

CASE No \_\_\_\_\_

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IN THE SUPREME COURT OF UNITED STATES  
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KIYA CUNNINGHAM,

Applicant,

v.

WELLS FARGO BANK, N.A. AND 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.

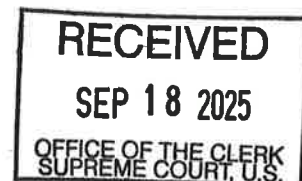
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On Application for an Extension of Time to  
File Petition for a Writ of Certiorari to the  
Supreme Court of the United States  
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PETITIONER'S APPLICATION TO THE HONORABLE JOHN G. ROBERTS.,  
CHIEF JUSTICE OF THE UNITED STATES AND FOR THE FOURTH CIRCUIT  
FOR AN EXTENSION OF TIME TO FILE A PETITION  
FOR WRIT OF CERTIORARI

To the Honorable Chief Justice, as Circuit Justice for the United States Court of Appeals for the  
Fourth Circuit:

Pursuant to this Court's Rules 13.5, 22, 30.2, and 30.3, Petitioner Kiya Cunningham respectfully requests that the time to file her Petition for Writ of Certiorari in this matter be extended for sixty (60) days, up to and including November 6, 2025. This extension applies solely to Petitioner.

Petitioner is a pro se litigant and has made a good faith effort to comply with the Supreme Court Rules. However, confusion arose regarding the computation of time under Rule as Petitioner



mistakenly believed that the 90-day period to file the petition for a writ of certiorari began from the date of the issuance of the mandate—June 17, 2025—rather than from the denial of her petition for rehearing en banc on June 9, 2025, as governed by Supreme Court Rule 13.3. Petitioner also incorrectly assumed that an application for extension of time could be filed within 10 days of the expiration of what was believed to be the deadline, rather than in advance of the actual due date.

### **Background**

Kiya Cunningham was employed with Defendant Wells Fargo from 2006 to 2020, after many years of suffering various forms of discrimination and retaliation by Defendants without action of any kind taken to correct the hostile work environment she faced, Cunningham filed a Charge of Discrimination with the EEOC in 2019 followed by a Complaint with the U.S. District Court in Western District of North Carolina on October 11, 2019. Shortly thereafter, Cunningham was placed on administrative leave, and ultimately terminated on October 8, 2020.

After years of litigation Cunningham's response to summary judgement was struck by the lower court without giving her a chance to respond to the Defendant's Motion to Strike.

On appeal to the Fourth Circuit, the court issued a minimum worded affirmance that indicated petitioner's argument in her informal brief "does not present developed argument challenging the bases undergirding the district court's rulings," without affording leeway for Cunningham's pro se status or explaining how to cure the defect which denied Cunningham the right to a meaningful appellate review. Cunningham's petition for rehearing en banc was similarly denied without explanation, leaving her without any substantive judicial review of the statutory interpretation.

### **Identification of Judgment Sought to be Reviewed**

The judgment sought to be reviewed was entered by the United States Court of Appeals for the Fourth Circuit on May 9, 2025, in Case No. 23-1977 and No. 23-1978. A copy of Exhibit A for the Fourth Circuit Judgment is attached. Petitioner timely filed a Petition for Rehearing En Banc on May 21, 2025, the denial of such review was entered on June 9, 2025 attached as Exhibit B and the formal mandate issued on June 17, 2025 attached as Exhibit C.

### **Basis for Jurisdiction in this Court**

This case presents an important constitutional and procedural question at the intersection of the Due Process Clause and the rules governing summary judgment under the Federal Rules of Civil Procedure. The petitioner's opposition to the respondent's motion for summary judgment was struck from the record by the district court pursuant to a motion to strike filed by the respondent. Critically, the court struck petitioner's response **without providing petitioner an opportunity to respond** to the motion to strike.

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

The petition for a writ of certiorari will present three questions:

1. Whether a federal district court violates a party's due process rights under the Fifth (or Fourteenth) Amendment by striking that party's opposition to summary judgment without affording an opportunity to respond to a motion to strike, when the opposition constitutes the party's only substantive defense to a dispositive motion.
2. Whether a district court's failure to follow the procedures established in Federal Rule of Civil Procedure 56—by disposing of a summary judgment response without considering its content or allowing supplementation—undermining the essential procedural safeguards that

govern Rule 56 motion constitutes reversible error when it deprives a party of the opportunity to oppose summary judgment.

3. Whether the Circuit Split and Jurisprudential Uncertainty Warrant Review by this Court. There is no clear, uniform standard across federal courts on whether a motion to strike a summary judgment opposition may be granted without allowing a response. Some circuits discourage motions to strike entirely in this context, while others allow limited use when evidence is untimely or undisclosed. This inconsistent practice affects litigants' substantive rights, fosters procedural unfairness, particularly pro se or disadvantaged parties, and creates a procedural gap that demands clarification from this Court.

The broader legal trend post-2010 Rule 56 (c) (2) amendments, which discourage standalone motions to strike in favor of objections are embedded within motion practice. Federal Rule of Civil Procedures requires that courts evaluate the evidence in the light most favorable to the non-moving party. By entirely disregarding Petitioner's responses and evidence—without analysis or engagement—the district court failed to perform the evaluation required by law. This procedural shortcut undermines the adversarial process and denies substantive justice.

### **Reasons Why an Extension of Time is Justified**

Good cause exists for the requested extension, as required by Supreme Court Rule 13.5:

1. Petitioner seeks additional time to properly prepare and file a petition raising substantial constitutional and legal issues. Granting this extension will not prejudice the respondents. The requested extension is modest and will not unduly delay the proceedings. Moreover, the importance of the legal issues in this case warrants careful preparation of the petition, and an extension would aid in the proper presentation of the issues for the Court's consideration.

2. The Constitution demands more than a superficial invocation of judicial discretion. The Fifth (and Fourteenth) Amendment Due Process Clause ensures that no person may be deprived of a protected liberty or property interest without “**notice and an opportunity to be heard at a meaningful time and in a meaningful manner.**” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).
3. This Court has emphasized that due process protections apply equally in civil proceedings. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 429–30 (1982) (“[T]he Court traditionally has held that the Due Process Clauses protect civil litigants who seek recourse through the legal process.”). The decision below thus represents a stark departure from well-settled constitutional jurisprudence and invites unchecked judicial discretion over fundamental rights.
4. This abdication of procedural fairness undermines the adversarial system itself and risks converting summary judgment—a mechanism designed to eliminate only legally or factually unsupported claims—into a procedural shortcut for silencing parties on technical or strategic grounds. Such an approach cannot be reconciled with either the language or the purpose of Rule 56.
5. Given the leniency typically afforded to pro se litigants, Petitioner should not be deprived of her day in this Court. As the Court has recognized on several occasions, “[n]avigating the appellate process without a lawyer's assistance is a perilous endeavor for a layperson.” *Halbert v. Michigan*, 545 U.S. 605, 621 (2005); see also, e.g., *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (emphasizing that “[a] document filed pro se is ‘to be liberally construed’”); *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (same); *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972) (same). That is no less true of the process before this Court. Accordingly, this Court

can and should excuse inadvertent failures to comply with the Court's rules when they result from the difficulties inherent in proceeding pro se. Cf. *Schacht v. United States*, 398 U.S. 58, 64 (1970) ("The procedural rules adopted by the Court for the orderly transaction of its business ... can be relaxed by the Court in the exercise of its discretion when the ends of justice so require.") In short, there is no reason not to reinstate this case and every reason to do so. Convincing this Court to review a case is no mean feat for any Petitioner, let alone for a Petitioner proceeding pro se. It would be both unfortunate and inequitable to deny Petitioners the rare opportunity to have his case heard by the Supreme Court of the United States.

In *Erickson v. Pardus*, 551 U.S. 89 (2007) (per curiam), this Court held that "a document filed pro se is 'to be liberally construed,' and 'a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.'" Although *Erickson* addressed pleadings, its reasoning reflects a broader principle applicable throughout federal litigation — namely, that substance must prevail over form when evaluating pro se filings. This Court earlier reaffirmed that standard in *Haines v. Kerner*, 404 U.S. 519 (1972), holding that courts must construe pro se filings liberally and evaluate them based on substance, not strict compliance with technical legal form. In *Haines*, the Court reversed a dismissal where a pro se complaint appeared facially deficient but arguably raised constitutional claims.

For the foregoing reasons, Petitioner respectfully requests that the time for filing a petition for a writ of certiorari be extended by sixty (60) days, to and including November 6, 2025. This 60-day extension will not prejudice Respondent, as it maintains the status quo without delaying any ongoing proceedings.

Respectfully submitted.

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/s/ KIYA CUNNINGHAM  
KIYA CUNNINGHAM  
Petitioner, pro se  
3160 Hwy 21  
Suite 103 #2088  
Fort Mill, SC 29715

Dated: September 6, 2025

## APPENDIX



**TABLE OF CONTENTS**

**APPENDIX A — JUDGMENT OF THE UNITED STATES COURT OF  
APPEALS FOR THE FOURTH CIRCUIT, FILED MAY 9, 2025.....**

**APPENDIX B — ORDER OF THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT FILED JUNE 9, 2025.....**

**APPENDIX C — ORDER OF THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT FORMAL MANDATE FILED JUNE 17, 2025**

## APPENDIX A

**UNPUBLISHED****UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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**No. 23-1977**

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**KIYA CUNNINGHAM,****Plaintiff - Appellant,****v.****WELLS FARGO BANK, N.A.,****Defendant - Appellee.**

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**No. 23-1978**

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**KIYA CUNNINGHAM,****Plaintiff - Appellant,****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,****Defendants - Appellees.**

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**Appeals from the United States District Court for the Western District of North Carolina,  
at Charlotte. Robert J. Conrad, Jr., District Judge; Frank D. Whitney, Senior District Judge.  
(3:19-cv-00528-FDW; 3:22-cv-00094-RJC)**

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Submitted: March 31, 2025

Decided: May 9, 2025

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Before THACKER and RUSHING, Circuit Judges, and KEENAN, Senior Circuit Judge.

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Affirmed by unpublished per curiam opinion.

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Kiya Cunningham, Appellant Pro Se. Kevin Joseph Dalton, FISHER & PHILLIPS, LLP, Charlotte, North Carolina, for Appellees.

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Unpublished opinions are not binding precedent in this circuit.

## PER CURIAM:

In these consolidated appeals, Kiya Cunningham appeals from the district court's orders granting Wells Fargo Bank, N.A.'s motions to strike and for summary judgment, treating her motion for reconsideration as a Fed. R. Civ. P. 59(e) motion to alter or amend judgment, and denying relief under Rule 59(e) in her civil action for discrimination, a hostile work environment, retaliation, and interference (No. 23-1977) and from the district court's orders granting the motion filed by Wells Fargo and several of its employees to dismiss Cunningham's separate civil action for failure to state a claim and denying Cunningham's motion for reconsideration pursued under Rule 59(e) and Fed. R. Civ. P. 60 (No. 23-1978).

Appellees have moved to strike Cunningham's supplemental informal brief as unauthorized and untimely and, after review of the motion and Cunningham's response to it, we grant the motion to strike and deny as moot Appellees' motion to extend the time for filing a response to Cunningham's supplemental informal brief. In the informal briefing Cunningham properly filed, she contends in appeal No. 23-1977 that the district court erred in denying her motion to enforce a discovery order. She also challenges the district court's rulings striking her response to Wells Fargo's summary judgment motion and granting that motion. In appeal No. 23-1978, Cunningham challenges the district court's denial of relief under Rule 60.

We conclude after review that the district court did not abuse its discretion in granting Wells Fargo's motion to strike Cunningham's response to its summary judgment motion. *See United States v. Ancient Coin Collectors Guild*, 899 F.3d 295, 324 (4th Cir.

2018) (applying abuse of discretion standard to review of district court ruling striking pleading); *Turner v. United States*, 736 F.3d 274, 283 (4th Cir. 2013) (reviewing “a district court’s decisions pertaining to the management of its own docket” for abuse of discretion). Because Cunningham’s briefing does not present developed argument challenging the bases undergirding the district court’s rulings denying her motion to enforce, granting summary judgment to Wells Fargo, and denying relief under Rule 60, we conclude that she has waived appellate review of those rulings. *See Just Puppies, Inc. v. Brown*, 123 F.4th 652, 660 n.4 (4th Cir. 2024); *Grayson O Co. v. Agadir Int’l LLC*, 856 F.3d 307, 316 (4th Cir. 2017).

Accordingly, we affirm the district court’s orders. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*AFFIRMED*

## APPENDIX B

FILED: June 9, 2025

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 23-1977 (L)  
(3:19-cv-00528-FDW)

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KIYA CUNNINGHAM

Plaintiff - Appellant

v.

WELLS FARGO BANK, N.A.

Defendant - Appellee

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No. 23-1978  
(3:22-cv-00094-RJC)

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KIYA CUNNINGHAM

Plaintiff - Appellant

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

Defendants – Appellees



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O R D E R

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The court denies the petition for rehearing and rehearing en banc, the motion to exceed length limitations, and the motion for leave to amend the petition for rehearing. No judge requested a poll under Fed. R. App. P. 40 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Thacker, Judge Rushing, and Senior Judge Keenan.

For the Court

/s/ Nwamaka Anowi, Clerk

## APPENDIX C

FILED: June 17, 2025

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 23-1977 (L)  
(3:19-cv-00528-FDW)

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KIYA CUNNINGHAM

Plaintiff - Appellant

v.

WELLS FARGO BANK, N.A.

Defendant - Appellee

---

No. 23-1978  
(3:22-cv-00094-RJC)

---

KIYA CUNNINGHAM

Plaintiff - Appellant

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

Defendants - Appellees

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M A N D A T E

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The judgment of this court, entered 05/09/2025, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

/s/Nwamaka Anowi, Clerk

**CERTIFICATE OF SERVICE**

I hereby certify that I caused PETITIONER'S APPLICATION TO THE HONORABLE JOHN G. ROBERTS., CHIEF JUSTICE OF THE UNITED STATES AND FOR THE FOURTH CIRCUIT FOR AN EXTENSION OF TIME TO FILE A PETITION FOR WRIT OF CERTIORARI by United States Mail to:

Kevin J. Dalton  
Fisher Phillips LLP  
227 West Trade Street  
Suite 2020  
Charlotte, NC 28202  
*Attorney for Respondents*

Respectfully submitted:  
PLAINTIFF/APPELLANT:  
KIYA CUNNINGHAM

/s/KiyaCunningham

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Kiya Cunningham, Pro Se