

No. 25-824

**In the
Supreme Court of the United States**

♦
TONY MOODY,

Petitioner,

v.

**OHIO DEPARTMENT OF MENTAL HEALTH
AND ADDICTION SERVICES,**

Respondent.

♦
On Petition for Rehearing of an Order Denying
a Petition for a Writ of Certiorari

♦
**PETITION FOR REHEARING
(UNDER SUPREME COURT RULE 44.2)**

♦
Tony Moody
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Petitioner, Pro Se

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TABLE OF AUTHORITIES

Cases:

<i>McDonnell Douglas Corp. v. Green</i> , 411 U.S. 792 (1973)	1, 2, 4, 9, 11
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Rules:

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Petitioner Tony Moody respectfully petitions for rehearing of the Court's order denying the petition for a writ of certiorari. This petition is made under Rule 44.2 on the ground that the Court overlooked or misapprehended controlling matters of law and fact. [Although the underlying facts were previously presented, the legal significance of the analytical inconsistency, specifically, the lower courts' failure to apply a cumulative evidence framework to pretext analysis, constitutes a substantial ground warranting rehearing.] The petition does not ask the Court to retry the case or to resolve disputed testimony. It asks the Court to reconsider whether the certiorari denial overlooked a recurring and material legal question concerning the treatment of pretext evidence in a retaliation case that has already produced multiple appellate decisions and repeated argument over the same evidentiary core. The issue was preserved throughout the state proceedings and was presented again in the certiorari materials.

This case presents a narrow but critical issue: whether a court may determine that evidence of pretext is sufficient to proceed to trial, and later reject

that same claim without reconciling that prior determination under the governing *McDonnell Douglas* framework. That question is not a new theory invented after the fact. It is the same question Moody pressed in the Ohio courts, in his motion for reconsideration, and in the certiorari petition that followed.

INTRODUCTION

This case arises from a retaliation claim brought by Petitioner after protected activity. The claim proceeded through summary judgment, remand, trial, and a second appeal. In its initial decision, the Tenth District Court of Appeals held that the record permitted a finding of pretext and remanded for further proceedings. That earlier decision matters because it confirms that the retaliation theory was not speculative or newly minted; it was recognized by a court of appeals as substantial enough to survive summary judgment.

After trial, the same claim was rejected and later affirmed on appeal. The certiorari petition presented a narrow issue: whether the lower courts misapplied the *McDonnell Douglas* framework by evaluating evidence in isolation rather than as a whole, and

by failing to reconcile their prior determination that the evidence was sufficient to support a finding of pretext. The petition did not ask the Court to become a factfinder. It asked the Court to identify whether the lower courts used the correct legal method in assessing the same retaliation theory that had already been recognized as substantial at an earlier stage.

Rehearing is warranted because the certiorari petition raised a substantial question about repeated pretext analysis errors, and the denial of certiorari overlooked that issue even though it was carried consistently through the state-court record. The petition and the Ohio filings repeatedly identified the same evidence: temporal proximity, disparate treatment, alleged deviation from Directive A-19, and the courts' alleged failure to view that evidence cumulatively. Those are not afterthoughts. They are the central theory of the case.

REASONS FOR REHEARING

I. The Court Overlooked a Controlling Legal Inconsistency in the Record.

The Court overlooked a controlling inconsistency in the record. In its 2021 decision, the Tenth

District held that the evidence was sufficient to permit a reasonable factfinder to infer pretext and remanded for trial. After trial, however, the same retaliation claim, based on substantially the same evidentiary framework, was rejected and affirmed on appeal without meaningful reconciliation of that prior determination. (App. B). The petition for certiorari presented this inconsistency as a legal error in the application of the *McDonnell Douglas* framework, specifically the failure to evaluate pretext based on the totality of the evidence. That issue was squarely presented but overlooked. This Court has made clear that pretext must be evaluated in light of the entire evidentiary record, not by isolating individual facts. See *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133 (2000).

The core of Moody's case has never been a single disputed fact in isolation. It has been the cumulative pattern. His filings consistently alleged that protected complaints were followed by discipline, investigations, and the threat of harsher sanctions; that the employer's stated reason centered on incident-reporting obligations under Directive A-19; that the conduct

in question did not warrant the response given; and that other employees were not treated the same way. The petition for certiorari and the appellate briefs repeatedly presented those facts as a single pretext question, not as disconnected incidents.

That framing matters because the first Tenth District decision recognized that Moody had evidence sufficient to create a factual issue on retaliation. In the 2021 decision, the court affirmed in part and reversed in part, and the reversal on retaliation was tied to the conclusion that the employer's explanation could be found pretextual by a reasonable factfinder. The legal significance of that earlier decision is that one appellate panel already identified the pretext issue as substantial enough to survive summary judgment. That makes the later disposition in the case especially important: the same retaliation theory continued through remand and later appeal, yet the issue remained whether the evidence had been properly assessed in a cumulative way.

Petitioner's point in certiorari was not that the Court should weigh the evidence itself. The point was that the lower courts had allegedly assessed the evi-

dence piecemeal rather than evaluating whether the overall record supported an inference of retaliation. That is the exact kind of alleged methodological error that the petition brought to the Court's attention. The denial of certiorari overlooked that legal question even though it was clearly presented in the certiorari petition and reflected in the Ohio filings.

II. The Court Overlooked the Misapplication of the Pretext Framework.

The certiorari petition argued that the lower courts misapplied pretext analysis by fragmenting the evidence rather than evaluating the record as a whole. The pretext inquiry requires consideration of the full evidentiary context and the inferences reasonably drawn from it. See *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502 (1993). The same evidentiary themes, temporal proximity, differential treatment, and policy inconsistency, were presented consistently, yet were assessed in isolation rather than cumulatively. This is the heart of the Rule 44 issue: not a request for a second merits review, but a request for correction of the analytical method used to evaluate the retaliation claim.

A central theme in the filings is timing. Moody's state appellate brief explained that discipline followed his discrimination complaint, that later investigations followed his 2018 protected activity, and that the temporal closeness between protected conduct and adverse action supported an inference of retaliation. The certiorari petition repeated that same point, arguing that the lower courts treated timing as incidental instead of as evidence relevant to causation and pretext. The same point appears in the memorandum in support of jurisdiction and in Moody's motion for reconsideration, which argued that the courts had not properly accounted for the sequence of events after protected activity.

Another recurring theme is comparative treatment. The appellate brief and the certiorari petition both asserted that similarly situated employees were not investigated or disciplined in the same way. The point was not merely that Moody was treated harshly; the point was that the employer's asserted justification looked selective when compared with how other employees were handled. The petition expressly framed that differential treatment as evidence of pre-

text. That same argument appears in the earlier appellate papers, where Moody insisted that the evidence should be understood as a pattern, not as an isolated disagreement over one workplace event.

A third recurring theme is the alleged mismatch between the employer's stated justification and Directive A-19. The filings consistently assert that the policy required reporting only of significant incidents affecting patient safety, that the incidents at issue did not meet that threshold, and that Moody in any event reported the matters to the Charge Nurse as part of normal workplace practice. The 2024 appellate brief and the memorandum in support of jurisdiction make that same point in detail. Whether one ultimately agrees with Moody or not, that theory was squarely presented and goes directly to pretext. It is the type of argument that must be addressed as part of the totality of the record, not in fragments.

The reason this matters for rehearing is that Moody's certiorari petition did not present a new factual complaint. It argued that the lower courts failed to integrate all of these themes. The petition's core position was that the case cannot be understood by iso-

lating one incident, one schedule change, or one investigation. Instead, it must be evaluated as a series of adverse steps following protected activity, with a shared legal question about whether the employer's explanation was genuine. The Court's denial left that legal question unaddressed even though the petition framed it repeatedly and consistently.

III. The Issue Was Consistently Preserved and Presented at Every Stage.

The issue presented in the petition for certiorari was consistently preserved throughout the state proceedings. From the initial appeal through the memorandum in support of jurisdiction and the certiorari petition, Petitioner advanced the same legal theory: that the retaliation claim was improperly rejected because the evidence was evaluated in isolation rather than as a whole under the governing *McDonnell Douglas* framework. This continuity matters because Rule 44 is not a vehicle for new issues; it is a vehicle for correction when an issue was already presented and overlooked.

The first Tenth District decision confirms that this theory was not newly introduced. That court held

that the evidence was sufficient to permit a reasonable factfinder to infer pretext and remanded the case for further proceedings. The same theory remained central to the case through trial and the subsequent appeal, where Petitioner continued to argue that temporal proximity, comparative evidence, and policy inconsistency must be considered cumulatively. The record therefore shows preservation, not improvisation.

The certiorari petition presented that same issue as a question of legal method, not merely disagreement with factual findings. Petitioner argued that the lower courts isolated the evidence and failed to apply the correct framework for assessing pretext. That question was not hidden in a footnote or introduced only at the end of the process. It was the basis of the petition itself. Because the issue was preserved at every stage and formed the consistent basis of the claim, rehearing is warranted to address a controlling matter that was squarely presented but overlooked.

This preservation also appears in the Supreme Court of Ohio filings. Moody sought jurisdictional review, and then reconsideration after the initial denial. The reconsideration filing again pressed the same

theme that the lower courts had not properly accounted for the pretext evidence and that the *McDonnell Douglas* analysis had been applied too narrowly. The denial of reconsideration on April 1, 2025, left that issue in place without explanation from the state high court. That silence is part of the reason rehearing is now sought in this Court.

IV. The Court Was Presented With a Record-Based Argument About Analytical Error, Not a Request to Reweigh Facts.

Petitioner does not ask this Court to become a factfinder. He asks the Court to recognize that the petition for certiorari identified a legal error in the treatment of retaliation evidence that is both recurring and important: the evidence was allegedly fractured into pieces, the prior appellate recognition of pretext was not meaningfully reconciled with the later disposition, and the totality of the record was not given the weight Petitioner contends it deserved. That is a legal-method question, not a request for a new factual trial.

That is the kind of issue that can be overlooked when a case is denied at the certiorari stage, especially after a long procedural history with multiple

state-court filings and repeated judicial consideration. But the fact that the issue is difficult or highly fact-dependent is not a reason to ignore it; it is the reason it was repeatedly pressed through the state proceedings and into this Court. The certiorari materials consistently stated that the lower courts separated evidence that should have been analyzed together. The denial of certiorari should therefore be reconsidered because the same legal question was already before the Court.

The Supreme Court of Ohio's decisions declining jurisdiction and denying reconsideration did not resolve the underlying analytical issue. They left the record in place, but without explanation of why the question of pretext analysis did not merit review. Moody's certiorari petition then brought that issue to this Court in the same form it had appeared below. Rehearing is appropriate because the Court was presented with a focused, record-based argument that the lower courts' method of analysis was flawed, and that argument was not meaningfully addressed in the denial of certiorari.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court grant rehearing, vacate its denial of certiorari, and restore the petition for further consideration.

Respectfully submitted,

/s/ Tony Moody

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JULY 20, 2026

APPENDIX A

Order Denying Petition for Writ of Certiorari
(Supreme Court of the United States, March 23, 2026)

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

Scott S. Harris
Clerk of the Court
(202) 479-3011

March 23, 2026

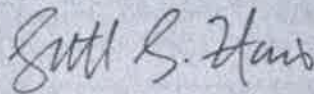
Mr. Tony Moody
560 Bishop Knight
Columbus, OH 43228

Re: Tony Moody
v. Ohio Department of Mental Health and Addiction Services
No. 25-824

Dear Mr. Moody:

The Court today entered the following order in the above-entitled case:
The petition for a writ of certiorari is denied.

Sincerely,



Scott S. Harris, Clerk

Appendix B

Moody v. Ohio Dept. of Mental Health & Addiction Services,
2021-Ohio-4578 (10th Dist.) (selected excerpts)

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Tony Moody,	:	
	:	
Plaintiff-Appellant,	:	No. 21AP-159
	:	(Ct. of Cl. No. 2019-01146JD)
v.	:	
	:	
Ohio Department of Mental Health and	:	(REGULAR CALENDAR)
Addiction Services,	:	
	:	
Defendant-Appellee.	:	

D E C I S I O N

Rendered on December 28, 2021

On brief: *William J. O'Malley*, for appellant.
Argued: *William J. O'Malley*.

On brief: *Dave Yost*, Attorney General, *Gregory S. Young*,
and *Eric A. Walker*, for appellee. **Argued:** *Eric A. Walker*.

APPEAL from the Court of Claims of Ohio

SADLER, J.

{¶ 1} Plaintiff-appellant, Tony Moody, appeals from a judgment of the Court of Claims of Ohio granting summary judgment in favor of defendant-appellee, Ohio Department of Mental Health and Addiction Services ("ODMHAS"), on Moody's claims for race and national origin discrimination and retaliation. For the following reasons, we affirm in part and reverse in part.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} Moody was born in Sierra Leone and immigrated to the United States in 2003, becoming a naturalized citizen in 2017. Beginning in 2013, Moody worked for ODMHAS as a Therapeutic Program Worker ("TPW") at Twin Valley Behavioral Healthcare

{¶ 31} Moody argues the three-day working suspension was an adverse employment action because it escalated his position in the progressive discipline system and meant any future infraction would be subject to a five-day suspension or termination. We have held that where an employer is not required to use progressive discipline prior to terminating an employee, the failure to use progressive discipline does not necessarily establish a pretext for discrimination. *Cruse v. Shasta Bevs., Inc.*, 10th Dist. No. 11AP-519, 2012-Ohio-326, ¶ 19; *Wigglesworth v. Mettler Toledo Intl., Inc.*, 10th Dist. No. 09AP-411, 2010-Ohio-1019, ¶ 24-25. Conversely, in this case, ODMHAS's application of its progressive discipline system when disciplining Moody for being late to work does not, in itself, constitute an adverse employment action.⁶ See *Davis v. Cleveland*, 8th Dist. No. 83665, 2004-Ohio-6621, ¶ 11, quoting *Rose* at 776-77, quoting *Scroggins v. Univ. of Minn.*, 221 F.3d 1042, 1045 (8th Cir.2000) ("The anti-discrimination statutes, however, do not insulate an employee from discipline for 'violating the employer's rules or disrupting the workplace.'").

{¶ 32} In this case, Moody did not lose pay during the three-day working suspension. Moreover, his hourly wage and seniority were not affected by the three-day working suspension. Unlike the plaintiff in *Arnold*, Moody has not demonstrated any "diminished material responsibilities" resulting from the suspension. *Arnold*. at 532. Thus, like the plaintiff in *Presley*, Moody has failed to demonstrate the three-day working suspension had any long-term impact on the terms or conditions of his employment. See *Presley* at 514. Even construing the evidence most favorably to Moody, we conclude he fails to demonstrate the three-day working suspension imposed in August 2018 was an adverse employment action purposes of his race and national origin discrimination claims. Therefore, Moody has failed to establish a prima facie case of race and national origin discrimination.

⁶ We note the federal district court decision in the *Presley* case, which was affirmed by the Sixth Circuit, rejected the plaintiff's claim that her employer's written reprimands "carr[ied] extra weight because it use[d] a progressive discipline policy." *Presley v. Ohio Dept. of Rehab. & Corr.*, N.D. Ohio No. 3:15-CV-67 (Apr. 27, 2016). The court concluded "Presley's proposed rule—that any reprimand issued as part of a progressive discipline policy is itself a materially adverse employment action—would gut the adverse-action element of any meaning." *Id.* In the present case, Moody's argument suggests a similar rule, effectively resulting in any application of progressive discipline necessarily being an adverse employment action if it moved an employee farther along in the progressive system and potentially subjected him to greater future discipline.

December 2018 investigations. Therefore, ODMHAS met its burden under the second step of the *McDonnell Douglas* framework.

e. Pretext for retaliation

{¶ 44} Under the third step of the *McDonnell Douglas* framework, because ODMHAS presented a legitimate justification for the December 2018 investigation, the burden shifts back to Moody to establish that ODMHAS's explanation was a pretext for retaliation. *Dautartas* at ¶ 49. "In order to prevail on a claim of retaliation where the employer has articulated a legitimate, nondiscriminatory reason, the plaintiff must prove not only that the proffered reason was a pretext, but also that the real reason for the employer's action was unlawful retaliation." *Smith v. Ohio Dept. of Pub. Safety*, 10th Dist. No. 12AP-1073, 2013-Ohio-4210, ¶ 76. "A plaintiff may establish pretext by proving that: (1) the employer's stated reason for [the action] has no basis in fact, (2) the reason offered was not the actual reason for the [action], or (3) the reason offered was insufficient to explain the employer's action." *Id.* at ¶ 77.

{¶ 45} Moody effectively argues ODMHAS's proffered reason was insufficient to explain the December 2018 investigations. He asserts TPWs at Twin Valley had some discretion regarding when to file incident reports because not every infraction merited a formal incident report. Moody claims incident reports were an elevated form of reporting that automatically triggered a police investigation, whereas reporting matters to the charge nurse allowed them to be resolved informally. Moody asserted he "generally reported workplace problems to the Charge Nurse, rather than automatically escalate all issues into Incident Reports and police investigations" and that he "only filed Incident Reports for the most egregious conduct." (Moody Aff. at ¶ 10, Pl.'s Ex. 1.) Moody further claimed this "was the way most such incidents were handled by my fellow TPWs." (Moody Aff. at ¶ 10, Pl.'s Ex. 1.) In addition to his personal understanding of appropriate reporting practices, Moody cites a statement made by a registered nurse during the December 2018 investigations. The nurse told the investigator that if a TPW witnessed a patient violation she would advise the TPW to tell the registered nurse on duty about it. Construing this evidence most favorably to Moody, it creates a genuine issue of material fact regarding the incident reporting practices at Twin Valley and, by extension, whether ODMHAS's justification for the December 2018 investigation (i.e., that it was necessary because Moody violated policy by failing to report workplace incidents) was merely a pretext for retaliation.

3. Conclusion regarding Moody's retaliation claim

{¶ 46} Construing the evidence most favorably to Moody as the non-moving party, as we must in a summary judgment motion, we conclude Moody demonstrated a prima facie case that the December 2018 investigations were retaliation for filing the OCRC/EEOC complaint. ODMHAS met its burden of presenting a legitimate, non-retaliatory reason for its action, asserting Moody failed to comply with its incident reporting policies. The burden then shifted back to Moody and he demonstrated a genuine issue of material fact as to whether ODMHAS's proffered explanation was merely a pretext for retaliation. Therefore, the Court of Claims erred by granting summary judgment for ODMHAS on Moody's retaliation claim.

{¶ 47} Accordingly, we sustain Moody's second assignment of error.

V. CONCLUSION

{¶ 48} For the foregoing reasons, we overrule Moody's first assignment of error and sustain his second assignment of error. We affirm the Court of Claims' grant of summary judgment in favor of ODMHAS on Moody's race and national origin discrimination claims but reverse the grant of summary judgment in favor of ODMHAS on Moody's retaliation claim. We remand this matter to the Court of Claims for further proceedings consistent with law and this decision.

*Judgment affirmed in part
and reversed in part.*

JAMISON and NELSON, JJ., concur.

NELSON, J., retired, of the Tenth Appellate District, assigned to active duty under the authority of the Ohio Constitution, Article IV, Section 6(C).

CERTIFICATE OF COMPLIANCE

I, TONY MOODY, HEREBY CERTIFY THAT:

1. THE GROUNDS FOR THIS PETITION FOR RE-
HEARING ARE LIMITED TO SUBSTANTIAL GROUNDS NOT
PREVIOUSLY PRESENTED, SPECIFICALLY: THE LOWER
COURTS' ALLEGED MISAPPLICATION OF THE *McDON-*
NELL DOUGLAS PRETEXT FRAMEWORK BY EVALUATING
EVIDENCE IN ISOLATION RATHER THAN CUMULATIVELY,
AND THE FAILURE TO RECONCILE PRIOR APPELLATE
RECOGNITION OF SUFFICIENT PRETEXT EVIDENCE WITH
THE SUBSEQUENT DISPOSITION OF THE SAME CLAIM.

2. THIS PETITION IS PRESENTED IN GOOD
FAITH AND NOT FOR DELAY.

DATED: JULY 20, 2026

/S/ TONY MOODY
TONY MOODY
PETITIONER, PRO SE

CERTIFICATE OF SERVICE

I, Tony Moody, certify that on July 20, 2026, I served a true and correct copy of the foregoing Petition for Rehearing on counsel for Respondent by depositing the same in the United States mail, first-class postage prepaid, addressed as follows:

Counsel for Respondent
Ohio Department of Mental Health and Addiction
Services
30 East Broad Street, 36th Floor
Columbus, Ohio 43215

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

JULY 20, 2026

/s/ TONY MOODY
TONY MOODY
PETITIONER, PRO SE