

No. _____

**IN THE SUPREME COURT
OF THE UNITED STATES**

TERRA WARGO,
Petitioner,

v.

**MJR PARTRIDGE CREEK
DIGITAL CINEMA 14,**
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

Carla D. Aikens
Carla D. Aikens, P.L.C.
615 Griswold Street, Suite 709
Detroit, Michigan 48226
(844) 835-2993
carla@aikenslawfirm.com
Counsel for Petitioner

QUESTIONS PRESENTED

1. Whether a court may defeat a Title VII hostile work environment claim on summary judgment by parsing the record incident by incident instead of evaluating the totality of the circumstances.
2. Whether a Title VII disparate treatment claim may be defeated at the prima facie stage by treating comparator evidence as an inflexible prerequisite under *McDonnell Douglas*.
3. Whether, after *Muldrow v. City of St. Louis*, a forced transfer is nonactionable whenever pay and benefits remain unchanged.
4. Whether Title VII retaliation protection covers internal reporting, advocacy for coworkers, and related opposition when the employer fires the employee for that speech and assistance.

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

Petitioner Terra Wargo was the plaintiff in the district court and appellant in the court of appeals. Respondent MJR Partridge Creek Digital Cinema 14 was the defendant in the district court and appellee in the court of appeals.

No corporate disclosure statement is required for petitioner.

PROCEEDINGS DIRECTLY RELATED TO THIS CASE

1. *Terra Wargo v. MJR Partridge Creek Digital Cinema 14*, No. 4:22-cv-12063, United States District Court for the Eastern District of Michigan. The district court granted summary judgment on February 21, 2024, and denied reconsideration on February 13, 2025.
2. *Terra Wargo v. MJR Partridge Creek Digital Cinema 14*, No. 25-1143, United States Court of Appeals for the Sixth Circuit. The court of appeals entered judgment on November 25, 2025, and denied rehearing and rehearing en banc on December 30, 2025.

TABLE OF CONTENTS

QUESTIONS PRESENTED	1
PARTIES AND CORPORATE DISCLOSURE STATEMENT	2
PROCEEDINGS DIRECTLY RELATED TO THIS CASE	2
TABLE OF CONTENTS	3
TABLE OF AUTHORITIES	4
OPINIONS BELOW	5
JURISDICTION	5
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	5
STATEMENT OF THE CASE	5
REASONS FOR GRANTING THE PETITION	7
CONCLUSION	10
APPENDIX TABLE OF CONTENTS	11

TABLE OF AUTHORITIES

Cases

<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242 (1986)	8
<i>Burlington N. & Santa Fe Ry. Co. v. White</i> , 548 U.S. 53 (2006)	9
<i>Crawford v. Metro. Gov’t of Nashville & Davidson Cnty.</i> , 555 U.S. 271 (2009)	9
<i>Furnco Constr. Corp. v. Waters</i> , 438 U.S. 567 (1978)	8
<i>Harris v. Forklift Sys., Inc.</i> , 510 U.S. 17 (1993)	8
<i>Hittle v. City of Stockton</i> , 604 U.S. ____ (2025) (Thomas, J., dissenting from denial of certiorari)	9
<i>McDonnell Douglas Corp. v. Green</i> , 411 U.S. 792 (1973)	8
<i>Muldrow v. City of St. Louis</i> , 601 U.S. 346 (2024)	9
<i>Oncale v. Sundowner Offshore Servs., Inc.</i> , 523 U.S. 75 (1998)	8
<i>Texas Dep’t of Cmty. Affairs v. Burdine</i> , 450 U.S. 248 (1981)	8
<i>Tolan v. Cotton</i> , 572 U.S. 650 (2014)	8

Statutes

28 U.S.C. § 1254(1)	5
42 U.S.C. § 2000e-2(a)(1)	5
42 U.S.C. § 2000e-3(a)	5, 9

OPINIONS BELOW

The Sixth Circuit's order denying rehearing and rehearing en banc, entered December 30, 2025, is unreported and reproduced at App. 1a.

The Sixth Circuit's unpublished opinion, entered November 25, 2025, is unreported and reproduced at App. 4a-15a. The judgment is reproduced at App. 16a.

The district court's opinion and order granting summary judgment, entered February 21, 2024, is unreported and reproduced at App. 17a-46a.

The district court's opinion and order denying reconsideration, entered February 13, 2025, is unreported and reproduced at App. 47a-50a.

JURISDICTION

The court of appeals entered judgment on November 25, 2025. It denied rehearing and rehearing en banc on December 30, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Title VII of the Civil Rights Act of 1964 provides in relevant part:

42 U.S.C. § 2000e-2(a)(1): It shall be an unlawful employment practice 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 sex.

42 U.S.C. § 2000e-3(a): It shall be an unlawful employment practice for an employer to discriminate against any employee because she has opposed any practice made an unlawful employment practice by Title VII, or because she has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Title VII.

STATEMENT OF THE CASE

Terra Wargo began working at MJR Partridge Creek Digital Cinema 14 in 2015. She advanced through the ranks and became a full-time manager. When the general-manager position at Partridge Creek opened in early 2021, she applied and interviewed for it. MJR did not promote her. It transferred Paul Finnigan, a male employee, into the role instead, and offered petitioner Finnigan's former position at another theater. She declined and remained at Partridge Creek. R. 39-2, PgID.282; ECF No. 42, PageID.488-89.

After Finnigan arrived, petitioner's working environment changed. He texted her on her personal phone. He invited her to join him at Bar Louie. He then sent messages including: "I will teach you all I know," "I can show you everything . . . if you let me," "You just have to trust me,

and my methods,” “You will learn more than you think,” and later, “I wanted to treat you to dinner.” R. 39-6, PgID.445-48, 454-55; ECF No. 42, PageID.493; ECF No. 50, PageID.742.

Petitioner’s lower-court briefing also identified evidence that Finnigan used the same tactic with another female manager, Hannah Vennard, and that he invited the two female salaried managers out for drinks. ECF No. 42, PageID.492-93; ECF No. 50, PageID.742, 757.

On June 17, 2021, Finnigan saw petitioner driving near Partridge Creek, turned his car around, followed her into a parking lot, and then texted her about where she was. Petitioner moved her car between other vehicles because she feared what would happen if he saw her. R. 39-6, PgID.455; R. 39-8, PgID.458; ECF No. 50, PageID.742-43.

On July 13, 2021, Finnigan again asked petitioner to meet him. The meeting became heated. On petitioner’s account, Finnigan became angry and aggressive, slammed a piece of paper down, followed her into an adjoining office, blocked the door while she tried to leave, and touched her arm for five to ten seconds to stop her from exiting. Petitioner testified: “Multiple times I had attempted to physically leave by going towards the door and also verbally expressing that I wanted to leave, and he would not let me.” R. 39-2, PgID.272-73; R. 39-11, PgID.463; ECF No. 42, PageID.493, 505-06.

A coworker found petitioner crying in her car afterward. Finnigan later admitted she was upset when leaving the office. ECF No. 42, PageID.505-06.

Petitioner filed an internal complaint and requested Finnigan’s removal. MJR concluded there was no sexual harassment, issued written warnings to both employees, directed petitioner not to discuss future complaints from other employees with coworkers, and offered her a transfer to another theater less than ten miles away. She accepted because she needed a job and had no other alternative. R. 39-14, PgID.466-68; ECF No. 50, PageID.747-48.

Petitioner’s transfer preserved pay and benefits, but it removed her from the theater where she had built her career, where she had sought promotion, and where she had reported Finnigan’s conduct. The panel later treated the transfer as legally irrelevant because petitioner “didn’t testify to any harm from the transfer” and said she got along with her new manager. ECF No. 56, PageID.906.

The retaliation evidence did not end with petitioner’s own complaint. The record below included evidence that petitioner sent emails, completed official forms, had multiple meetings with management about Finnigan, and assisted Hannah Vennard with HR-related tasks and questions about filing a report against Finnigan for conduct toward another female employee, Jocelyn. According to petitioner’s briefing, Jocelyn reported that Finnigan had grabbed her butt twice and had uncomfortable conversations with her. ECF No. 50, PageID.747-48, 761-62; ECF No. 42, PageID.497-98, 511.

Petitioner's briefing further identified testimony from MJR's corporate representative that he could not identify any policy expressly prohibiting employees from talking to coworkers about potential HR complaints. ECF No. 42, PageID.500-01, 511.

About one month after the transfer, petitioner returned to Partridge Creek and met with former coworkers in a keyed office. One coworker filed a sexual-harassment complaint against Finnigan the next day. About two weeks later, MJR fired petitioner. It gave three reasons: inappropriate comments about a manager, insubordination to and a verbal outburst at a manager, and a refusal to follow company policy and directive provided in corrective discipline. R. 39-18, PgID.475; ECF No. 56, PageID.902.

Kincaid later explained that petitioner had entered a keyed office after her transfer and had discussed HR-related issues with coworkers despite the earlier warning. MJR said it "lost faith" that petitioner was trustworthy. R. 39-3, PgID.331; ECF No. 56, PageID.902. Petitioner's reconsideration motion argued that the first two reasons dealt with the Finnigan incidents she had complained about and the last reason dealt with her assistance to another employee seeking to complain. ECF No. 50, PageID.761-62.

Petitioner sued under Title VII and Michigan's Elliott-Larsen Civil Rights Act. The district court granted summary judgment on hostile work environment, sex discrimination, and retaliation. As relevant here, the district court held that the harassment allegations did not rise to severe or pervasive conduct as a matter of law, that petitioner lacked proper comparators, and that her retaliation theory failed because she had not adequately developed causation. ECF No. 53, PageID.890-91.

The Sixth Circuit affirmed. On hostile environment, it characterized the invitations as "sporadic," treated the texts as part of a "routine work discussion," and held that the blocking and touching incident was not actionable because it "wasn't sexual" and occurred once. ECF No. 56, PageID.903-05. On discrimination, it held that the transfer was not an adverse action under Muldrow and that petitioner could not identify a similarly situated male comparator as to promotion or termination. ECF No. 56, PageID.906-07. On retaliation, it held that no formal investigation had begun before petitioner's firing, that her coworker filed only an internal complaint, that her direct-evidence retaliation theory was forfeited, and that she forfeited causation by underdeveloped briefing below. ECF No. 56, PageID.907-09.

REASONS FOR GRANTING THE PETITION

This case presents recurring Title VII questions about the way lower courts use summary judgment to narrow the statute. The decision below broke the harassment record into isolated incidents, treated comparator evidence as a rigid gatekeeper, read Muldrow narrowly, and discounted retaliation rooted in internal reporting and coworker advocacy. The petition follows the path this Court took in Muldrow and the concerns recently identified in *Hittle*: Title VII's text does

not permit lower courts to add extra screens that keep juries from deciding ordinary discrimination disputes.

I. THE DECISION BELOW CONFLICTS WITH THIS COURT’S HOSTILE WORK ENVIRONMENT PRECEDENTS BY DISASSEMBLING THE RECORD.

Harris and *Oncale* require courts to examine the whole working environment, not disconnected fragments. *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 23 (1993); *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 81-82 (1998). The question is whether a reasonable jury could find an objectively hostile environment from the totality of the circumstances.

That is not what happened here. The panel acknowledged repeated invitations to meet outside work, messages such as “I can show you everything . . . if you let me” and “trust me, and my methods,” following petitioner into a parking lot, and physically blocking her exit while touching her arm. ECF No. 56, PageID.903-05; R.39-6, PgID.445-48, 454-55; R.39-8, PgID.458; R.39-11, PgID.463. It then discounted the invitations as sporadic, the texts as part of work discussion, the following incident as insufficient, and the blocking and touching because the restraint occurred once and “wasn’t sexual.” ECF No. 56, PageID.903-05.

A jury could view the same record as an escalating pattern: a newly installed male supervisor contacted petitioner on her personal phone, repeatedly asked her out, used language a jury could regard as suggestive, tracked her movements, and then physically prevented her from leaving a room. Petitioner also presented evidence that Finnigan used the same tactic with another female subordinate. ECF No. 42, PageID.492-93, 505-06. Rule 56 does not permit courts to neutralize that record piece by piece. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *Tolan v. Cotton*, 572 U.S. 650, 657-60 (2014).

II. THE DECISION BELOW TURNS MCDONNELL DOUGLAS INTO A SUBSTANTIVE BARRIER.

McDonnell Douglas created a method for organizing circumstantial proof, not a separate body of substantive law. The prima facie showing was never meant to be rigid, mechanized, or exclusive. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 n.13 (1973); *Furnco Constr. Corp. v. Waters*, 438 U.S. 567, 575, 577 (1978); *Texas Dep’t of Cmty. Affairs v. Burdine*, 450 U.S. 248, 253 (1981).

The panel nevertheless held that petitioner’s claim “can’t get off the ground” without a similarly situated male comparator. ECF No. 56, PageID.907. It rejected Finnigan as a promotion comparator because he had prior general manager experience and had helped open Partridge Creek, and it rejected the termination claim because no male employee engaged in the same conduct. *Id.* That approach converts comparator evidence from one possible way to prove discrimination into an exclusionary rule.

Justice Thomas, joined by Justice Gorsuch, recently warned that some courts treat *McDonnell Douglas* “as a substantive legal standard that a plaintiff must establish to survive summary judgment,” even though the framework is only a procedural device and may cause courts to miss other ways a plaintiff can prove a claim. *Hittle v. City of Stockton*, 604 U.S. ____ (2025) (Thomas, J., dissenting from denial of certiorari) (slip op. 5-6).

That concern applies here. Petitioner sought the general manager role at the theater where she had built her career, was passed over in favor of a man, reported that supervisor’s conduct, was moved out, and was later fired amid the same conflict. ECF No. 56, PageID.902, 906-07; ECF No. 42, PageID.510-11. A jury could infer discrimination from that course of conduct even without a nearly identical comparator.

III. THE DECISION BELOW MISREADS *MULDROW*.

In *Muldrow v. City of St. Louis*, this Court rejected a heightened-harm rule for transfer claims and held that an employee need show only some injury respecting employment terms or conditions. 601 U.S. 346, 355-59 (2024). The panel cited *Muldrow* and still held petitioner’s transfer nonactionable because her pay and benefits stayed the same, she managed a different department, she did not testify to harm in the panel’s preferred terms, and she got along with her new manager. ECF No. 56, PageID.906.

The panel’s reading is too narrow. Petitioner was removed from the theater where she had worked for years, where she had sought promotion, and where she had reported harassment by the incoming general manager. Her reconsideration motion explained that she accepted the transfer because she needed a job and had no other alternative. ECF No. 50, PageID.747-48. A forced move under those circumstances is not legally invisible because salary stayed constant. *Muldrow* rejected an extra-textual transfer screen. The decision below effectively recreates one.

IV. THE DECISION BELOW NARROWS TITLE VII RETALIATION IN THE VERY SETTING WHERE EMPLOYEES ARE TOLD TO SPEAK UP.

Title VII protects employees who oppose unlawful discrimination, including through internal reporting, and separately protects employees who assist or participate in Title VII proceedings and investigations. 42 U.S.C. § 2000e-3(a). *Crawford* rejected any cramped definition of opposition, and *Burlington Northern* recognized that the antiretaliation provision must protect conduct that would deter a reasonable worker from reporting discrimination. *Crawford v. Metro. Gov’t of Nashville & Davidson Cnty.*, 555 U.S. 271, 276-80 (2009); *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 64-68 (2006).

Petitioner used internal reporting channels, completed official forms, met with management, and assisted Hannah Vennard with HR-related questions about filing a report against Finnigan concerning conduct toward another female employee. ECF No. 50, PageID.747, 761; ECF No. 42, PageID.497-98. MJR then fired her for reasons tied to that same speech and advocacy:

inappropriate comments about a manager, insubordination to and a verbal outburst at a manager, and failure to follow a directive not to discuss HR-related issues with coworkers. R.39-18, PgID.475; ECF No. 56, PageID.902. Petitioner expressly argued on reconsideration that the first two reasons arose from the Finnigan incidents and the third from helping another person file a complaint. ECF No. 50, PageID.761-62.

The panel still held that no formal investigation had begun before her firing, that the coworker filed only an internal complaint, and that petitioner's direct-evidence retaliation theory was forfeited. ECF No. 56, PageID.907-09. That approach leaves employees exposed at the point where Title VII most expects them to act: inside the workplace, before an EEOC charge exists, using the employer's own reporting channels.

V. THIS CASE IS A SUITABLE VEHICLE.

The court of appeals directly resolved the hostile environment, discrimination, transfer, and retaliation questions. ECF No. 56, PageID.903-09. The judgment is final, rehearing was denied, and the record is developed. The opinion is unpublished, but unpublished employment decisions shape ordinary summary judgment practice every day. This case presents the same type of court-created narrowing that warranted review in Muldrow and prompted concern in Hittle.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

/s/ Carla D. Aikens

Carla D. Aikens
Carla D. Aikens, P.L.C.
615 Griswold Street, Suite 709
Detroit, Michigan 48226
(844) 835-2993
carla@aikenslawfirm.com
Counsel for Petitioner

APPENDIX TABLE OF CONTENTS

United States Court of Appeals for the Sixth Circuit, Order Denying Petition for Rehearing/Rehearing En Banc, December 30, 2025	App. 1a
United States Court of Appeals for the Sixth Circuit, Transmittal Letter Regarding Rehearing Order, December 30, 2025	App. 2a
United States Court of Appeals for the Sixth Circuit, Transmittal Letter Regarding Opinion and Judgment, November 25, 2025	App. 3a
United States Court of Appeals for the Sixth Circuit, Unpublished Opinion, November 25, 2025	App. 4a
United States Court of Appeals for the Sixth Circuit, Judgment, November 25, 2025	App. 16a
United States District Court for the Eastern District of Michigan, Order Granting Summary Judgment, February 21, 2024	App. 17a
United States District Court for the Eastern District of Michigan, Order Denying Reconsideration, February 13, 2025	App. 47a