No. 25-945

IN THE

Supreme Court of the United States

ROD WARREN, *et al.*,

Petitioners,

v.

NUCOR CORPORATION,

Respondent.

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

REPLY BRIEF

ALEXANDRA C. SISKOPOULOS
Counsel of Record
SISKOPOULOS LAW FIRM, LLP
136 Madison Avenue
6th Floor, #3007
New York, NY 10016
(646) 942-1798
acs@siskolegal.com

Counsel for Petitioners

132120

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES

Page

Cases

Cited Authorities

Other Authorities

REPLY BRIEF

I. Respondent disingenuously argues that this case does not present the ideal vehicle for this Court to finally consider whether the *McDonnell Douglas* framework is an appropriate tool to evaluate Title VII claims at summary judgment. Contrary to the Respondent's assertions, this case is the ideal vehicle, and Respondent's arguments are simply unavailing.

Respondent makes numerous futile arguments in support of its position that this case is an inappropriate vehicle. First, in an attempt to evade review, Respondent incorrectly asserts that the Arkansas Civil Rights Act ("ACRA") limits the use of federal law to interpret the statute. This is simply untrue. In fact, established precedent contradicts Respondent's position. The law clearly holds "[r]acial discrimination claims are evaluated identically under Title VII and the ACRA." *McKinney v. Ammunition Operations, LLC*, No. 4:24-cv-00880-KGB, 2026 U.S. Dist. LEXIS 72045, at *15 n.11 (E.D. Ark. Mar. 31, 2026)(citing *Schaffhauser v. UPS*, 794 F.3d 899, 902 (8th Cir. 2015)); *Holt v. Deer-Mt. Judea Sch. Dist.*, 135 F. Supp. 3d 898, 904 (W.D. Ark. 2015). Additionally, the framework established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), is federal precedent interpreting Title VII claims and it was clearly applied to the discrimination claims in the instant case.

In support of this faulty assertion, Respondent cherry picks language from *Island v. Buena Vista Resort*, 352 Ark. 548, 103 S.W.3d 671 (2003), which was analyzing whether ACRA allowed claims for workplace sexual

harassment. Rather than finding that ACRA critically limited the use of federal law, the Supreme Court of Arkansas stated, "we note that the Arkansas Civil Rights Act expressly instructs us to look to federal civil-rights law when interpreting the Act." *Island v. Buena Vista Resort*, 352 Ark. 548, 557, 103 S.W.3d 671, 675 (2003) (stating "because the Arkansas Civil Rights Act instructs us to look to federal civil-rights law when interpreting the Act, we look now to Title VII and federal cases interpreting Title VII for guidance on sexual-harassment claims brought pursuant to the Arkansas Civil Rights Act." *Island v. Buena Vista Resort*, 352 Ark. 548, 557, 103 S.W.3d 671, 675-76 (2003)). The only other case cited by Respondent in support of this futile position is *Med. Liab. Mut. Ins. Co. v. Alan Curtis LLC*, 519 F.3d 466 (8th Cir. 2008), in which the Court was trying to determine the statute of limitations under the Arkansas Long Term Care Resident's Rights Act. The Court noted that if claims under this statute were characterized as civil rights claims, ACRA specifically permits the use of decisions that interpret federal civil rights laws as persuasive authority. *Med. Liab. Mut. Ins. Co. v. Alan Curtis LLC*, 519 F.3d 466, 474 (8th Cir. 2008). Indeed, neither case stands for the Respondent's position that the statute "critically limits the use of federal law," and a plain reading of both decisions shows that cases interpreting federal civil rights law are not only routinely utilized but indeed encouraged. Thus, Respondent's argument on this point fails.

Second, Respondent's argument is disingenuous. The Record clearly shows that Respondent moved for summary judgment in the District Court asserting that "none of the plaintiffs allege direct evidence of race discrimination, therefore their claims must be

analyzed under the *McDonnell Douglas* burden-shifting framework." Nucor's Memorandum of Law in Support of its Motion for Summary Judgment, R.Doc. 39, p. 5 (citation omitted). Respondent further acknowledged that the law regarding ACRA claims was settled stating that "'[c]laims premised under the Arkansas Civil Rights Act of 1993 are analyzed in the same manner as Title VII claims.' *Henderson v. Simmons Foods Inc.*, 217 F.3d 612, 615 n. 3 (8th Cir. 2000)." Nucor's Memorandum of Law in Support of its Motion for Summary Judgment, R.Doc. 39, p. 5, n.1. The District Court relied on this established law in rendering its decision in favor of Respondent stating "Plaintiffs' ACRA claims are analyzed in the same manner as federal Title VII claims. *Bell v. Baptist Health*, 60 F.4th 1198, 1203 (8th Cir. 2023)." App.24a. Thereafter, the District Court applied the *McDonnell Douglas* test at summary judgment on the discrimination claims. App.25a. The Eighth Circuit's opinion explicitly relied on this established law when rendering its decision in favor of Respondent stating "[a]ll claims here were brought under the ACRA and require the same analysis as claims brought under Title VII. *Henderson v. Simmons Foods, Inc.*, 217 F.3d 612, 615 n.3 (8th Cir. 2000)." App.6a. The Eighth Circuit also applied the *McDonnell Douglas* test at summary judgment. App.7a-9a.

The law holds that judicial estoppel "prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase." *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001)(citations omitted). As such, the doctrine of judicial estoppel precludes Respondent from asserting this disingenuous argument to this Honorable Court. The Respondent clearly asserted that the *McDonnell*

Douglas test was the appropriate standard to apply to ACRA claims because they are analyzed in the identical manner as Title VII claims and cannot run from this legal argument in an attempt to preclude this Honorable Court's review. Indeed, the Eighth Circuit's decision highlights that the instant case is the ideal vehicle for addressing the issue as the issues are squarely presented and the opinions below illuminate how the *McDonnell Douglas* framework is hijacking the proper summary judgment analysis, curtailing legitimate discrimination claims and depriving litigants of their right to have their claims heard by a jury.

Third, Respondent's arguments are simply a red herring. The issue at hand is not the application of federal law in ACRA claims, but rather the utilization of the *McDonnell Douglas* test at summary judgment. Indeed, the Respondent's opposition clearly highlights that the instant action is already being utilized as precedent on this issue. Respondents cite *McKinney v. Ammunition Operations, LLC*, No. 4:24-cv-00880-KGB, 2026 U.S. Dist. LEXIS 72045, at *15 (E.D. Ark. Mar. 31, 2026), which unequivocally cites *Warren v. Nucor Corp.*, 150 F.4th 990 (8th Cir. 2025), when outlining the use of the *McDonnell Douglas* framework in its summary judgment analysis. Respondents also cite *Weston v. Tyson Shared Servs.*, No. 5:24-CV-5050, 2026 U.S. Dist. LEXIS 9536, at *34 (W.D. Ark. Jan. 19, 2026), which also explicitly cites *Warren v. Nucor Corp.*, 150 F.4th 990 (8th Cir. 2025), utilizing the *McDonnell Douglas* burden-shifting framework to determine the motion for summary judgment. Further undercutting Respondent's assertion, the instant case has also been cited as precedent in cases that do not invoke ACRA at all but rather center their analysis under Title VII. *See Sly v. Collins*, No. 4:24-CV-00448-DGK, 2026

U.S. Dist. LEXIS 57604 (W.D. Mo. Mar. 19, 2026); *Kirksey v. Oriental Trading Co.*, No. 8:24CV268, 2026 U.S. Dist. LEXIS 80049 (D. Neb. Apr. 13, 2026)(noting that NFEPA ("Nebraska Fair Employment Practice Act") is modeled on its federal counterpart of Title VII, thus the claims will be analyzed together using federal law). Moreover, many state discrimination statutes are modeled after Title VII and utilize the same analysis. As such, this case presents an ideal vehicle because it not only clarifies the use of *McDonnell Douglas* at summary judgment on Title VII cases but also reaches analogous state statutes that explicitly utilize this federal precedent.

II. This case presents an important procedural issue that warrants this Honorable Court's review and Respondent's arguments in opposition are woefully misguided.

Respondent argues that the doctrine of waiver precludes this Court from reaching the issue of whether Petitioner Booker should be permitted to revive his race discrimination claim. Respondent's reasoning, however, is based upon a fallacy. Waiver is the relinquishment of a known right. *United States v. Corona-Verduzco*, 963 F.3d 720, 722 (8th Cir. 2020). Petitioner Booker could not know that this Court would overturn Eighth Circuit precedent until this Court actually rendered its opinion in *Muldrow v. City of St. Louis*, 601 U.S. 346 (2024). Thus, he could not waive a right he did not have at the time. At the earliest time this right arose, Petitioner Booker presented it to the Court.

Respondent then erroneously argues that Petitioner Booker makes no showing that his discrimination claim

would have been viable. This is simply untrue. The Petition details the discrimination Petitioner Booker faced at Nucor. Petition, pp. 7-8. Petitioner Booker was subjected to a supervisor calling himself a slavedriver and making a whiplike motion over Petitioner Booker's head clearly inferring he was a slave. Petition, pp. 7-8. Petitioner Booker details how he was wrongfully written up for being late in violation of Nucor policies. Petition, pp. 7-8. He details how he requested vacation days in the same manner as white employees, yet he was wrongfully punished for taking a vacation day. Petition, pp. 7-8. Petitioner Booker provided a list of names of white employees who requested vacation days in the same manner as he did and received no punishment. Petition, pp. 7-8. He details how his salary was reduced for taking this vacation day. Petition, pp. 7-8. Petitioner Booker also details how Nucor peppered his writeups with stale infractions in violation of Nucor policy. Petition, pp. 7-8. Prior to this Court's holding in *Muldrow v. City of St. Louis*, 601 U.S. 346 (2024), the District Court would have held that Petitioner Booker's injuries were not significant, material or serious and could have sanctioned him if he pursued his racial animus claims. As this Court stated, because of this change in the law, "many cases will come out differently." *Muldrow v. City of St. Louis*, 601 U.S. 346, 356 n.2 (2024). Petitioner Booker should be afforded the right to pursue his claims.

Finally, Respondent argues that the important procedural issue that this case presents should not be addressed by this Honorable Court because it is rare. Just because the procedural posture of this case is rare, does not mean that the results are not far reaching. This argument ignores the proverbial elephant in the room. The Eighth

Circuit's decision on this issue has now created a legal quagmire which would require litigants to pursue claims in contravention of the established precedent of a Circuit. In essence, the Eighth Circuit has now proclaimed that in order to avoid a waiver argument on unforeseen changes in the law, litigants are not only invited to ignore stare decisis but are required to pursue claims in contravention of the established precedent of a Circuit. This reasoning ignores the real-life consequences that pursuing such claims could result in sanctions. Additionally, although the procedural posture of this case is rare, it is likely to occur again. As such, this Honorable Court's intervention is necessary to ensure that both lower courts and litigants know how to proceed in such an instance.

III. The Petition clearly set forth that the Eighth Circuit's decision was in contravention of this Court's established precedent, and the Respondent offers no argument in response.

Respondent has simply failed to defend the Eighth Circuit's decision on the merits. Indeed, Respondent does not make any legal argument contesting the arguments made in the Petition that the Eighth Circuit violated the well-established law on summary judgment and violated this Court's precedent established in both *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), and *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133 (2000). Petition, pp. 11-12, 22-23. As set forth in the Petition, the instant action is a federal case utilizing the *McDonnell Douglas* framework on a motion for summary judgment pursuant to Fed. R. Civ. P. 56. The case squarely presents how the use of the *McDonnell Douglas* burden shifting framework at summary judgment is usurping the Fed. R.

Civ. P. 56 summary judgment analysis in contravention of this Court's precedent. Petition, pp. 25-28. Moreover, as this case illustrates, the lower courts' improper use of the *McDonnell Douglas* framework has resulted in the revival of the "pretext-plus" requirement that this Court rejected in *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133 (2000). Petition, pp. 22-23. This Honorable Court has been clear, "[t]he shifting burdens of proof set forth in *McDonnell Douglas* are designed to assure that the 'plaintiff [has] his day in court despite the unavailability of direct evidence.'" *TWA v. Thurston*, 469 U.S. 111, 121 (1985)(citation omitted). Rather than serving its intended purpose, the framework is being used to derail legitimate discrimination claims. The federal courts, through the misuse of the *McDonnell Douglas* test, have effectively sunsetted Title VII claims throughout our country. This alarming trend must be addressed. This case presents the ideal vehicle because it squarely presents the issue of how the use of the *McDonnell Douglas* framework ultimately hijacked the court's required analysis under Rule 56 and the substantive law. Despite the Respondent's failed protestations, this Honorable Court's intervention is warranted as the instant action was decided in contravention of this Honorable Court's established precedent.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

ALEXANDRA C. SISKOPOULOS
Counsel of Record
SISKOPOULOS LAW FIRM, LLP
136 Madison Avenue
6th Floor, #3007
New York, NY 10016
(646) 942-1798
acs@siskolegal.com

Counsel for Petitioners

April 24, 2026