

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

CHARLES FAULK,

Petitioner,

v.

OWENS CORNING ROOFING AND ASPHALT, LLC,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether courts may affirm summary judgment in a Title VII case by discounting sworn testimony, drawing inferences in the employer's favor, and treating the employer's explanation as controlling, contrary to *Tolan v. Cotton*, 572 U.S. 650 (2014), *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), and *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133 (2000).
2. Whether a Title VII plaintiff may be denied a prima facie case solely for lack of a "nearly identical" comparator when the plaintiff offers other evidence supporting an inference of discrimination, contrary to *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), *Furnco Construction Corp. v. Waters*, 438 U.S. 567 (1978), and *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248 (1981).

PARTIES TO THE PROCEEDING

Petitioner Charles Faulk was the plaintiff in the United States District Court for the Northern District of Texas and the appellant in the United States Court of Appeals for the Fifth Circuit.

Respondent Owens Corning Roofing and Asphalt, LLC, was the defendant in the district court and the appellee in the court of appeals.

PROCEEDINGS DIRECTLY RELATED TO THIS CASE

Faulk v. Owens Corning Roofing and Asphalt, LLC, No. 3:23-cv-00230-X

(N.D. Tex.).

Faulk v. Owens Corning Roofing and Asphalt, LLC, No. 25-10356 (5th Cir.).

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The opinion of the United States Court of Appeals for the Fifth Circuit was entered on December 18, 2025, and is reproduced at App. 1a–16a.

The district court’s memorandum opinion and order granting summary judgment was entered on February 18, 2025, and is reproduced at App. 17a–38a.

The district court’s final judgment, entered on February 18, 2025, is reproduced at App. 39a.

JURISDICTION

The judgment of the court of appeals was entered on December 18, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY AND RULE PROVISIONS INVOLVED

Federal Rule of Civil Procedure 56(a) provides that summary judgment may be granted only if “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a)(1), makes it unlawful for an employer to discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because of race.

Title VII's anti-retaliation provision, 42 U.S.C. § 2000e-3(a), prohibits an employer from discriminating against an employee because he opposed an unlawful employment practice or participated in a Title VII proceeding.

STATEMENT OF THE CASE

Charles Faulk is an African-American employee who worked for respondent Owens Corning Roofing and Asphalt, LLC, at its Irving, Texas facility beginning in 2016. Over the course of his employment, petitioner earned additional responsibilities and promotions, including positions as a forklift driver, end-of-line driver, and raw material coordinator. Multiple witnesses described him as competent, helpful, and valued. Even Mike Brown, the supervisor at the center of this case, admitted that petitioner was good at his job and that their relationship did not become contentious until petitioner began raising concerns about equal treatment.

Petitioner's evidence showed that Brown treated Black employees more harshly than others on his shift. Petitioner testified that Brown disproportionately wrote up Black workers and that Brown would not have treated white employees the same way. Other Black employees corroborated petitioner's account. Timothy Holden testified that, when he arrived at the plant, there was already a "deep hate" for petitioner and that the environment was racially hostile toward Black workers. Quinterious Williams testified that Brown wrote up and terminated Black employees at a much higher rate than employees on other shifts and that Black workers under Brown were not treated the same as others.

Petitioner also presented evidence that Brown’s Facebook page displayed a Confederate flag and that Brown’s conduct toward Black employees tracked that symbolism. Petitioner further introduced evidence that, after his termination, an employee texted Brown “WHITE POWER,” and Brown responded, “No sir I’m not a racist.” The court of appeals acknowledged those facts. (App. 3a–4a, 10a).

In the spring of 2022, petitioner’s overtime access was disabled in the company’s CrewSense system. Petitioner complained internally that Brown had shut off his overtime and was singling him out. Respondent later attempted to explain the matter as a temporary or technical issue, but petitioner’s evidence showed that Brown had intentionally deactivated petitioner’s access and that respondent never meaningfully investigated petitioner’s complaint. Petitioner further testified that he told HR that Brown was treating him unfairly because of race. (App. 2a–3a, 7a–8a, 17a–18a).

After petitioner complained internally, the scrutiny escalated. Petitioner was subjected to a post-incident THC test following forklift-related events, even though coworkers testified that similar or worse incidents occurred regularly without testing or serious discipline. Several witnesses testified that respondent had effectively stopped policing marijuana the way it later claimed and that Black workers, not others, were repeatedly singled out for testing and discipline. Petitioner was then placed on a continued-employment or “last chance” agreement. Respondent later claimed petitioner violated that agreement by using AirPods or failing to comply with hearing-protection rules, though petitioner and his witnesses disputed both the

factual basis and the existence of any uniformly enforced written rule matching respondent's later description.

Petitioner also presented evidence that Brown attempted to recruit Holden to lie to HR about petitioner. Holden testified that Brown offered him a forklift role and then asked him to go to HR and say petitioner was causing problems. Holden instead told HR that Brown was retaliating and had a problem with Black employees. After Holden refused to go along, he was himself targeted and soon fired. Williams similarly testified that Brown repeatedly wrote him up after he moved to Brown's shift, while non-Black employees openly violated the same supposed rules without consequence.

Petitioner contacted the Equal Employment Opportunity Commission after these events. He then alleged that respondent's internal behavior shifted into a scramble to justify termination: a tightening narrative around safety violations, racialized communications, and the later emergence of celebratory texts tied to his firing. Petitioner's response to summary judgment argued that the company's explanations were false, inconsistently applied, and selectively enforced, and that a jury could infer both discrimination and retaliation from the whole record. Respondent's summary judgment motion did not argue that Brown's own denial of racism had any legal effect; it argued instead that petitioner lacked comparator evidence, lacked protected activity, and was terminated for legitimate safety and drug-policy reasons.

The district court did not grant summary judgment immediately. It first ruled that it could not decide the motion on the briefs as filed, ordered a sur-reply on

admissibility, and then ordered depositions of Holden and Williams before ruling. After demanding that additional material, the district court still granted summary judgment, holding that petitioner failed to establish a prima facie case of either discrimination or retaliation. (App. 5a, 18a).

The Fifth Circuit affirmed in an unpublished opinion. It treated the fourth prima facie element as the “primary focus,” applied a rigid comparator analysis, and held that even evidence such as Brown’s Confederate flag display and the “WHITE POWER” text exchange was “not enough.” (App. 6a–10a). This petition follows.

REASONS FOR GRANTING THE PETITION

I. The Decision Below Repeats the Rule 56 Error This Court Corrected in *Tolan*.

This Court granted review in *Tolan v. Cotton*, 572 U.S. 650 (2014), because the Fifth Circuit recited the proper summary judgment standard and then applied the opposite one: crediting the movant’s version of events, discounting contrary testimony, and resolving mixed evidence in the defendant’s favor. Though at oral argument, the court of appeals acknowledged *sua sponte* the import of *Tolan*, the same inversion occurred here.

The district court did not lack a developed record. It specifically concluded that, as briefed, it was “unable to rule” on summary judgment and therefore ordered additional admissibility briefing and witness depositions. (App. 5a, 18a). That procedural history matters, as it shows that petitioner was not denied because he had

“no evidence.” He was denied after the district court required more evidence, received more evidence, and then treated the resulting sworn testimony as insufficient despite the volume of evidence to the contrary.

The end result was open noncompliance with Rule 56 and this Court’s cases. Under *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), credibility determinations and weighing evidence are jury functions. Under *Tolan*, courts may not resolve mixed evidence by choosing the employer’s interpretation over the plaintiff’s. Under *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133 (2000), once a plaintiff offers evidence from which a jury could disbelieve the employer’s explanation, the matter ordinarily belongs to the jury.

Here, petitioner presented sworn testimony from himself, Holden, and Williams describing first-hand events: Brown’s treatment of Black workers, Brown’s effort to recruit Holden to lie about petitioner, respondent’s selective drug-testing and discipline practices, overtime deactivation, and a racially hostile environment. Holden and Williams were not armchair commentators. They were workers on Brown’s shift describing what they saw, heard, and experienced. Yet the lower courts discounted their testimony as speculative or insufficient, while treating respondent’s version as decisive.

The Fifth Circuit’s unpublished affirmance is no answer. The court acknowledged petitioner’s evidence, but then still affirmed by treating comparator proof as dispositive and the remainder of the record as legally inadequate. That is

exactly how *Tolan* violations evade review: the right standard is recited and the wrong standard is applied.

This Court's intervention is warranted because the lower courts' error is methodological, not merely factbound. If lower courts may demand additional record development, wholly discount the resulting testimony, and then affirm because the plaintiff still loses on the court's own reading of the evidence, *Tolan* becomes a slogan rather than a rule.

II. The Court of Appeals Distorted *McDonnell Douglas* by Turning Comparator Analysis Into A Rigid Barrier.

This Court has repeatedly described the *McDonnell Douglas* prima facie showing as flexible and "not onerous." *Texas Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 248, 253 (1981); *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 n.13 (1973); *Furnco Constr. Corp. v. Waters*, 438 U.S. 567, 577 (1978). The framework was designed to function as a practical means of raising an inference of discrimination, not as a rigid comparator code that screens out otherwise probative evidence. Yet that is exactly what happened below. Justice Thomas, joined by Justice Gorsuch, recently criticized the use of *McDonnell Douglas* at summary judgment in Title VII cases, explaining that the framework has generated substantial confusion in the lower courts. *Hittle v. City of Stockton*, 145 S. Ct. 759, 759-61 (2025) (Thomas, J., dissenting from denial of certiorari).

The Fifth Circuit's decision exemplifies that confusion. It treated the fourth prima facie element as the "primary focus" and held that petitioner's claim failed

because he lacked a sufficiently “nearly identical” comparator, even though he offered substantial other evidence supporting an inference of discrimination and retaliation. That is not a faithful application of *McDonnell Douglas*. Comparator evidence may be useful, but this Court has never held that a Title VII plaintiff must identify a nearly identical coworker before a jury may consider the rest of the proof. A rule demanding a workplace doppelganger is incompatible with a framework meant to eliminate the most common innocent explanations, not to bar otherwise triable claims at the threshold.

The error is especially clear here because comparator formalism was used to neutralize the balance of petitioner’s evidence. If this record cannot support a jury inference of discrimination, then the problem is not the evidence. The problem is that the standard has been distorted into a tool for dismissal rather than a framework for deciding which cases belong before a jury.

Petitioner did not rely on abstract allegations. He offered evidence of Brown’s Confederate flag display; the “WHITE POWER” text exchange tied to his termination; sworn testimony that Brown disproportionately targeted Black employees; evidence that Brown tried to induce another Black employee to make false complaints specifically against petitioner; evidence that Black workers were singled out for THC testing; evidence that non-Black workers committed similar or more serious conduct without comparable consequences; and evidence that respondent’s explanations shifted and hardened after petitioner complained internally and went to the EEOC. That is a classic totality-of-the-circumstances case.

Yet the lower courts treated the absence of a comparator they considered sufficiently close as effectively dispositive. That turns the prima facie case into a trap and front-loads the merits at the threshold. It also allows courts to disregard evidence that, under *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133 (2000), could support a jury verdict once the employer’s explanations are found false, selective, or unworthy of credence.

This Court should grant review to make clear that *McDonnell Douglas* does not authorize courts to use “nearly identical” comparator analysis as a rigid bar whenever an employer disputes motive. The relevant question remains whether the circumstances, taken together, support an inference of discrimination. The decision below asked, and answered, a different question.

III. The Fifth Circuit’s Treatment of Brown’s Supposed “Disavowal” of Racism Underscores the Need for Review.

This case presents an especially stark example of lower courts drawing inferences for the employer and thereby nullifying race-charged evidence at summary judgment.

The Fifth Circuit acknowledged record evidence that Brown’s Facebook displayed a Confederate flag and that, after petitioner’s termination, another employee texted Brown “WHITE POWER,” to which Brown replied, “No sir I’m not a racist.” (App. 3a–4a, 10a). The court nevertheless held that this evidence was “not enough” because petitioner had not sufficiently satisfied the fourth prima facie element.

That reasoning cannot be squared with *Tolan*, *Anderson*, or *Reeves*. Brown's statement did not negate the contrary evidence, as a matter of law. At most, it created a credibility conflict about what the exchange meant and what Brown's mindset was. Indeed, Brown's response itself did not deny the racial premise of the exchange; it implicitly acknowledged it and created, at minimum, a jury question. Under Rule 56, that conflict must be resolved in petitioner's favor or left for the jury, not turned into an employer-favoring inference.

The problem is compounded by the fact that respondent itself did not advance any freestanding "disavowal of racism" theory below. Respondent argued lack of comparator evidence, lack of protected activity, and legitimate nondiscriminatory reasons for termination. The Fifth Circuit thus went further than respondent asked, effectively converting Brown's self-serving denial into a summary judgment defense. That is not a harmless embellishment. It reveals the deeper logic of the opinion: even when race-charged evidence exists, the court will neutralize it through comparator rigidity and employer-favoring interpretation. If a Confederate flag display, a "WHITE POWER" text tied to the plaintiff's firing, and sworn testimony about racial targeting still cannot get a plaintiff to a jury because the accused supervisor says, in effect, "I am not a racist," then *Reeves* has lost practical force in Title VII litigation. This Court should grant review to make clear that defendants' self-exculpatory denials do not defeat jury-triable conflicts in the evidence.

IV. This Case is An Unusually Suitable Vehicle for Enforcing *Tolan* and Restoring the Proper Operation of *McDonnell Douglas*.

Although the Fifth Circuit’s decision is unpublished, the legal errors are unusually explicit and the record is fully developed. The district court did not dismiss the case on a sparse or undeveloped record; it ordered a sur-reply and witness depositions before ruling. It then held that petitioner nonetheless failed to establish a prima facie case of discrimination or retaliation. The court of appeals affirmed on the same legal grounds, expressly applying comparator formalism and treating the remainder of petitioner’s evidence as insufficient.

There is no preservation problem. Petitioner argued below and on appeal that the district court improperly discounted sworn testimony, misapplied summary judgment standards, and imposed an unduly rigid comparator requirement. The lower courts reached those arguments and rejected them on the merits.

This case therefore gives the Court a clean opportunity to reaffirm two fundamental propositions: first, that lower courts may not evade *Tolan* by reciting Rule 56 while applying the opposite standard; and second, that *McDonnell Douglas* does not permit a plaintiff’s case to be dismissed solely for lack of a sufficiently “nearly identical” comparator when the plaintiff offers other evidence from which a jury could infer discrimination.

This Court should grant the petition because the decision below reflects an increasingly common pattern in employment discrimination cases: comparator formalism and employer-favoring treatment of mixed evidence being used to take

cases from juries despite *Tolan*, *Anderson*, and *Reeves*. Review is warranted to restore the proper role of Rule 56 and the proper operation of the Title VII framework.

CONCLUSION

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

Date: March 17, 2026

Respectfully submitted,

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