

ORIGINAL

No. 25-7374

In the Supreme Court of the United States

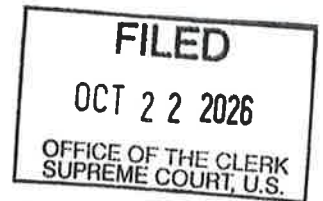
STEVEN DOUGLAS COLEMAN,

Petitioner,

v.

MARIA KIM GRAND,

Respondent.



ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR REHEARING

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OCTOBER MMXXVI

Petition for Rehearing

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PETITION FOR REHEARING

Under this Court's Rule 44.2, petitioner Steven Douglas Coleman respectfully asks the Court to grant rehearing of its October 5, 2026, order denying certiorari, to call for a response, and to grant the petition and summarily reverse or set the case for plenary review.

The petition for certiorari showed that the courts below resolved sworn factual disputes at summary judgment. Pet. for Cert. 3–11. This petition presents substantial grounds not previously presented:

The Second Circuit majority's own governing rule protects an accusation as opinion only when its supporting facts are "fully and accurately set forth." App. 23. On this record, they were neither, and Grand concealed contrary facts from the district court as well as from her readers.

The majority's holding that Coleman waived his challenge to the letter's accusations of coerced sex (App. 11, n. 3), and its premise that Coleman "only contests Grand's conclusions and subjective characterizations, not the underlying facts" (App. 24), are contradicted by the district court record.

The majority opinion does not cite a single sworn statement from either party or the letter passage and journalist communication in which Grand stated the meaning of her accusations.

The result denied Coleman a jury on a genuinely disputed accusation of criminal sexual misconduct, contrary to the Seventh Amendment.

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REASONS FOR GRANTING REHEARING**I. The majority’s own rule requires facts “fully and accurately set forth.” Grand’s were neither.**

The majority held Grand’s accusations to be protected opinion under this rule: an accusation “could be regarded as mere hypothesis and therefore not actionable if the facts on which they are based are fully and accurately set forth and it is clear to the reasonable reader or listener that the accusation is merely a personal surmise built upon those facts.” App. 23–24 (quoting *Gross v. New York Times Co.*, 82 N. Y. 2d 146, 155 (1993)).

The facts were not full. In an earlier version of her letter, which she emailed to several people, J. App’x 1329, 1348, Grand told readers that “in the last three years of my interaction with him I have been sexually harassed and pushed into saying yes to sexual acts I did not want to do.” J. App’x 2500. In the published version, Grand told readers: “In September 2013 he broke up with me By that point, though, I wasn’t in love with him anymore. I didn’t want to be intimate with him anymore. That period is when the sexual harassment started.” J. App’x 38–39. Both statements refer to the same period: the three years following September 2013, during which Grand stated she did not want any sex with Coleman. Grand then described sexual encounters during that same period as unwanted sex that Coleman coerced from her:

“On tour I would have to sleep with him at the end of the day lest him be absolutely angry and sometimes

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refuse to rehearse the band the next day.” J. App’x 39.

“Whenever he offered me more work, he would wait until I actually slept with him to solidify the dates.” *Ibid.*

Coleman has stated under oath and argued in his briefs that these accusations of coerced, unwanted sex are knowingly false. J. App’x 1082–1084, 2073–2074.

The record contains Grand’s own contemporaneous communications, from 2013 through 2016, pursuing Coleman for sex during those same three years. J. App’x 1485–1489. None appears in her letter.

Grand even removed a partial admission. The earlier version of her letter conceded that in September 2016, during the period in which she described sex with Coleman as “only harassment and coercion,” J. App’x 2071–2072, 2097, “I actually volunteered to give him a massage.” J. App’x 2498. That sentence does not appear in the published version. See *id.*, at 36–42, 2480. In fact, the contemporaneous messages from September 16 through 22, 2016, show that the “massage” was Grand initiating the parties’ last sexual encounter, culminating in sexual acts on September 21. J. App’x 485, 487–488, 1488–1489, 1501–1502.

The facts were not accurate. Coleman denied the accusations under oath. J. App’x 1080–1091. A recital of facts that the opposing party disputes under oath cannot be “accurately set forth” as a matter of law at summary judgment.

Grand also concealed contrary facts from the court. In opposing summary judgment, Grand quoted a September 2015 email from Coleman as

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proof that he demanded sex from her while she refused. That email falls two years into the three-year period in which Grand repeatedly stated she did not want any sex with Coleman. J. App'x 38–39, 2071–2072, 2097, 2500. Grand omitted the surrounding messages. The day before, Grand had written to Coleman, “I really am just horny,” and “I could use a licking.” Before she received his email, she wrote, “If you promise to treat me really nicely . . . I’ll come to your room now.” J. App'x 2478–2480. Coleman also documented Grand’s undisclosed distribution of her letter to journalists through third parties, discovered only by subpoena. J. App'x 2076–2080. Neither court below addressed this concealment.

A speaker who withholds the facts that contradict her accusation, from her readers and then from the court, has not “fully and accurately set forth” anything. This Court has recognized the same principle: even when a speaker states the facts on which an opinion rests, “if those facts are either incorrect or incomplete, or if his assessment of them is erroneous, the statement may still imply a false assertion of fact.” *Milkovich v. Lorain Journal Co.*, 497 U. S. 1, 18–19 (1990). Grand herself told readers the letter was factual: “I have proof for most of what I’m talking about here. If you’d like to see text messages please let me know.” J. App'x 36. As Judge Menashi explained, “A reasonable reader would understand a statement in which the author offered to prove her claims as ‘capable of being proven true or false.’” App. 32 (quoting *Davis v. Boenheim*, 24 N. Y. 3d 262, 270 (2014)).

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II. The district court record refutes the majority's waiver holding and its premise that Coleman challenged no facts.

The majority declined to consider Coleman's challenge to the letter's statements that "sexual relations were forced upon her in exchange for professional benefit," because he "did not identify these statements as false or defamatory in his submissions in the district court." App. 11, n. 3. It then faulted the dissent as "[u]nable to identify a single factual statement from Grand's letter that Coleman actually challenges as false," and asserted that "Coleman only contests Grand's conclusions and subjective characterizations, not the underlying facts." App. 24.

The district court record shows otherwise:

The amended complaint alleged that the letter contained "untrue statements alleging [that Coleman] engaged in a pattern of abuse, sexual harassment and sexual acts without the consent of [Grand]." J. App'x 158.

Coleman's summary judgment papers argued that Grand's statement that he "convinced" her to be intimate was "clearly a fabrication"; that the claim that "the sexual harassment started" in September 2013 was false because he "ended the relationship" and Grand "pursued him"; and that there was never a single instance in which he "initiated intimacy and refused to take 'no' for an answer." J. App'x 1395–1397. The majority cites these pages itself. App. 12, 14, 17, 19; see App. 35 (Menashi, J., dissenting).

On the exchange of sex for professional benefit, Coleman showed that the reverse occurred. On

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July 4, 2011, Grand offered him sexual favors in exchange for travel to Chicago. J. App'x 1256, 1396. On July 7, she told musician Antoine Roney that she “manipulated somebody to get what I wanted” and “used my body to get musical knowledge,” and identified Coleman as that person. *Id.*, at 1395, 1081; see *id.*, at 557–568. At her deposition she admitted it: “I just told you it was Steve.” *Id.*, at 356. On July 9, Coleman rejected the offer in writing and told her she should never offer herself sexually to obtain anything. *Id.*, at 1256. At her deposition, Grand claimed that Coleman had pushed her into making the offer; she was then confronted with his July 9 email saying the opposite. *Id.*, at 335–337. She later wrote to Coleman, “I would like you to teach me like you do, but in a barter situation, where I do things for you and you do things for me.” *Id.*, at 1396. Neither court addressed this evidence. A court that grants summary judgment without considering the nonmovant’s evidence has not viewed the record in his favor. *Tolan v. Cotton*, 572 U. S. 650, 657 (2014) (*per curiam*).

Coleman’s sworn declaration challenged the underlying facts: “There was no sexual harassment that began in September 2013. From September 2013 through January 2014, Ms. Grand was pursuing me, trying to get me to come back to her.” J. App'x 1082; see *id.*, at 1083–1084. Grand admitted that after the September 2013 breakup she called, texted, and emailed him often. *Id.*, at 305–306.

Coleman also swore that there was no “abuse and exploitation” on his part, that Grand “frequently used her sexual ‘power’ to obtain many of the things that she wanted,” and that in February 2012 she told him

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she had “trapped” him “because of what she could learn from” him. J. App’x 1081; see *id.*, at 466. He denied the “lifetime” remark, J. App’x 1533, which the majority said he attacked “without denying.” App. 24.

The district court itself acknowledged that “Coleman disclosed the facts supporting his assertion that Grand’s claims were false,” including text messages with Grand. App. 71.

The court of appeals reviews summary judgment *de novo* on the whole record; it may not affirm by declaring that the challenge was never made.

Judge Menashi saw this: “Contrary to the majority’s suggestion, Coleman disputes the account of the relationship that Grand provided.” App. 35. “[T]he majority somehow examines a bitter dispute over alleged sexual misconduct and concludes that everyone actually agrees on what happened. No reasonable reader could believe that.” *Ibid.*

III. The majority did not cite a single sworn statement or Grand’s own explanations of what her letter meant.

The majority cites the record at J. App’x 36–42, 142–146, 175–176, 1395–1398, and 2073–2074. Pages 142–146 are from Coleman’s Rule 56.1 statement; the majority cited them only for the letter’s text, not for the statement’s repeated citations to sworn testimony. See J. App’x 134–148. The majority does not cite:

The letter passage accusing Coleman of three years of coerced, unwanted sex. J. App’x 2500.

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Grand's sworn interrogatory answers: "From 2013 onward . . . Mr. Coleman would refuse to book or solidify gigs or tours unless Defendant had sex with him," and in July 2011 he "forced Defendant to share a hotel room with him . . . told her she could not sleep without having sex with him, and forced her to leave the room at 3am when she repeatedly refused." J. App'x 1675.

Grand's sworn deposition testimony: "[H]e pressured me to go to the hotel with him even though I didn't want to, and I remember crying all the way to the hotel." J. App'x 283–284; see *id.*, at 2072–2073, and n. 10.

Grand's sworn statement on the parties' first encounter, which her letter described this way: "[H]e convinced me to be intimate with him. I would always end up doing what he wanted after he'd pressure me enough." J. App'x 38. Under oath, she went further: "In June 2011, during Parties' first sexual encounter, Mr. Coleman put immense pressure on Defendant at every step, persuading and pushing her until she acquiesced. . . . Defendant did not feel that this encounter was in any way consensual." J. App'x 1677. The majority treated "convinced" as opinion without mentioning this statement. App. 12–14.

Grand's November 16, 2017, email to journalist Steve Rowland, a recipient of the letter, stating its intended meaning:

"I hope my letter makes that clear . . . after I started resisting his advances, it was only harassment and coercion. I want to stress that again.

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After September 2013, all I was is harassed. It's a long time to be harassed. I made it clear many times that I wanted him to stop propositioning me, and he didn't care. I'm highly annoyed that this was not more clear in my letter and that you felt the need to stress that relationships should be kept out of work. This isn't about relationships. It's about abuse and harassment . . .” J. App'x 2097.

Coleman's sworn denials. J. App'x 1080–1091.

Coleman put the Rowland email squarely before the district court:

“Grand communicated to journalist Steve Rowland that her accusations had not been strongly worded enough, and clarified her defamatory comment that, after September of 2013, every sexual interaction between Mr. Coleman and herself had been coerced. Grand's email to Rowland removes any hint of ambiguity regarding what she meant in her Letter.” J. App'x 2071–2072.

His brief also quoted Grand's statements to Rowland that “I never propositioned him nor would have wanted to” and “I really strived to make this letter as impartial as I could but now I kind of regret that.” *Id.*, at 2072, n. 4; see *id.*, at 2097. Neither the district court nor the majority mentioned the email.

The author of the letter, writing to a reader and later under oath, described the same events as things that happened: coercion, conditioning work on sex, being forced into a hotel room against her will. The readers understood it the same way: three band

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members quit “as the result of Ms. Grand’s Letter,” and six organizers canceled engagements “because of the ‘cloud that exists now.’” App. 28 (Menashi, J., dissenting) (quoting J. App’x 146). “Either Coleman sexually harassed Grand or he did not. That is a jury question, not a matter of figurative expression.” App. 30. A statement that its author swears to as fact, and that its readers acted on as fact, cannot be held to be opinion as a matter of law.

Grand swore she was forced into the Chicago hotel room. J. App’x 283–284, 1675. Coleman’s interrogatory answers said the opposite: “I never made Maria share a hotel room with me or come to my hotel room. Maria came to my hotel rooms for sex many nights over many trips, but only because she wanted to. No one ‘made’ her do anything that she did not want to do.” J. App’x 1529–1530. This was the same Chicago trip for which Grand had offered sexual favors, and Coleman had refused. J. App’x 1256, 1396. Coleman also produced Grand’s own email of July 17, 2011, written before the trip: “I don’t care about where I stay. Wherever there’s a bed is good. I don’t mind sharing your room.” J. App’x 2104; see *id.*, at 2074. The majority acknowledged the email, App. 19–20, but did not treat it as creating a dispute for a jury. Instead, it discounted the email by reinterpreting the letter, relying on a passage at J. App’x 40 that describes a different event in June 2016, see *id.*, at 320, 2239, five years after the Chicago trip. App. 20; see Pet. for Cert. 10. Coleman identified the error on rehearing below, CA2 ECF No. 200, p. 17, and the court did not acknowledge it. Weighing one party’s evidence against the other’s, and resolving the conflict by

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relying on an unrelated event, is precisely what a court may not do at summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).

The majority also observed that “[a]t no point . . . does Grand’s letter represent or imply that she was raped or otherwise physically forced to have sex with Coleman.” App. 19. But Grand never alleged physical force, and physical force is not the test: that sex-related conduct was “voluntary” is “not a defense,” and whether it was “unwelcome” “turns largely on credibility determinations committed to the trier of fact.” *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 68 (1986); see App. 32. She alleged coercion: that Coleman used his position as her teacher and bandleader to extract unwanted sex. She swore to that, J. App’x 1675, and testified: “I say that I was not physically forced. Now I believe I was manipulated and coerced,” *id.*, at 236, and “I was definitely coerced and pressured, and I believe that affects consent also.” *Id.*, at 361. Coleman denied it under oath. J. App’x 1080–1091.

IV. The Seventh Amendment requires a jury to decide whether these accusations are true.

Grand accused Coleman of illegal sexual conduct. As Judge Menashi noted, “[s]exual harassment is an illegal form of sex discrimination under federal and state law,” and “[i]f Grand made the same allegations in a Title VII complaint against an employer, she would state a claim for sex discrimination.” App. 31. Coleman denied the accusations under oath and supported his denial with Grand’s own contemporaneous communications. J. App’x 1080–1091. Judge Men-

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ashi concluded that even under the actual malice standard the district court applied, “[i]f those claims were false, a reasonable jury could find that Grand knew that the claims were false.” App. 38.

The Seventh Amendment preserves the right to a jury in actions at common law, including defamation. Summary judgment is consistent with that right only when there is no genuine dispute of material fact. “Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge.” *Anderson*, 477 U.S., at 255. By declaring that the parties agree on facts they dispute under oath and labeling the disputed accusation “opinion,” the courts below removed from the jury the only question the case is about.

V. The Court should call for a response.

Under this Court’s Rule 44.3, the Court will not grant rehearing without first calling for a response. Respondent waived her response to the petition for certiorari. Petitioner asks the Court to call for one, so that respondent must address the record identified above.

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CONCLUSION

The Court should grant rehearing, vacate its October 5, 2026, order denying certiorari, call for a response, and grant the petition for a writ of certiorari, either summarily reversing the judgment of the Second Circuit as in *Tolan* or setting the case for plenary review.

Respectfully submitted.

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OCTOBER 2026

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CERTIFICATION OF UNREPRESENTED PARTY

I, Steven Douglas Coleman, *pro se* petitioner, certify that this petition for rehearing is restricted to the grounds specified in this Court's Rule 44.2—intervening circumstances of a substantial or controlling effect or other substantial grounds not previously presented—and that it is presented in good faith and not for delay.

/s/ Steven Douglas Coleman

Steven Douglas Coleman

October 22, 2026

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STEVEN DOUGLAS COLEMAN,
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v.

MARIA KIM GRAND.

CERTIFICATE OF COMPLIANCE AND SERVICE

Pursuant to S. Ct. R. 33.1(h), I certify that the petition for rehearing respectively 2,226 words, excluding parts exempted by S. Ct. R. 33.1(d).

Pursuant to S. Ct. R. 29.2, I certify that 40 copies in booklet format and 1 unbound copy of the petition for rehearing are sent to the Clerk of the Supreme Court of the United States through the United Parcel Service via Next Day Air postage prepaid on this 22nd day of October, 2026.

Lastly, I certify pursuant to S. Ct. R. 29.5(c), 3 copies of the petition for rehearing are served all parties required to be served have been served via email and United States Postal Service via Priority Mail postage prepaid, this 22nd day of October, 2026.

[See attached service list]

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

Executed on October 22, 2026.

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President

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