidavit doctrine applies only when an affidavit contradicts prior sworn testimony by the same witness. It does not address first-instance, coordinated affidavits submitted by multiple affiants. The lower courts' reliance on that doctrine leaves a doctrinal gap that permits affidavit-driven summary judgment without meaningful scrutiny—an issue only this Court can resolve. See App. 2-4.

G. The Issue Is Exceptionally Important and Recurring

Summary judgment now resolves a substantial majority of pro se civil cases. See Heinz *et al.*, *Unchanging Rates of Pro Se Litigation in Federal Court*, 41 Law & Soc'y Inquiry 1 (2016). Institutional litigants increasingly rely on affidavit-driven motions. Allowing verbatim affidavits to secure judgment undermines the jury's role in fact-finding, disproportionately disadvantages individual litigants, and erodes public confidence in the judicial process.

H. This Case Is an Ideal Vehicle

This case squarely presents multiple verbatim affidavits, direct conflicts with contemporaneous documentary evidence, concealment of agency and party identity, and a lower-court decision crediting the affidavits as dispositive. There are no procedural obstacles to review, making this case an ideal vehicle for resolving these important and recurring questions. Again, see App. 2-4.

XI. This Case Illustrates a Recurring Due Process Problem in Summary Judgment Practice

This case illustrates a recurring problem in summary judgment practice: the use of coordinated, materially identical affidavits to resolve disputed factual issues that should be tested through the adversarial process. When courts credit such affidavits over conflicting contemporaneous documentary evidence, they risk substituting scripted narratives for genuine fact-finding.

Although federal and state courts employ different procedural rules, the constitutional limits on summary adjudication are the same. Due process requires that courts refrain from resolving genuine disputes of material fact, weighing competing evidence, or making credibility determinations at the summary judgment stage. This Court's precedents recognize those limits and make clear that summary judgment is appropriate only when the record permits but one reasonable conclusion.

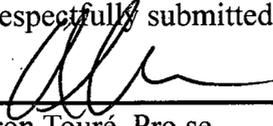
Review is warranted to clarify that coordinated, verbatim affidavits cannot constitutionally substitute for competent, individualized evidence where material facts are disputed, and that state courts may not engage in arbitrary fact-finding under the guise of summary judgment.

XII. CONCLUSION

For these reasons, the petition for a writ of certiorari should be granted.

DATED this 26 day of January 2026

Respectfully submitted



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