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

APPENDIX

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United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
December 18, 2025
Lyle W. Cayce
Clerk

No. 25-10356

CHARLES FAULK,

Plaintiff—Appellant,

versus

OWENS CORNING ROOFING AND ASPHALT, L.L.C.,

Defendant—Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:23-CV-230

Before SMITH, STEWART, and HAYNES, *Circuit Judges*.

PER CURIAM:[*]

This case involves Appellant Charles Faulk's race-based claims of Title VII employment discrimination and retaliation against his former employer, Owens Corning Roofing and Asphalt ("Owens Corning"). Faulk alleges that while he was an employee at Owens Corning, his night-shift supervisor Michael Brown revoked his ability to take overtime shifts for one of his job classifications, and that Brown's discriminatory animus ultimately

[*] This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

led to his termination. On appeal, Faulk argues that the district court erred in analyzing his claims by improperly applying a strict comparator requirement, improperly weighing the evidence, and making credibility determinations that should have been left to a jury. For the following reasons, the judgment of the district court is AFFIRMED.

I

A

Owens Corning is a "market leader in roofing shingles, underlayment, and components products" with an Irving, Texas plant at which employees "manufacture and package quality roofing materials." In 2016, Owens Corning hired Faulk as a utility operator. In 2017, Faulk was promoted to the position of raw material coordinator driver, and in 2019, he was trained to be an end-of-line driver. Faulk primarily worked the night shift and would often take overtime shifts.

When Faulk worked the night shift, Brown was his supervisor. According to Faulk, Brown treated Black employees differently from White employees. Additionally, on December 3, 2019, Brown posted or reposted on his personal Facebook account a post about a Super Bowl squares competition. In the back of one of those photos, hanging in the wall of the garage behind the Mustang that was the subject of the picture, was a Texas state flag and a Confederate flag. At some point during his employment, Faulk and another employee discovered the photo.

1

In February 2022, Faulk raised a complaint to human resources ("HR") officer Rebecca Pike, claiming that Brown turned off his ability to take overtime shifts in the Owens Corning system. Faulk told Pike, and later testified during his deposition, that he believed Brown revoked his access to

overtime shifts because he was jealous of Faulk's new truck. An investigation into Faulk's report revealed that Brown did deactivate Faulk in the system because he "believed that [Faulk] was not qualified for a certain role." Pike testified that Brown deactivated Faulk's access without authorization and that Faulk was subsequently reinstated into the system. That was the first time Pike had heard of Brown's deactivating an employee's overtime.

2

While Faulk was employed, Owens Corning had a policy prohibiting substance use, including THC (the psychoactive component of marijuana), in the workplace. As of August 2021, employees were no longer subject to random tests for THC use. However, employees were still subject to testing based on reasonable suspicion and "[p]ost incident testing . . . after an employee's second safety related incident within a twenty-four-month period (regardless of property damage or injury, including near-misses)." On June 10 and 12, 2022, Faulk had two incidents that qualified as safety-related incidents or "near misses." Hannah Schyllander, another shift supervisor, reported the incidents to Owens Corning's environmental health and safety representative Kennedy Reister. After learning that Faulk had two incidents in such close succession, Reister instructed that Owens Corning drug test Faulk in accordance with company policy. Faulk tested positive for marijuana.

After Faulk's positive drug test, on June 21, 2022, Faulk signed a continued employment agreement. The agreement stated that Faulk had tested positive for drugs in violation of the company's policy and outlined the terms and conditions of Faulk's continued employment. One of those conditions was that Faulk "must comply with all company policies and maintain satisfactory performance in all job-related activities." He acknowledged that "[f]ailure to comply with any of the [terms] mean[t]

automatic release from [his] employment with Owens Corning and [would] constitute just cause for termination."

Less than one month later, on July 14, 2022, Owens Corning received two different communications indicating that Faulk was wearing Airpods while operating his forklift. The use of Airpods and other Bluetooth devices was expressly prohibited by Owens Corning's safety policy, which required use of authorized hearing protection devices and prohibited Bluetooth headphones. Faulk was terminated on July 18, 2022.

According to Brown, he neither made the decision to terminate Brown nor was consulted during his termination. After Faulk's termination, another employee texted Brown to ask whether Brown "w[o]n [his] fight" with Faulk. Brown replied, "He has been terminated." The other employee responded with a GIF[1] and the words "WHITE POWER." Brown responded, "No sir I'm not a racist." The employee responded "I'm kidding. Calm down."

In October 2022, Faulk filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC").

B

On January 30, 2023, Faulk filed a complaint against Owens Corning in the Northern District of Texas, alleging Title VII claims of discrimination and retaliation based on race. Owens Corning filed a motion for summary judgment, arguing that Faulk did not establish a prima facie case of

[1] GIF stands for "graphics interchange format." A GIF is a series of photos or a short video that plays continuously on a loop.

discrimination. Faulk opposed the motion, referring the district court to his 1,042-page appendix.[2]

The district court held a hearing on the motion for summary judgment, seeking to understand the adverse actions and comparators that Faulk alleged. The district court subsequently granted summary judgment to Owens Corning, determining that Faulk failed to establish a prima facie case of discrimination or retaliation. In its ruling, the district court pointed out that it sorted through the thousands of pages of evidence presented to it, despite Faulk's failure to point it to the relevant facts in the record. Faulk timely appealed.

II

Because Faulk's claims arise under federal law, the district court had jurisdiction to hear the case pursuant to 28 U.S.C. § 1331. This court has appellate jurisdiction to review the district court's final judgment pursuant to 28 U.S.C. § 1291.

We review a district court's ruling on a motion for summary judgment de novo. *Sanders v. Christwood*, 970 F.3d 558, 561 (5th Cir. 2020) (citing *Burrell v. Prudential Ins. Co. of Am.*, 820 F.3d 132, 136 (5th Cir. 2016)). "Summary judgment is proper '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.'" *Id.* (quoting FED. R. CIV. P. 56(a)). A genuine dispute of material fact exists if the dispute "might affect the outcome of the suit" and

[2] That appendix was unnumbered. The district court noted that it could strike the appendix but "ch[ose] not to do so." Additionally, in his appellate brief, Faulk argues that the district court took the "unusual step" of having two of his witnesses sit for depositions after the initial summary judgment briefing was complete. However, the district court ordered depositions (rather than striking the declarations altogether) because Faulk failed to disclose those witnesses during discovery.

"a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). However, "the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment.'" *Id.* at 247–48.

III

A

We first consider Faulk's Title VII discrimination claims based on the revocation of his overtime access and his termination. Claims of employment discrimination under Title VII are subject to the burden-shifting framework promulgated in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) ("*McDonnell Douglas*"). Under that framework, the plaintiff must first establish a prima facie case of discrimination by proving four elements:

> (1) he is a member of a protected class, (2) he was qualified for the position at issue, (3) he was the subject of an adverse employment action, and (4) he was treated less favorably because of his membership in that protected class than were other similarly situated employees who were not members of the protected class, under nearly identical circumstances.

Lee v. Kansas City S. Ry. Co., 574 F.3d 253, 259 (5th Cir. 2009).

Once the plaintiff has established a prima facie case, there is an "inference of intentional discrimination . . . and the burden of production shifts to the employer, who must offer an alternative non-discriminatory explanation for the adverse employment action." *Id.* (footnote omitted); *Ames v. Ohio Dep't of Youth Servs.*, 605 U.S. 303, 308–09 (2025). If the employer asserts a "legitimate" reason for its decision, then the burden shifts back to the plaintiff "to show that the stated justification 'was in fact pretext' for discrimination." *Ames*, 605 U.S. at 309 (quoting *McDonnell Douglas*, 411

U.S. at 804). Thus, "[a] plaintiff 'may succeed [under the *McDonnell Douglas* framework] 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.* (second alteration in original) (quoting *Tex. Dep't of Cmty. Affs. v. Burdine*, 450 U.S. 248, 256 (1981)).

The fourth element of the prima facie case is the primary focus of this dispute. This circuit has previously considered how to identify similarly situated employees when the plaintiff alleges they were disciplined differently because of their membership in a protected class. In those cases, we have explained that the employees' situations must be "*nearly* identical." *Lee*, 574 F.3d at 260 (emphasis added). Nearly identical circumstances exist where the employees: (a) "held the same job or responsibilities," (b) "shared the same supervisor or had their employment status determined by the same person," and (c) "have essentially comparable violation histories." *Id.* However, an employee is not similarly situated if the "difference between the plaintiff's conduct and that of those alleged to be similarly situated *accounts for* the difference in treatment received from the employer." *Id.* (quoting *Wallace v. Methodist Hosp. Sys.*, 271 F.3d 212, 221 (5th Cir. 2001)).

B

Faulk raises two Title VII claims of discrimination. He argues that he was discriminated against based on race when (1) Brown revoked his ability to access overtime shifts; and (2) he was terminated.

1

The district court did not err in rejecting Faulk's discrimination claim regarding the revocation of his overtime access. Faulk himself claims that his access to overtime was revoked for a reason other than his race. Both in his declaration and during his deposition, Faulk explained that the reason Brown

revoked his option to take overtime was because he was jealous of Faulk's new truck: "[O]nce I showed up with the new rims and tires on the truck, it was basically him saying, 'He's getting too much overtime over here.' That's how I took it. That's why [my overtime] was turned off." According to Owens Cornings's Rule 30(b)(6) deposition by Pike, Faulk did not report the overtime issue as discrimination. Pike explained that Faulk "felt that . . . Brown was kind of copying him and had the same type of vehicle, [and] was causing problems for him."

Faulk did not present to the district court, and has not presented to this court, any evidence that he believed the revocation of his overtime access was due to his race. Pike did testify that Brown's revocation of overtime access was unauthorized. However, "[p]oor treatment without more is not sufficient to show harassment based on race, even if [the plaintiff] believes race to be the motivating factor for the poor treatment." *Eaton-Stephens v. Grapevine Colleyville Indep. Sch. Dist.*, 715 F. App'x 351, 356 (5th Cir. 2017) (per curiam) (citing *Ramsey v. Henderson*, 286 F.3d 264, 268 (5th Cir. 2002)). Because Faulk's overtime access was not revoked based on his race, we hold that his corresponding discrimination claim is without merit. *See McDonnell Douglas*, 411 U.S. at 796 n.4, 802.

2

We next consider Faulk's discrimination claim regarding his termination. He argues that "[c]omparator evidence is not the only way to meet the fourth [element]" of the prima facie case because the *McDonnell Douglas* framework is "not rigid." Despite that statement, most of Faulk's arguments that his termination was discriminatory focus on two purported comparators: Zach Probst and Ivan Villegas. But Faulk's appellate briefing does not provide any facts to show that either employee was in fact similarly situated. As the district court explained when granting Owens Cornings's

motion for summary judgment, "[j]udges are not like pigs, hunting for truffles buried in the record." *See United States v. del Carpio Frescas*, 932 F.3d 324, 331 (5th Cir. 2019) (per curiam). Nonetheless, the district court searched the record below for comparator evidence and determined that there was insufficient evidence to establish any similarly situated comparator. We did the same and draw the same conclusion: There is insufficient evidence to establish a similarly situated comparator.

As articulated *supra*, a similarly situated comparator in this context should share the same "job or responsibilities," the same supervisor, and should have an "essentially comparable violation history[y]." *Lee*, 574 F.3d at 260. There is no evidence to show that neither Probst nor Villegas is a similarly situated comparator. Probst was a White Owens Corning employee, but Faulk does not explain or offer evidence of Probst's job title, job responsibilities, or supervisor, and he does not have an essentially comparable violation history. Villegas was a Hispanic Owens Corning employee who Faulk states is a "supervisor" and whose boss is his father. However, Faulk does not explain or offer evidence of Villegas's job responsibilities, and Villegas does not have an essentially comparable violation history. Additionally, the fact that Villegas's father is his boss suggests that he and Faulk did not share the same supervisor.

In sum, Faulk has not offered sufficient evidence to establish a similarly situated comparator and does not establish the fourth element of his prima facie case. Moreover, the record reflects that Faulk was replaced by an employee in his protected class.

Faulk argues that despite the lack of comparators, and despite the fact that he was replaced by an employee in his protected class, he can satisfy the

fourth element with other evidence of discrimination.[3] We need not address that argument because even if Faulk could establish a prima facie case, Owens Corning has offered a legitimate reason for Faulk's termination: his failed drug test and subsequent violation of his continued employment agreement. Faulk cannot show that proffered reason is pretextual for two primary reasons.

First, Faulk admitted to each of the violations that led to his termination. During his deposition, Faulk testified that he used marijuana during his employment with Owens Corning. He acknowledged that when Owens Corning drug tested him, he tested positive for marijuana. It did not surprise him that he tested positive given his levels of consumption of marijuana at that time. He acknowledged that Owens Corning could have terminated him due to his drug use but instead offered him a last chance agreement. Also, during his deposition, Faulk acknowledged that the last chance agreement required him to follow all company policies. He then admitted that he wore Airpods while working at the plant, which was yet another violation of company policy. He was then terminated from Owens Corning. Thus, Faulk admitted to his violations of Owens Corning's policies

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[3] The district court identified the evidence Faulk attempted to marshal to argue that the fourth element was met even without a similarly situated comparator: declarations from other employees about Brown's treatment, the photo included in a repost on Brown's Facebook page that included a Confederate flag in the background, and the text message sent to Brown that read "WHITE POWER." The record does contain facts that suggest that Brown did not like Faulk—and the text sent *to* Brown is alarming to say the least. However, these facts are not enough to satisfy the fourth element of Faulk's prima facie case. Even if Brown did not like Faulk, again, "[p]oor treatment without more is not sufficient to show harassment based on race, even if [the plaintiff] believes race to be the motivating factor for the poor treatment." *Eaton-Stephens v. Grapevine Colleyville Indep. Sch. Dist.*, 715 F. App'x 351, 356 (5th Cir. 2017) (per curiam); *see Waggoner v. City of Garland*, 987 F.2d 1160, 1166 (5th Cir. 1993) (explaining that a supervisor's dislike of an employee is not relevant to the employee's discrimination claim if there is no evidence that "connect[s]" that dislike to the employee's protected class).

that led to his termination. Even taking Faulk's testimony as true, and declining to engage in credibility determinations, he cannot overcome Owens Corning's legitimate reason for his termination.

Second, Faulk has offered no evidence that Brown was involved in his termination and thus caused the adverse action to occur. Record evidence shows that after Faulk's two June 2022 safety incidents occurred, Owens Corning's environmental health and safety representative made the decision to have Faulk drug tested in accordance with the company policy. It was because of Faulk's resulting positive drug test that he was subject to a continued employment agreement. Further, when Faulk used Airpods rather than approved protective hearing gear, it was not Brown who reported the safety violation. Owens Corning received two separate complaints from other employees that Faulk was wearing "white earpods" while driving. And at oral argument, Faulk's counsel acknowledged that the decision to ultimately terminate Faulk was made by Pike or others in HR who had the power to engage in decision making at that level. This lack of evidence connecting Brown to Faulk's termination further supports that Faulk cannot overcome Owens Corning's legitimate reason for his termination.

Therefore, Faulk's claims of discrimination regarding the temporary revocation of his overtime access and termination both fail, and the district court did not err in granting summary judgment to Owens Corning on those claims. *See McDonnell Douglas*, 411 U.S. at 804–05.

III

A

We next consider Faulk's Title VII claims of retaliation based on the revocation of his overtime access and his communications with the EEOC. "To establish a prima facie case of retaliation, [a plaintiff] must show that: (1) [he] participated in an activity protected by Title VII; (2) [his] employer

took an adverse employment action against [him]; and (3) a causal connection exists between the protected activity and the materially adverse action." *Aryain v. Wal-Mart Stores Tex. LP*, 534 F.3d 473, 484 (5th Cir. 2008) (citation modified). As with discrimination claims, once the plaintiff establishes a prima facie case, "the burden then shifts to the employer to articulate a legitimate . . . non-retaliatory reason for its employment action." *Id.* (citation omitted). The first and third elements of the prima facie case are at issue here.

"Protected activity is defined as opposition to any practice rendered unlawful by Title VII, including making a charge, testifying, assisting, or participating in any investigation, proceeding, or hearing under Title VII." *Lewis v. Bd. of Supervisors of La. State Univ. & Agric. & Mech. Coll.*, 134 F.4th 286, 295 (5th Cir. 2025) (quoting *Ackel v. Nat'l Commc'ns, Inc.*, 339 F.3d 376, 385 (5th Cir. 2003)). For example, "[t]he filing of an EEOC charge constitutes protected activity." *Id.* (citing *Harvill v. Westward Commc'ns, L.L.C.*, 433 F.3d 428, 439 (5th Cir. 2005)). However, the protected activity "must relate to discriminatory practices based on race, color, religion, sex, or national origin" to be entitled to protection under Title VII. *Allen v. Envirogreen Landscape Pros., Inc.*, 721 F. App'x 322, 327 (5th Cir. 2017) (per curiam) (citation omitted).

To prove a causal connection between the activity and the materially adverse action, the evidence must demonstrate that "the employer's decision to terminate was based in part on knowledge of the employee's protected activity." *Medina v. Ramsey Steel Co.*, 238 F.3d 674, 684 (5th Cir. 2001) (quoting *Sherrod v. Am. Airlines, Inc.*, 132 F.3d 1112, 1122 (5th Cir. 1998)); *see also Tureaud v. Grambling State Univ.*, 294 F. App'x 909, 914 (5th Cir. 2008) (per curiam) ("To establish a 'causal link' [between] the protected activity and the adverse employment decision, the evidence must demonstrate that the decision maker had knowledge of the protected

activity."). Thus, where an employer lacks knowledge of the employee's protected activity, no causal link exists.

B

Faulk points to two instances in which he argues he engaged in protected activity. First, he raised a complaint to HR about the revocation of his overtime, and "[w]ithin weeks, ... was drug tested, written up, and terminated for wearing AirPods." Second, he "went to the EEOC just a week before he was fired." Faulk argues that the temporal connection between these activities and his termination would be sufficient for a "reasonable jury [to] infer that his firing was retaliatory."

1

Faulk fails to establish a prima facie case of retaliation related to his internal complaint about the revocation of his overtime because he has not presented facts to show that he was engaged in protected activity. As explained *supra*, Faulk's own testimony is that Brown revoked his overtime access because he was jealous of Faulk's truck. As the district court correctly explained, "[h]arassment motivated by something other than a plaintiff's membership in a protected class lies beyond the scope of Title VII." *See Stingley v. Watson Quality Ford*, 836 F. App'x 286, 289 (5th Cir. 2020) (per curiam). Reports of general harassment that are not based on a protected class are not protected activity and are thus insufficient to support a claim of retaliation. Therefore, Faulk does not state a prima facie case of retaliation based on his internal complaint. *See Aryain*, 534 F.3d at 484; *Allen*, 721 F. App'x at 327.

2

Faulk also fails to establish a prima facie case of retaliation related to his communications with the EEOC or his charge of discrimination because

he has not presented facts to show a causal link between those communications and his termination. Faulk testified that he did not tell Brown, Pike, or any Owens Corning employee with supervisory authority over him about his meetings with the EEOC. Faulk testified that he only told a fellow employee who had alerted him to the resource. Therefore, there is no evidence to suggest that Owens Corning had knowledge that Faulk went to the EEOC at the time of his termination. *See Tureaud*, 294 F. App'x at 914 (explaining that to establish a causal link, "the evidence must demonstrate that the decision maker had knowledge of the protected activity"). Thus, Faulk fails to establish that Owens Corning was aware of his communications with the EEOC, let alone that the activity led to his termination. Accordingly, he has failed to establish a prima facie case of retaliation based on his communications with the EEOC. *See id.*; *Aryain*, 534 F.3d at 484.

IV

In short, the district court did not engage in improper credibility determinations or weighing of the evidence presented. Even accepting all of Faulk's testimony as true, Faulk fails to meet his burden of establishing a prima facie case of discrimination or retaliation. For the foregoing reasons, the judgment of the district court is AFFIRMED.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

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CLERK

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NEW ORLEANS, LA 70130

December 18, 2025

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing or Rehearing En Banc

No. 25-10356 Faulk v. Owens Corning
USDC No. 3:23-CV-230

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and Fed. R. App. P. 39, 40, and 41 govern costs, rehearings, and mandates. **Fed. R. App. P. 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. Fed. R. App. P. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari**. Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

The judgment entered provides that Appellant pay to Appellee the costs on appeal. A bill of cost form is available on the court's website www.ca5.uscourts.gov.

Sincerely,

LYLE W. CAYCE, Clerk

Christy Combel

By:_____
Christy M. Combel, Deputy Clerk

Enclosure(s)

Mrs. Carla D. Aikens
Ms. Jo Beth Drake
Mr. Dimitri Dube
Mr. Gavin Samuel Martinson

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CHARLES FAULK,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. 3:23-CV-0230-X
	§	
OWENS CORNING ROOFING AND ASPHALT, LLC,	§	
	§	
Defendant.	§	

MEMORANDUM OPINION AND ORDER

Pending before the Court is Defendant Owens Corning Roofing and Asphalt, LLC's (Owens Corning) motion for summary judgment (Doc. 61), and Plaintiff Charles Faulk's motion to file exhibits under seal (Doc. 74). After carefully reviewing Owens Corning's motion, the parties' briefing, the evidence, and the arguments of counsel, the Court **GRANTS** the motion because Faulk has failed to establish a prima facie case for either his claim of discrimination or retaliation. The Court **DENIES WITHOUT PREJUDICE** Faulk's motion to file under seal but will allow him to file an amended motion to seal within fourteen (14) days of this Order.

I. Background

This is an employment discrimination case. Charles Faulk, an African American male, worked for Owens Corning for six years.[1] Faulk began at Owens Corning as a Utility Operator before he was promoted to a Raw Material Coordinator,

[1] Doc. 1 at 2.

and then trained for End of Line Driver; both latter positions involved operating a forklift. Throughout his employment, Faulk could collect overtime in these roles. At some time in early 2022, Faulk's ability to collect overtime as a Utility Operator (but not his other two roles) was removed in the company's overtime portal for a period of a few weeks. Faulk alleges that Mike Brown, his supervisor, intentionally turned off his overtime because of "Plaintiff's race and [because] Mr. Brown felt Plaintiff was making too much money."[2] Faulk also alleges that Brown did not treat black employees fairly and that he heard about a Facebook post on Brown's profile from 2019 that included a photo with a Confederate flag in the background.

In June 2022, after a safety infraction involving his forklift, Faulk was required to take a drug test, which he failed for marijuana. Faulk was suspended but was offered a "Last Chance Agreement," or a Continued Employment Agreement.[3] This agreement required Faulk to undergo additional drug testing, complete a drug treatment program, and comply with all company policies. One company safety policy required hearing protection to be worn in all manufacturing areas, outdoor working and loading areas, and any other marked areas; this policy specifically stated "[t]he use of Bluetooth devices/ear buds in lieu of hearing protection is not authorized."[4] In July, Faulk was seen wearing AirPods while operating his forklift in violation of company policy. He was terminated on July 18, 2022.

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[2] Doc. 1 at 3.

[3] Doc. 63 App. 83–84.

[4] Doc. 63 App. 89–90. Faulk signed, acknowledging he received this policy in March 2022. Doc. 63 App. 87.

Faulk alleges that Owens Corning—specifically, Brown—created an environment where black employees were treated unfairly. In a text conversation with an unidentified individual that was produced in discovery, Brown informed the individual Faulk was terminated and the unidentified individual responded: "[redacted]"[5] Brown responded "[redacted]"[6]

This motion has had layers of briefing and legal argument. Owens Corning filed its motion for summary judgment. After two extensions of time, Faulk responded, then attempted to amend his response late.[7] Owens Corning filed multiple objections to Faulk's summary judgment evidence. Faulk presented declarations from undisclosed individuals, so the Court ordered additional depositions to occur before ruling on the motion. After the depositions and supplemental briefing, the Court held a hearing on this motion on January 15, 2025, for legal argument only. Finally, now, the Court considers Owens Corning's motion.

II. Sealing

A. Legal Standard

The Court takes very seriously its duty to protect the public's access to judicial records. Transparency in judicial proceedings is a fundamental element of the rule of law[8]—so fundamental that sealing and unsealing orders are immediately

[5] Doc. 74-2, Ex. P.

[6] Doc. 74-2, Ex. P.

[7] The Court denied the late filing, but accepted Faulk's original response as a brief.

[8] *See Binh Hoa Le v. Exeter Fin. Corp.*, 990 F.3d 410, 418 (5th Cir. 2021).

appealable under the collateral-order doctrine.[9] The public's right to access judicial records is independent from—and sometimes even adverse to—the parties' interest.[10] That's why the judge must serve as the representative of the people and, indeed, the First Amendment, in scrutinizing requests to seal.

Litigants may very well have a legitimate interest in confidential discovery secured by a protective order under Federal Rule of Civil Procedure 26(c). However, "[t]hat a document qualifies for a protective order under Rule 26(c) for discovery says nothing about whether it should be sealed once it is placed in the *judicial record*."[11]

"To decide whether something should be sealed, the court must undertake a document-by-document, line-by-line balancing of the public's common law right of access against the interests favoring nondisclosure."[12] If the Court seals information, it must give sufficient reasons to allow for appellate review.[13] Finally, "[p]ublicly available information cannot be sealed."[14]

B. Analysis

Faulk seeks to file two exhibits under seal on the judicial record: Faulk's full deposition transcript and a series of text messages exchanged in discovery, some of

[9] *June Med. Servs. v. Phillips*, 22 F.4th 512, 519 (5th Cir. 2022).

[10] *See id.*

[11] *Id.* at 521 (emphasis in original).

[12] *Id.* (cleaned up).

[13] *Binh Hoa Le*, 990 F.3d at 419.

[14] *June Med. Servs.*, 22 F.4th at 520 ("We require information that would normally be private to become public by entering the judicial record. How perverse it would be to say that what was once public must become private—simply because it was placed in the courts that belong to the public. We will abide no such absurdity." (cleaned up)).

which are marked "Confidential" by the Defendant. The Court **DENIES WITHOUT PREJUDICE** the motion, as the motion is facially insufficient under Fifth Circuit caselaw that governs the sealing of judicial records. The Court will allow Faulk to file an amended motion to seal within fourteen days of this Order. If no further motion is filed, the Court will unseal the exhibits.

Faulk's two-page brief does not include a line by line, page-by-page analysis of what material should be sealed or redacted. Private or confidential information, such as social security numbers, addresses, or medical information, may be suited for redactions, but the Court will not seal a 244-page transcript because it might contain some unidentified private information. According to Owens Corning's response, Faulk did not designate any of the transcript confidential under the parties' confidentiality agreement. In the next fourteen (14) days, the moving party must: (1) identify precisely what information (pages, lines, etc.) the party wants sealed;[15] (2) conduct a line-by-line, page-by-page analysis[16] explaining and briefing why the risks of disclosure outweigh the public's right of access; and (3) explain why no other viable alternative to sealing exists.[17] If the movant sealed the information based on

[15] *Id.* at 521.

[16] *Trans Tool, LLC v. All State Gear Inc.*, No. SA-19-CV-1304-JKP, 2022 WL 608945, at *6 (W.D. Tex. Mar. 1, 2022) ("[I]t is certainly within a court's discretion to summarily deny a request to seal when it is apparent that the submitter has not conducted its own document-by-document, line-by-line review.").

[17] *Planned Parenthood of Greater Tex. Family Planning & Preventative Health Servs., Inc. v. Kaufman*, No. 17-50534, Doc. 00514098372, at 2 (5th Cir. Aug. 1, 2017) ("This court disfavors the sealing of briefs or portions of the record where the parties on appeal have not articulated a legal basis for the sealing."). The Fifth Circuit has "repeatedly required parties to justify keeping materials under seal." *Id.*; *see, e.g.*, *Claimant ID 100236236 v. BP Expl. & Prod'n, Inc.*, No. 16-30521 (5th Cir. Jan. 31, 2017) (requesting letter briefs *sua sponte* as to whether appeal should remain under seal and entering order unsealing appeal); *United States v. Quintanilla*, No. 16-50677 (5th Cir. Nov. 16, 2016) (order

the non-movant's designation under the parties' confidentiality agreement, the non-movant should file a response conducting the same line-by-line, page-by-page analysis and include why no other viable alternative to sealing exists.

III. Summary Judgment

A. Legal Standard

District courts can grant summary judgment only if the movant shows "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."[18] A dispute "is genuine if the evidence is sufficient for a reasonable jury to return a verdict for the nonmoving party."[19] Employment discrimination claims are subject to the *McDonnell Douglas* burden-shifting framework, which the Court addresses claim-by-claim below.[20] Under *McDonnell Douglas*, the plaintiff must make a prima facie showing of discrimination.[21] If the plaintiff successfully asserts a prima facie discrimination case, that raises a presumption of discrimination, which the employer may rebut by "articulat[ing] some legitimate, nondiscriminatory reason" for their actions.[22] If the employer produces evidence that the perceived discriminatory treatment was justified by a "legitimate,

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authorizing briefs and record excerpts to be filed under seal on condition that the parties filed redacted briefs and record excerpts on the public docket).

[18] Fed. R. Civ. P. 56(a).

[19] *Goodson v. City of Corpus Christi*, 202 F.3d 730, 735 (5th Cir. 2000) (cleaned up).

[20] *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

[21] *Id.* at 802.

[22] *Rogers v. Pearland Indep. Sch. Dist.*, 827 F.3d 403, 408 (5th Cir. 2016) (cleaned up).

nondiscriminatory reason," the burden then "shifts back to the plaintiff, who must show the articulated reason is pretextual."[23]

B. Summary Judgment Evidence

"Judges are not like pigs, hunting for truffles buried in the record."[24] After multiple rounds of briefing and a summary judgment hearing, Faulk seems to think the Court is better than he is at finding truffles. Faulk has filed multiple briefs, sought leave to amend his brief filed past the deadline, and filed documents via the court's emergency email, rather than ECF, where there was no emergency.

Local Civil Rule 56.6(a) requires parties to include materials they rely upon to support or oppose a motion for summary judgment in an appendix to the Court. This appendix "must be assembled as a self-contained document, separate from the motion and brief or response and brief," and "[e]ach page of the appendix must be numbered legibly in the lower, right-hand corner."[25] The Rule specifically states that the numbering should be sequential for the entire appendix, "i.e., the numbering system must not re-start with each succeeding document in the appendix."[26]

Faulk's evidentiary appendix (Doc. 73) totaled 1,042 pages and included no sequential page numbers or any bates stamps or page numbers of any kind, aside from those found on the deposition transcripts. Due to the volume of the record, the Court held a hearing on the motion. The Court could strike this appendix, but due to

[23] *Thomas v. Johnson*, 788 F.3d 177, 179 (5th Cir. 2015).

[24] *United States v. del Carpio Frescas*, 932 F.3d 324, 331 (5th Cir. 2019) (per curium).

[25] Loc. Civ. R. 56.6(b)(1), (3).

[26] Loc. Civ. R. 56.6(b)(3).

the extent of briefing and discovery that has been ordered for the resolution of this motion, the Court chooses to not strike Faulk's appendix even though doing so requires the Court to sniff out the truffles for itself.

C. Analysis

1. Discrimination Claim

Title VII prohibits discriminatory employment practices "because of such individual's race, color, religion, sex, or national origin."[27] For cases brought under Title VII, the *McDonnell Douglas* burden-shifting framework applies at the summary judgment stage. To establish a prima facie case for a discrimination claim, the plaintiff "must show that he (1) is a member of a protected group; (2) was qualified for the position at issue; (3) was discharged or suffered some adverse employment action by the employer; and (4) was replaced by someone outside his protected group or was treated less favorably than other similarly situated employees outside the protected group."[28] Neither party disputes that Faulk is a member of a protected class, so the Court takes the other elements in turn. Since Faulk asserts two adverse employment actions, the Court first considers the first two elements of the prima facie case, then addresses the third and fourth elements separately.

The parties dispute whether Faulk was qualified for his position. Owens Corning argues that (1) Faulk cannot identify a promotion he pursued and was denied, and (2) due to his alleged marijuana use, he was not qualified as a forklift

[27] 42 U.S.C. § 2000e-2(a)(1).

[28] *Ernst v. Methodist Hosp. Sys.*, 1 F.4th 333, 339 (5th Cir. 2021) (cleaned up).

driver. Faulk appears to argue he was a good employee to satisfy this element. Even if the Court assumes this element met, Faulk fails to present a prima facie case for either adverse action (termination or loss of overtime), as addressed below.

i. Termination

One adverse employment action is undisputed: Faulk was terminated in July 2022.[29] The parties dispute, unsurprisingly, the cause of the termination.

So we turn to the fourth element, that similarly situated employees were not terminated and thus treated more favorably than Faulk. A plaintiff can establish the fourth element by proving he "was replaced by someone outside his protected group or was treated less favorably than other similarly situated employees outside the protected group."[30]

Owens Corning argues that Faulk cannot meet this element as (1) he was replaced by a member of the same protected class; (2) there are no similarly situated individuals who have the same disciplinary record as Faulk; and (3) there is no racial motivation to Faulk's termination or Owens Corning's other employment actions. Because Faulk was replaced by a someone within the same protected class,[31] he must identify a similarly situated comparator. Faulk argues that he has identified a number of similarly situated individuals, naming two employees: Zach Probst and Ivan Villegas. In the hearing, counsel stated identifying comparators by name was

[29] Doc. 62 at 15; Doc. 71 at 23.

[30] *Ernst*, 1 F.4th at 339.

[31] "Faulk's position was filled with an employee already working at [Owens Corning] in a different role, Kamron Robbins-Lopez. Mr. Robbins-Lopez is African-American." Doc. 63 at App. 48.

difficult due to the time that has passed, but specifically named Probst, arguing he "committed many of these various infraction things for which Mr. Faulk [was] terminated but [Probst] was never terminated."[32]

Similarly situated employees' "circumstances, including their misconduct, must [be] nearly identical."[33] Employees are deemed similarly situated when they "held the same job or responsibilities, shared the same supervisor or had their employment status determined by the same person, and have essentially comparable violation histories."[34] Employees are *not* similarly situated where "the difference between the plaintiff's conduct and that of those alleged to be similarly situated *accounts for* the difference in treatment received from the employer."[35]

Faulk argues that Zach Probst and Ivan Villegas are similarly situated to him and are not members of the same protected class. While Faulk dwells on the allegation that Probst and Villegas wore headphones without repercussion,[36] Faulk fails to provide evidence of similar job title, job responsibilities, supervisor, or employment status for either. Faulk's brief assures the Court, "Position, title, hours, and other such information would be easily introduced at trial given the consistent

[32] Doc. 100 at 32:20–33:4.

[33] *Perez v. Texas Dept. of Crim. Just.*, 395 F.3d 206, 213 (5th Cir. 2004) (cleaned up).

[34] *Lee v. Kansas City S. Ry. Co.*, 574 F.3d 253, 260 (5th Cir. 2009).

[35] *Id.* (emphasis in original).

[36] Even though Faulk seeks to make much out of Villegas and Probst's misconduct, Faulk could not identify another employee with a similar disciplinary history who was not terminated. Doc. 63 at App. 27, 153:2–25 ("Q. Do you know of any other coworker that has that disciplinary history who was not terminated? [objection] A. No."). Since Faulk was terminated for wearing headphones only after being placed on a Continued Employment Agreement, disciplinary history is relevant.

and shared work schedules."[37] But Faulk must prove his prima facie case now to get to trial. The Court dug through the record for the necessary evidence and finds it lacking. As to Villegas, the evidence only states he was a "coordinator."[38] As to Probst, Faulk's counsel requested at the hearing that the Court infer that Probst was a forklift operator.[39] The record presents little to no evidence on the job title, duties, supervisor, or job status of Probst, Villegas, or any other potential comparators. Therefore, the Court cannot compare these individuals to Faulk, and Faulk fails to carry his prima facie burden of showing he was treated less favorably than other similarly situated employees.

Faulk also seeks to prove the fourth element by arguing he was terminated because of his race and argues that the Court should find an "inference of racial discrimination."[40] Faulk argues for a broader understanding of the fourth element and that the Court should "leave open the consideration of other evidence besides comparators in determining if there was an inference of discrimination."[41] He points

[37] Doc. 94 at 5.

[38] Doc. 73-3 ¶ 21.

[39] Doc. 100 at 33:19–25. Faulk points to an instance of accusing Mike Brown of treating a black employee caught sleeping different from how Brown would treat Zach Probst, a white employee, in the same situation. Doc. 73-11 ¶¶ 3–4. While this is a comparison between two individuals, this account does not present a similarly situated individual to Faulk. Further, in this instance, Faulk was speculating as to Brown's hypothetical treatment of Probst, so it is irrelevant to this analysis.

[40] Doc. 100 at 31:12–17.

[41] Doc. 94 at 8. Faulk relies on lengthy declarations for the proposition that Mike Brown and Owens Corning treated black employees unfairly. These declarations do not identify a comparator. And where they do identify instances of alleged disparate treatment, they fail to articulate personal knowledge or to provide information as to job duties sufficient for the Court to consider whether the individual is similarly situated to Faulk.

to Supreme Court and Fifth Circuit precedent for this argument.[42] But his reliance on this case law is misplaced.

In *Texas Department of Community Affairs v. Burdine*, the Supreme Court clarified that the purpose of the prima facie case, as a whole, is to give rise to an inference of unlawful discrimination, creating a rebuttable presumption that the employer unlawfully discriminated.[43] This language is neither descriptive of the fourth element, nor instructive as to Faulk's burden here.

Faulk cites to *Nguyen v. University of Texas School of Law* for the proposition that a "broader formulation of the fourth element" should be considered.[44] In *Nguyen*, the court articulated that the plaintiff's burden under the fourth element was to show "she was either replaced by someone outside her protected class, was treated less favorably than other similarly situated employees who were not members of her protected class, or was otherwise discharged because of her race."[45] *Nguyen* is designated as an unpublished opinion that is not binding on this Court as precedent under Fifth Circuit Rule 47.5, but it is persuasive.[46] In that case, the plaintiff failed to meet the fourth element under either test. The plaintiff presented three events as racial animus that predated the adverse event by over a year: an email forwarding

[42] Doc. 94 at 7 (citing *Tex. Dep't of Cmty. Affs. V. Burdine*, 450 U.S. 248, 253 (1981); *Nguyen v. Univ. of Tex. Sch. of L.*, 542 F. App'x. 320, 323 (5th Cir. 2013) (per curium)).

[43] *Burdine*, 450 U.S. at 253–54 ("[T]he prima facie case raises an inference of discrimination only because we presume these acts, if otherwise unexplained, are more likely than not based on the consideration of impermissible factors." (cleaned up)).

[44] Doc. 94 at 7.

[45] *Nguyen*, 542 F. App'x at 323.

[46] *See id.* at 321.

her resume and flagging the use of "shedragon" in plaintiff's email address; a reference to "pan-Asian descent"; and plaintiff's job description that included a reference to "American/Texas business culture."[47] The Court found that the plaintiff did not articulate how the first two statements were proof of racial animus,[48] and that the use of "American/Texas business culture" did not require conformance with a racial stereotype, and the employer provided this standard for all employees.[49] The Court noted that, even if the Court assumed a "racial undertone" to the statements, "all three statements . . . are too remote in time and too attenuated from [the employment decisions and adverse action] to be probative of the question whether racial animus influenced these adverse employment actions."[50] Further, "[t]hey are also stray remarks similar to those that we have previously held to be too vague and too indirect to demonstrate racial animus."[51]

Faulk seeks to expand the fourth element by relying on *Nguyen* for racial animus. Though the Court is not bound by this standard, Faulk would fail to meet the fourth element as Faulk fails to prove the evidence demonstrates racial animus or the evidence is too remote in time or too attenuated. First, Faulk disavowed any complaint of discrimination at the time;[52] second, the picture with the Confederate

[47] *Id.* at 323–24.

[48] *Id.*

[49] *Id.* at 324.

[50] *Id.* at 325

[51] *Id.*

[52] Doc. 73-15, Ex. N (audio recording) at 3:29-:54 ("I didn't say anything about discrimination, I never said a word.").

flag in the background on Brown's Facebook page was posted three years prior to Faulk's termination;[53] and third, the text message "[redacted]" was sent to Brown by an unidentified individual after Faulk's termination, and Brown disavowed the message by responding, "[redacted]"[54]

The Court is aware that the *McDonnell Douglas* burden-shifting framework is not intended to be rigid. And it certainly isn't, as the prima facie elements articulated in *McDonnell Douglas*,[55] a discriminatory failure to hire case, have been applied in other Title VII discrimination cases for other adverse actions—like this one. The standard for the fourth element of the prima facie case is well established, and Faulk has failed to produce any evidence of a similarly situated comparator, through job duties or responsibilities, for the Court's consideration.

ii. Loss of Overtime Opportunity

The parties dispute the other adverse employment action—loss of overtime. Based on the record, Faulk's eligibility for utility operator, one of three roles, was turned off in Owens Corning's overtime portal for two or three weeks in February 2022.[56] Faulk argues that Brown turned off his overtime intentionally because of his race. Owens Corning argues that Faulk did not miss out on any overtime compensation and that, further, the evidence supports that Faulk actually believed Brown was jealous of his new tires, not that he acted from racial animus.

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[53] Doc. 73-14, Ex. M.

[54] Doc. 74-2, Ex. P.

[55] *McDonnell Douglas*, 411 U.S. at 802.

[56] Doc. 74-1 at 154:24–155:5; 156:10–157:3.

Title VII makes it unlawful for an employer "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."[57] Adverse employment actions are not limited to ultimate employment decisions, such as termination.[58]

Here, the reduction in overtime roles was not because of or related to Faulk's race—per Faulk's own admission. When asked in his deposition if he knew why Mr. Brown turned off his utility operator overtime, Faulk replied:

 [59]

Even if Faulk could adequately demonstrate an adverse employment action for overtime because of his race, he fails to identify a comparator who was similarly situated but was treated more favorably—that is, who kept his or her overtime eligibility. At oral argument, counsel argued that the appropriate comparators for the loss of overtime would be all remaining white forklift operators, and specifically one operator identified as Sean.[60] But Faulk's declaration states that Sean, a white

[57] 42 U.S.C. § 2000e-2(a)(1).

[58] *Hamilton v. Dallas Cnty*, 79 F.4th 494, 502–03 (5th Cir. 2023).

[59] Doc. 74-1 at 158:10–20; *see also* Doc. 73-11 ¶ 36.

[60] Doc. 100 at 30:9–17; 48:7–17.

male, was a forklift driver who did not work as a utility operator.[61] Sean told Faulk he had received three or four overtime notification texts.[62] There is no further testimony as to what types of overtime texts Sean received, or if Sean took these overtime shifts when Faulk could not. Therefore, the Court finds that Faulk fails to establish the fourth element for his prima facie case for loss of overtime eligibility.

2. Retaliation Claim

To establish a prima facie case of retaliation, a plaintiff must show (1) he "engaged in protected activity"; (2) he "suffered an adverse employment action"; and (3) "a causal link exists between the protected activity and the adverse employment action."[63] Owens Corning argues that Faulk did not establish that he engaged in protected activity under Title VII prior to his termination. Faulk argues that he was "fired for a completely made up reason,"[64] and states, in a conclusory fashion, that he has established a prima facie case.[65] The Court agrees with Owens Corning and finds that Faulk has failed to establish a prima facie retaliation claim.

The first prong of the prima facie cases requires a plaintiff to demonstrate that he engaged in protected activity under Title VII. "The Title VII antiretaliation provision has two clauses, making it an unlawful employment practice for an

[61] Doc. 73-11 ¶ 32. The Court accepts this declaration, despite its failure to comply with Local Civil Rule 11.1 on signatures. Even accepting Faulk's declaration as proper evidence, Faulk fails to show a prima facie case for either claim.

[62] Doc 73-11 ¶ 32.

[63] *Wright v. Union Pac. R.R. Co.*, 990 F.3d 428, 433 (5th Cir. 2021).

[64] This argument goes to the employer's legitimate nondiscriminatory reason. Faulk must first prove a prima facie case before the burden shifts to Owens Corning to prove such a reason.

[65] Doc. 71 at 25–26.

employer to discriminate against any of his employees (1) because he has opposed any practice made an unlawful employment practice [by Title VII], or (2) because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under [Title VII].[66] The first is referred to as the "opposition clause," and the second as the "participation clause."[67]

At the hearing, Faulk's counsel argued, "[Faulk] was retaliated against for complaining regarding the breaks, regarding the failure to train black employees, and complaining about the overtime."[68] "When one employee communicates to [his] employer a belief that the employer has engaged in a form of employment discrimination, that communication virtually always constitutes the employee's *opposition* to the activity."[69] The Supreme Court has recognized that an employee can oppose discriminatory conduct even where the employee does not initiate a formal complaint.[70]

So the question here is whether Faulk's complaints rose to the level of a protected activity. As to the first bucket—speaking up about unequal breaks—Faulk expressly disavowed it was a complaint about discrimination at the time.[71] Further,

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[66] *Crawford v. Metro. Gov't of Nashville and Davidson Cnty., Tenn.*, 555 U.S. 271, 274 (2008) (citing 42 U.S.C. § 2000e-3(a)) (cleaned up).

[67] *Id.*

[68] Doc. 100 at 29:4–8.

[69] *Crawford*, 555 U.S. at 276 (cleaned up) (emphasis in original) (citing EEOC compliance manuals).

[70] *Id.* at 277.

[71] Doc. 73-15, Ex. N (audio recording) at 3:29-:54 ("I didn't say anything about discrimination, I never said a word. . . . You're just making up stuff now.).

at least one of the individuals who took the long breaks that Faulk complained belonged to the same protected class as Faulk.[72]

As to speaking up about a failure to train black employees, the Court finds no record evidence that Faulk was not trained, nor that he complained about this.[73] Faulk states in his declaration that he would train people on the forklift.[74]

As to overtime, Faulk never alleged or reported discrimination, but testified that Brown turned off his overtime not because of race but because of jealousy over Faulk's sweet ride.[75] "Harassment motivated by something other than a plaintiff's membership in a protected class lies beyond the scope of Title VII."[76] As to all three buckets, the Court sees no record evidence that Faulk's complaints or "speaking up" ever alleged or hinted at unlawful discrimination. An employer cannot retaliate where there was no protected activity.[77]

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[72] Doc. 73-1 at 152:17-154:3 (discussing Faulk reporting Gil Norman, a black employee, for a long break).

[73] Faulk includes a third-party declaration from Quinterious Williams. Williams alleges that many of the Hispanic workers did not speak English and "they would never show Black employees how to do anything." Ex. 73-3 ¶ 18. This does not demonstrate a race-based discrimination as to Faulk—it does not appear to involve Faulk at all. The only instance in which the Court sees evidence of a complaint, it turns out that Faulk "forgot he had been trained," when he made the verbal complaint. Doc. 73-1 at 336:9–17.

[74] Doc. 73-11 ¶ 16.

[75] Doc. 74-1 at 158:10–20; *see also* Doc. 73-11 ¶ 36 ("Mike Brown did not like that I had a nice truck, because everyone talked about how nice my truck was, and not more than a week after that, Mike Brown turned off my overtime."). Owens Corning's corporate representative, Rebecca Pike, testified that Faulk had not reported or alleged discrimination as to the overtime issue. Doc. 73-1 at 151:4-5.

[76] *Stingley v. Watson Quality Ford, Jackson, Miss.*, 836 F. Appx. 286, 289 (5th Cir. 2020) (per curium) (unpublished).

[77] *Id.* at 290.

To the extent Faulk argues he engaged in protected activity by calling the EEOC, Faulk fails to carry his burden here as to the causal link. Faulk states in his response that he filed an EEOC charge in October 2022.[78] Faulk states in his declaration that he "ended up calling the EEOC," around June or July 2022, prior to his termination.[79] As Faulk's counsel argued at the hearing, the only alleged adverse employment action for Faulk's retaliation claim is his termination. Thus, to prove a prima facie case, Faulk must demonstrate that there is a causal link between his protected activity—contacting EEOC—and his termination. But Faulk testified in his deposition that he did not tell anyone at Owens Corning about calling the EEOC.[80]

"A causal link is established when the evidence demonstrates that the employer's decision to terminate was in part on knowledge of the employee's protected activity."[81] An employer cannot retaliate against an employee for protected conduct where the employer is unaware of that conduct.[82] Faulk does not demonstrate that Owens Corning was aware that he contacted the EEOC or any other protected activity. In fact, Owens Corning's corporate representative denies having any knowledge Faulk contacted the EEOC before he was terminated and denies that

[78] Doc. 71 at 23. Faulk could not have been retaliated for something that happened after the date of the alleged retaliation—his termination.

[79] Doc. 73–11 ¶ 69; *accord* Doc. 74-1 at 190:16–20.

[80] Doc. 74-1 at 192–94.

[81] *Ackel v. Nat'l Comms., Inc.*, 339 F.3d 376, 386 (5th Cir. 2003) (cleaned up).

[82] *Chaney v. New Orleans Pub. Facility Mgmt., Inc.*, 179 F.3d 164, 168 (5th Cir. 1999).

Owens Corning knew either.[83] Therefore, Faulk fails to establish a prima facie case of retaliation based on contacting the EEOC.

Faulk further alleges he complained about Brown's Facebook post that included a photo of a Confederate flag in the background.[84] Even if the Court assumes this is a protected activity, Faulk fails to establish a causal link between the complaint and his termination. Faulk states he complained about the Facebook post to Rebecca Pike at Owens Corning sometime in March 2022.[85] This was one month after his overtime was deactivated and reactivated and four months prior to his termination. The Court finds this timing is too remote to find a causal link between the complaint and the adverse action.

3. Hostile Work Environment Claim

Faulk did not plead a Title VII violation based on a hostile work environment, but the Court will consider whether his allegations could give rise to an implicit hostile work environment claim.

> To establish a claim of hostile work environment under Title VII, a plaintiff must prove he (1) belongs to a protected group; (2) was subjected to unwelcome harassment; (3) the harassment complained of was based on race; (4) the harassment complained of affected a term, condition, or privilege of employment; (5) the employer knew or should have known of the harassment in question and failed to take prompt remedial action.[86]

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[83] Doc. 73-1 at 331:2–8.

[84] Doc. 73-11 ¶ 35, 49.

[85] Doc. 74-1 at 173:14–174:8.

[86] *Hernandez v. Yellow Transp., Inc.*, 670 F.3d 644, 651 (5th Cir. 2012).

The first element is undisputed. But even if the Court assumes Faulk was subject to unwelcome harassment—which it does not—Faulk himself denied that he was complaining of discrimination in an audio recording of a conversation between Faulk and Brown about breaks, dated July 9, 2022.[87] In Faulk's own words, "I didn't say anything about discrimination, I never said a word."[88] Therefore, the Court does not find that Faulk pled a hostile work environment claim either expressly or impliedly.

Because Faulk has failed to establish a prima facie case of racial discrimination for any of his claims, the Court need not consider the subsequent steps of the *McDonnell Douglas* analysis.[89]

IV. Conclusion

In short, Faulk has a great many complaints about Owens Corning. But none of his complaints raises a dispute that would go to a jury. This Court is reminded of wisdom that has been stated many times by several different courts. "A federal court

[87] *See* Doc. 75; Doc. 86 at 3. The recording, Faulk's Exhibit N, was provided by email to the Court. Faulk states Owens Corning produced the recording in discovery, and Rebecca Pike, an Owens Corning employee, verified the recording in her deposition. The Court found a better description of the recording in Mike Brown's deposition. Doc. 73-4 at 31:9–32:9.

[88] Doc. 73-15, Ex. N at 3:29-:54.

[89] Even if this case reached the pretext stage of the *McDonnell Douglas* framework, Faulk's best evidence would still fail the Fifth Circuit standard for pretext. A plaintiff must present "substantial evidence" of pretext for discrimination; "evidence must be of sufficient nature, extent, and quality to permit a jury to reasonably infer discrimination." *Owens v. Circassia Pharms., Inc.*, 33 F.4th 814, 826 (5th Cir. 2022) (cleaned up). Faulk's best argument for pretext is the picture with a Confederate flag in the background posted on Brown's Facebook page three years prior to Faulk's termination. Doc. 73-14, Ex. M. This is not sufficiently close in time to infer causation. And the text message stating "[redacted]" was sent to Brown by an unidentified individual, and Brown disavowed the message by responding, "[redacted]" Doc. 74-2, Ex. P.

is not the Justice League. It cannot swoop in and address wrongs, real or perceived, wherever they appear."[90]

For the foregoing reasons, the Court **GRANTS** Owens Corning's Motion for Summary Judgment and **DISMISSES WITH PREJUDICE** Faulk's claims. A separate final judgment will be entered. As to Faulk's sealing motion, the Court **DENIES WITHOUT PREJUDICE** Faulk's motion but will allow him to file an amended motion to seal within fourteen (14) days of this Order.[91]

IT IS SO ORDERED this 18th day of February, 2025.

BRANTLEY STARR
UNITED STATES DISTRICT JUDGE

[90] *Combs-Harris v. Carvana, LLC*, 2023 WL 2772125 (E.D. Pa. April 4, 2023) (citing *Brummell v. Clemons-Abdullah*, No. 4:21-cv-01474-SRC, 2022 WL 1091137, at *3 (E.D. Mo. April 12, 2022)); *Long v. Clemons-Abdullah*, No. 4:21-CV-01395-SRC, 2022 WL 950862, at *3 (E.D. Mo. Mar. 30, 2022); *Wright v. United States*, 2:21-cv-01152-NR, at *4 (W.D. Pa. Jan. 6, 2022); *Lindsay v. State of Colorado*, No. 8:21-cv-00468, at *6 (D. Neb. Dec. 16, 2021); *Martin v. Coca Cola Consol., Inc.*, No. 1:20-cv-323-HAB, 2020 WL 5548690, at * 2 (N.D. Ind. Sept. 16, 2020)).

[91] Matters such as sealing and sanctions can endure past a final judgment. So the forthcoming final judgment will not dispose of the sealing issue at this point.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CHARLES FAULK,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. 3:23-CV-0230-X
	§	
OWENS CORNING ROOFING AND ASPHALT, LLC,	§	
	§	
Defendant.	§	

FINAL JUDGMENT

By separate memorandum opinion and order, the Court grants summary judgment in favor of Owens Corning Roofing and Asphalt, LLC on all of Charles Faulk's claims. (Doc. 101). Therefore, the Court **ORDERS**, **ADJUDGES**, and **DECREES** that Faulk's claims and causes of action against the Defendant are **DISMISSED WITH PREJUDICE.**

Each party shall bear its own fees and costs. The Judgment disposes of all parties and claims except for the remaining sealing issue noted in the memorandum opinion and order. This is a final judgment.

IT IS SO ORDERED this 18th day of February, 2025.

BRANTLEY STARR
UNITED STATES DISTRICT JUDGE