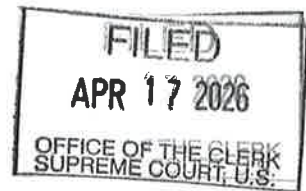


No. 25-784



In The
Supreme Court of the United States

KIYA CUNNINGHAM,
Petitioner,

v.

WELLS FARGO BANK, N.A.
Respondents.

CONSOLIDATED WITH

KIYA CUNNINGHAM,
Petitioner,

v.

WELLS FARGO BANK N.A; NADINE MOONEY;
JENNIFER S. JOHNSON, a/k/a Jennifer Peach;
TRACY A. TOLAND; DAVID MCDOWELL; CHARLES
STOKES, a/k/a Chuck Stokes.
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE U.S. COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR REHEARING

KIYA CUNNINGHAM
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Suite 103 #2088
Fort Mill, SC 29715

Pro se Petitioner

QUESTIONS PRESENTED

Whether Federal Rule of Civil Procedure 56 permits entry of summary judgment after the district court has granted a motion to strike the non-movant's opposition materials prior to the expiration of the response deadline, thereby excluding those materials from the Rule 56 record before the adversarial briefing process contemplated by the Rule is complete. (*App. A*).

PARTIES TO THE PROCEEDINGS

Petitioner is Kiya Cunningham, the plaintiff in the district court and appellant in the United States Court of Appeals for the Fourth Circuit.

Respondents are Wells Fargo Bank, N.A.; Nadine Mooney; Jennifer S. Johnson; Tracy A. Toland; David McDowell; and Charles Stokes, and defendants in the district court and appellees in the court of appeals.

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PETITION FOR REHEARING

Pursuant to Rule 44 of the Rules of the Supreme Court of the United States

Petitioner respectfully petitions for rehearing of the Court's denial of certiorari. Rehearing is warranted because the Court's consideration of the petition appears to have overlooked a material procedural feature of the case and controlling aspects of Federal Rule of Civil Procedure 56 and its implementing framework.

A petition for rehearing is not a vehicle for reargument of the merits. It is appropriate only where there has been an intervening circumstance of substantial or controlling effect, or where other substantial grounds not previously presented warrant further consideration. This case falls within that standard because the denial appears to have proceeded on an incomplete understanding of the procedural posture in which summary judgment was entered.

This case does not present a routine application of summary judgment principles. It presents a discrete procedural question concerning the effect of striking a non-movant's opposition and supporting materials prior to the completion of the Rule 56 briefing process, and the subsequent entry of summary

The resulting procedural sequence was as follows:

- Plaintiff filed an opposition to Defendant's motion for summary judgment and supporting materials;
- Defendant moved to strike the opposition in its entirety;
- The district court granted the motion to strike prior to the expiration of the response period;
- Plaintiff's opposition materials were excluded from the Rule 56 record; and
- Summary judgment was entered based solely on Defendant's submissions.

In this posture, the district court did not evaluate competing evidentiary materials within a completed Rule 56 record. Rather, summary judgment was entered after exclusion of the non-movant's submissions prior to completion of the adversarial briefing process contemplated by Rule 56.

This sequence differs from the ordinary summary judgment framework described in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), and *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), which assume adjudication based on a developed evidentiary record rather than exclusion of one party's submissions before that record is complete.

based framework, the structure of Rule 56 is not applied in its ordinary form.

**III. THE PROCEDURAL POSTURE WAS
TREATED BELOW AS DISCRETIONARY
CASE MANAGEMENT RATHER THAN RULE
56 RECORD STRUCTURE**

The court of appeals affirmed the district court's rulings under an abuse-of-discretion standard applicable to docket and case-management decisions. (*App. B*).

In doing so, the court did not address the effect of the pre-deadline exclusion of Plaintiff's opposition materials on the completeness of the Rule 56 record or the sequencing of adjudication contemplated by the Rule.

As reflected in Appendix B, the exclusion of the opposition materials was treated as a matter of procedural discretion rather than as a determination affecting the scope of the record on which summary judgment was entered.

strike dispositive motion briefing therefore raises a procedural question concerning the interaction between Rule 12(f) and Rule 56 when applied to summary judgment submissions.

This issue was not addressed in the Court's disposition.

VI. INTERVENING CIRCUMSTANCES OF SUBSTANTIAL OR CONTROLLING EFFECT

Federal courts continue to emphasize that summary judgment under Rule 56 is a record-based determination grounded in evidentiary materials submitted by both parties, with Rule 56(c)(2) serving as the principal mechanism for evidentiary challenges.

To the extent lower courts resolve evidentiary objections through exclusion of an entire opposition filing rather than through Rule 56's record-based framework, the uniform application of Rule 56's procedural structure is materially affected.

This concern is illustrated by the procedural sequence in Appendix A, where the non-movant's Rule 56 submissions were stricken before the response period expired.

Because Rule 56 establishes a uniform, record-based framework for adjudicating summary judgment motions in federal civil litigation, the procedural approach employed below implicates the consistent application of that framework across federal courts. To the extent exclusion of dispositive opposition materials supplants record-based evaluation, the issue extends beyond the parties to this case and bears on the administration of summary judgment under the Federal Rules.

Because Rule 56 establishes a uniform, record-based framework for adjudicating summary judgment motions in federal civil litigation, the procedural approach employed below implicates the consistent application of that framework across federal courts. To the extent exclusion of dispositive opposition materials supplants record-based evaluation, the issue extends beyond the parties to this case and bears on the administration of summary judgment under the Federal Rules.

CONCLUSION

For the foregoing reasons, the Court's denial of certiorari appears to rest on a misapprehension of a material procedural feature of the case and of the operation of Federal Rule of Civil Procedure 56. Specifically, as shown in Appendix A, the district court granted the motion to strike Plaintiffs

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Appendix A

IT IS THEREFORE ORDERED that Defendant's Motion to Strike (Doc. No. 88) is GRANTED *prior to the expiration of Plaintiff's response deadline*, and Plaintiff's Response (Doc. Nos. 85, 86), and "Response to Defendant's Reply" (Doc. No. 90), are STRICKEN.

IT IS FURTHER ORDERED that Defendant's Motion for Summary Judgment (Doc. No. 79) is GRANTED. The Clerk is respectfully directed to CLOSE THE CASE.

IT IS SO ORDERED.

Dated: August 30, 2022

Appendix A (continued)

Relevant Rule 56 Procedural Effect

(Excerpts)

In light of the Court's striking of Plaintiff's response brief, the facts presented by Defendant are not in dispute.

The Court must still consider whether the undisputed facts entitle Defendant to judgment as a matter of law.

APPENDIX C — FEDERAL RULE OF CIVIL
PROCEDURE 56(C)(2) AND RELEVANT
EXCERPTS FROM RULE ADVISORY
COMMITTEE NOTES (2010 AMENDMENTS)

Federal Rule of Civil Procedure 56(c)(2)

(Excerpt)

Rule 56(c)(2):

A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

Advisory Committee Notes (2010 Amendments)
(Excerpts)

The burden on the responding party is not a burden to produce evidence in a form that would be admissible at trial.

Rule 56 is designed for record-based adjudication and uses objection mechanisms not wholesale exclusion of entire opposition filings.

The objection functions much as an objection at trial, adjusted for the pretrial setting.

Certificate of Compliance

I, Kiya Cunningham, a pro se petitioner in this case, hereby certify that this petition for rehearing is presented in accordance with Rule 44.2 of the Rules of the Supreme Court of the United States.

I further certify that this petition is limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented, and that it is filed in good faith and not for delay.

Respectfully submitted,

/s/Kiya Cunningham

Kiya Cunningham

Certificate of Compliance

Pursuant to Supreme Court Rule 33.1(d), I hereby certify that this Petition for Rehearing complies with the word limitation prescribed by Rule 33.

This petition contains 1469 words, excluding the parts of the petition that are exempted by Rule 33.1(d). The word count was determined using the word-count feature of the word-processing system used to prepare the document.

Respectfully submitted,

/s/Kiya Cunningham

Kiya Cunningham