

USDC Case No. 2:24-CV-00068  
No. 25-40018

United States Supreme Court  
For The United States Court of Appeals Fifth Circuit

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Joe Holbert  
Plaintiff

v.

Thompson Industrial Services LLC, Et. Al.  
Defendants

Appeal from the United States District Court for the Southern District of Texas  
USCD No: 2:24-CV- 0068

Motion for a Sixty (60) Day Extension of Time and a Motion for Reconsideration

Equal Employment Opportunity Commission

Holbert presents arguments for each legal issue of the case:

Before the United States Equal Employment Opportunity Commission (EEOC) process, the Plaintiff believes the Agency failed to conduct a proper investigation. Further they denied him access to the EEOC process, because it was a mixed cases involving both discrimination and personal action which were not handled correctly. Holbert argues that a compensatory damages investigation is warranted, because the Agency failed to comply with prior orders, including orders awarding damages or requiring the provision of reasonable accommodation.

Holbert Argues the Right to Refile.

In *Prichard v Long Island University*, the court ruled that if a right-to-sue letter (RTS) is found invalid—such as when it is issued before the 180-day waiting period—the proper remedy is dismissal without prejudice, allowing the plaintiff to refile after the administrative period concludes. Holbert argues that the court's dismissal with prejudice denied him this standard procedural reset. Citing *Prichard*, Holbert contends that the District Court failed to allow the EEOC to fulfill its congressional mandate to thoroughly investigate the plaintiff's claims before judicial intervention.

*Post-Loper Bright Standard*

Holbert argues that the courts should not have deferred to a narrow interpretation of his pleading, just as the *Prichard* case applied the *Post-Loper Bright* Standards to reject deference to the EEOC's early Right to Sue (RTS) regulations. Holbert also argues that the EEOC's practice

of issuing early RTS letters violates Title VII statutory requirements. Under 42 U.S.C., the EEOC is required to investigate for 180 days. Holbert argues that his RTS notice was issued before this period expired, as was challenged in *Prichard*. Holbert argues that the EEOC failed to perform its mandatory investigation; therefore, the court's Dismissal with Prejudice was legally incorrect. Holbert requests that the case be remanded to the EEOC for the agency to complete the investigation mandated by the United States Congress.

The Plaintiff asserts that the EEOC's "check the box" approach deprived him of the administrative record necessary to survive a Motion to Dismiss. Holbert argues that the District Court dismissed his case because the Plaintiff provided insufficient evidence to state a claim. Holbert argues that the primary purpose of the EEOC investigation is to gather this very evidence. The EEOC sometimes issues a RTS Letter while administrative remedies are still pending. Such practices should not be used as a procedural trap, particularly for self-represented litigants. Holbert contends that the case was dismissed pursuant to 2025 policy directives, rather than being adjudicated on the substantive merits of his charge.

#### *Procedural Barriers*

Holbert argues that the court's refusal to consider late filed EEOC documents in facilitating discovery constitutes an abuse of the administrative process. Holbert argues that the changes with the EEOC and the broader legal landscape in 2025 incorporate revisions that address procedural barriers and pleading standards that otherwise may have led to the dismissal of Holbert's case. Holbert argues that his claims, which alleged racial slurs and sexual harassment, were subject to inconsistently applied plausibility standards that have since been rejected. Holbert argues *Ames v. Ohio Department of Youth Services* mandates a lower barrier for entry for all Title VII plaintiffs regardless of the proceedings stage or the court's perception of the claim's strength.

*Due Process and Discovery Assistance*

Holbert argues that due to the EEOC's inadequate investigation, he was forced to request discovery from the District Court, but his request was denied. Holbert argues that had the EEOC properly fulfilled its role as an impartial investigator, this evidence would have been preserved and documented in the administrative files.

Additionally, the District Court's subsequent refusal to assist him constitutes a violation of Holbert's rights to a fair legal process. Based on the 2025 legal landscape, including *Holbert v. Thompson Industrial Services*, the EEOC's practice of issuing early RTS letters violates the statutory requirements of Title VII. Holbert argues that the RTS letter is legally invalid. He argues that the agency exceeded its authority, and he contends the notice was invalid, because he never exhausted his administrative remedies, making the dismissal with prejudice improper. The case should be remanded to the EEOC to perform the investigation mandated by Title VII for violation of the mandatory 180-day investigation period. The EEOC failed its statutory duty under 42 U.S.C. § 5F1 by failing to perform a legal investigation.

If the court determines that the EEOC issued the RTS letter prematurely, meaning without conducting a bona fide investigation, the court may vacate the letter, stay the lawsuit, and order the EEOC to complete its investigation under 42 U.S.C. §§ 2000(e)-5(f)(1), including any necessary updates to the administrative file. Holbert argues again subpoenaing key witnesses or video evidence which he previously highlighted as a miss in his appellate brief. The EEOC should have gathered relevant facts to determine reasonable cause, including contacting the respondents, Thompson Industrial and/or Clean Harbors.

A Lack of *de Novo* review of Agency Action

The court erred by deferring to the EEOC's administrative outcome instead of conducting a *de Novo* review.

District Court

Holbert argues that during the initial hearing Judge Libby refused to allow one of Holbert's colleagues to assist him at the podium. Holbert argues that the individual assisting him during the initial hearing was Ms. Carla Pruitt, who had all necessary documents to amend the Complaint, as well as the relevant EEOC materials.

Holbert argues that Judge Libby committed an ethical violation by refusing to allow them to explain the matter once again. He further contends that the federal government should conduct a thorough investigation into alleged courthouse misconduct, abusive treatment toward litigants, and improper judicial demeanor. Holbert believes that the court abused its discretion by dismissing the case with prejudice. Moreover, he claims that dismissal with prejudice was an excessively severe sanction and that a lesser sanction, such as dismissal without prejudice, would have been appropriate, particularly where the litigant was not afforded a meaningful opportunity to amend the complaint given his *pro se* status. Holbert also contends that the District Court's refusal to assist with subpoenas constituted an abuse of discretion, particularly given his status as a *pro se* litigant. Because of all of this, Holbert requests reconsideration, citing newly discovered evidence due to the court's misapplication of procedural rules which led to the final dismissal.

Also, Holbert argues that subpoenas for courthouse cameras and witnesses should have been issued at the outset of the case. He contends that the failure of both the EEOC and the courts to assist with subpoenas created an information asymmetry in which the employer had exclusive

access to witnesses and records, making it impossible for Holbert to meet even a basic pleading standard without court-ordered discovery. Holbert argues that the court improperly considered evidence or facts outside the four corners of the complaint when deciding the motion to dismiss. Generally, when a court considers materials outside the complaint, it must convert Rule (12)(b)(6) into a summary judgment motion, which would have afforded Holbert a different procedural standard and an opportunity for discovery.

#### Inapplicability of Heightened Pleading to Discovery Pursuant to *Ames v Ohio*

##### Department of Youth

Holbert believes if Title VII pleading standards cannot be heightened, then access to discovery, likewise, should not be restricted by requiring a plaintiff to produce evidence that can only be obtained through discovery. Holbert argues that the U.S. Supreme Court should remand the case to the EEOC so the investigation can be completed thus ensuring that being a *pro se* litigant is not a jurisdictional bar as was the outcome due to the District Court's dismissal with prejudice for purportedly incomplete or insufficiently submitted documents all of which created an abuse of discretion by the District Court. Holbert argues for equitable tolling, asserting that any failure to produce certain documents earlier should be excused because he possessed them prior to the filing, demonstrating a good-faith effort to comply with Title VII requirements.

##### Fifth Circuit Court of Appeals

The Plaintiff specifically references the Supreme Court's June 5, 2025, decision in *Ames v. Ohio Department of Youth Services* to challenge the heightened pleading standards applied by the lower courts, emphasizing that uniform standards must be used for all plaintiffs. The *Ames* decision resolved a circuit split by holding that courts cannot impose a heightened evidentiary

burden on plaintiffs based on their group identity. Holbert argues that applying rigid standards to a *pro se* complainant contradicts the unanimous *Ames* ruling, which confirmed Title VII protections extend to all individuals.

#### McDonnell Douglas Flexibility

Holbert argues that the Fifth Circuit Court of Appeals failed to follow the Supreme Court's 2025 instructions regarding the *McDonnell Douglas* which indicated the framework must remain flexible and context-dependent rather than rigid or ritualistic. Holbert argues that denying his discovery and dismissing his case under 28 U.S.C. §§ 1915 and 2 without allowing access to video evidence or witness subpoenas was *Ames v. Ohio Department of Youth Services v. Ohio*. Holbert argues that the Fifth Circuit's November 24, 2025, decision in *Holbert v. Thompson Industrial Services* (25-40018) directly contradicts the Supreme Court's unanimous June 5, 2025, ruling in *Ames v. Ohio Department of Youth Services*. Holbert argues that the Fifth Circuit ignored the instruction provided by *Ames* which established that a *prima facie* initial burden of proof was not erroneous. By affirming a dismissal with prejudice, the court did so while Holbert was still producing key evidence, including his EEOC letter and other relevant documents. Holbert argues that the courts imposed a more demanding burden of proof than the even-handed standard by *Ames*, creating procedural barriers through judge made doctrines.

As stated by Justice Jackson emphasized in the *Ames* case, Title VII should not permit special requirements or judicially created hurdles beyond what the statute provides. In direct application to *pro se* litigants, Holbert relies on the *Ames* decision that all employee groups are entitled to consistent and fair treatment. Holbert argues that the District Court and the Court of Appeals decisions to dismiss his case with prejudice were unfairly influenced by a major circuit split regarding the effect of a RTS letter from the EEOC before the 180-day period has elapsed.

Holbert further cites post-*Loper Bright* arguments, such as those recognized in New York to underscore the importance of procedural fairness in investigations. The Plaintiff argues that the Fifth Circuit Court of Appeals erred by dismissing his case based on alleged deficiencies that a full, mandatory 180-day EEOC investigation might have cured or clarified.

#### Violation of Statutory Duties

Holbert argues that the 2025 policy, which closed prolonged investigations and issued RTS letters on April 23, 2025, without a full review, violated the agency's statutory obligation under Title VII to investigate all charges. Holbert argues that the policy change deprived him of the administrative process which Congress intended, effectively pushing him into court without a complete factual record. Holbert highlights that the circuit split as of August 2025 allows the EEOC to continue their investigation even after a private lawsuit has been filed, yet Fifth Circuit Court of Appeals does not. Holbert argues that the inconsistency creates unequal justice based solely on geography.

Holbert's argument is centered on the conflict between administrative mandates and judicial screening under 28 U.S.C. § 1915(e)(2) which is concerned with conflicts between judicial screenings and the EEOC statutory duties. Holbert argues that the Court of Appeals interpretation of 28 U.S.C. § 1915(e)(2) which allows dismissal at any time for failure to state a claim, contradicts the EEOC statutory mandate to investigate allegations. Holbert argues, citing *Cecilia Prichard v. Long Island University*, that the EEOC is required to conduct a thorough investigation. The decision directly conflicts with the U.S. Appeal Court's decision. Holbert argues that the EEOC issued a RTS letter too quickly without performing a full investigation as mandated by Title VII. Further he notes that because federal agencies do not explicitly prioritize individual harassment claims such as the plaintiff's, the courts are less inclined to dismiss such cases prematurely under

28 U.S.C. § 1915(e)(2). Holbert argues the Appeal Courts' dismissal undermines current federal enforcement priorities designed to protect individual workers from direct workplace hostility. Holbert contends that repeated racial slurs and unwanted physical contact, including buttocks slapping, contributed to a pervasive and discriminatory hostile work environment. Holbert contends that his claim falls squarely within the protected entitlement to seek legal remedies. Holbert argues that applying a strict Rule (12)(b)(6) dismissal to a *pro se* plaintiff—particularly after a landmark ruling intended to simplify the pathway for plaintiffs—violates the spirit of the *Ames* decision. Holbert argues that early RTS letters are invalid after *Loper Bright* which makes the RTS letter he received from the EEOC, which was premature in nature, legally invalid under *Prichard v. Long Island University*. Following the Supreme Court's 2024 decision in *Loper Bright Enterprises v. Raimondo*, which overruled *Chevron* deference, courts now apply textualist statutory interpretation rather than deferring to the EEOC's administrative practices. Holbert contends that the EEOC lacked statutory authority to issue the RTS letter prematurely as Title VII authorizes RTS notices only after the charge is dismissed or after the 180-day investigation period has elapsed.

Holbert argues that the lower courts committed reversible errors by dismissing his case with prejudice. In contrast, *Prichard v. Long Island University*, the case was dismissed without prejudice and remanded to the EEOC for further proceedings. Holbert argues that the rapid shift from *Chevron* deference to *Loper Bright* creates unfair hurdles for *pro se* litigants. He contends that his failure to timely provide the RTS letter should not have resulted in dismissal, particularly where the governing legal standards changed abruptly and without clear guidance for unrepresented plaintiffs.

Additionally, Holbert argues that David Wiggins' breach of contract serves as critical evidence that the company's stated reasons for his termination were a pretext for discrimination. Under current legal standards confirmed by the Fifth Circuit and prevailing employment law, Holbert identified multiple violations in his lawsuit through specific, articulated arguments.

#### Evidence of Pretext for Discrimination.

Holbert argues that David Wiggins violated the company's internal employment contract—including its handbook's progressive discipline policy—to mask a discriminatory motive.

#### Deviation from Policy

Where a company maintains a progressive discipline policy and a decision is made to bypass that policy and terminate an employee immediately thus constituting a procedural irregularity that can be recognized as probative evidence of pretext. Holbert contends the actions of David Wiggins falls under the aforementioned. Under prevailing employment law, such a departure can support an inference that the employer stated reason for termination—which alleged safety violations—was not the true motive. Holbert argues that Wiggins enforced the company's disciplinary policy against him but not against other employees who committed similar infractions. Because of this, Holbert argues independent claims under 42 U.S.C. § 1981, a federal law that prohibits racial discrimination in the making and enforcement of contracts. Holbert argues that 42 U.S.C. § 1981 protects his right to enjoy all benefits, privileges, terms, and conditions of the contractual relationship, including employment, and that the breach of contract interfered with those protected rights. Holbert argues that David Wiggins is personally liable under 42 U.S.C. § 1981, because Wiggins intentionally used his authority to breach Holbert's contractual rights based on the plaintiff's race. Holbert argues that David Wiggins breached the covenant of good faith and

fair dealing inherent in his employment agreement. Holbert argues that Wiggins breached his duty to act honestly by ignoring Holbert's reports concerning racial discrimination.

Moreover, failure to preserve evidence can violate a contractual duty. Holbert alleges that David Wiggins and Thompspon Industrial Services failed to preserve critical video evidence and witness statements that would have exonerated him of the safety violations used as the reason for his termination. The plaintiff framed this failure as a breach of the implied contractual duty to conduct a fair and thorough investigation. Holbert now contends that by destroying or failing to preserve the evidence, Wiggins and Thompson Industrial Services violated the procedural fairness owed the plaintiff.

#### **Fifth Circuit Court of Appeals**

Holbert argues that the lower court's refusal to allow him to amend his Complaint was a manifest injustice.

#### **Impeachment of a Key Witness**

Holbert argues that David Wiggins was both a decision maker and a witness in his termination for alleged harassment, and that Wiggin's legal disputes with the company may reveal a bias or conflict of interest. Holbert argues that Wiggins' testimony or previous statements on behalf of the company are unreliable, because the company is now actively litigating against David Wiggins.

### Pattern of Corporate Misconduct

Holbert argues that this supports his claim against the company. Holbert contends that *Cheetham v. Clean Harbors* ignores legal and professional standards, including those related to Title VII protections. Holbert states that breach-of-contract lawsuits often involve the discovery of confidential information, including internal emails, memos, and personnel files. Holbert argues that facts reveal in *Thompson Industrial Services v. Wiggins*—such as internal company culture and specific directives given to managers—support his claims.

### Managerial Creditability

Holbert argues that the company's decision to sue its former operations manager suggests instability and a lack of integrity within the management chain that oversaw his employment. Holbert requests a *subpoena duces tecum* as part of his ongoing litigation. Holbert is asking the court to issue a subpoena for the records of *Thompson v. Wiggins*, case number 3:2024-cv-02809.

### United States Supreme Courts Final Appeal

Holbert requests a 60-day extension under U.S. Supreme Court Rule 13.5, citing good cause, *pro se* status, and the complexity of the case. Holbert argues that as a *pro se* litigant, he requires additional time to ensure a well prepared and orderly presentation of complex Title VII issues.

### District Court Issues Courts of Appeals Issues for the Court Review

Holbert asserts that the need for extensive legal research—particularly due to the landmark ruling in *Ames v. Ohio Department of Youth Services* (June 2025) and emerging circuit splits in

2025 regarding the EEOC RTS letters making it impossible to complete adequate research with the 90-day window.

#### Holbert cites Interest of Justice

Holbert argues that an extension will allow him to carefully frame his petition in a manner that is more helpful to the Court, particularly regarding the conflict between the Fifth Circuit dismissal standards and *Ames v. Ohio Department of Youth Services*. This application is also addressed by the Fifth Circuit Justice, Samuel Alito. Holbert argues he faced administrative delays because of the EEOC, the District Court in Corpus Christi, and the Fifth Circuit Court of Appeals, and personal hardship with family.

#### United States Supreme Courts Final Appeal a Motion for Reconsideration

As of 2026, Holbert argues that David Wiggins is being sued by Thompson Industrial, which brings the credibility of the plaintiff's primary supervisor and the integrity of the company's internal investigations into question. Holbert argues that the lawsuit against Wiggins serves as new discovery evidence that directly impacts his discrimination case. Holbert argues that the company's own records now characterize its key witness as untrustworthy or as having violated corporate policy.

#### Hostile Work Environment Evidence

Holbert argues lawsuits between a company and its manager often involve the disclosure of internal emails and instant messages.

*Deuces Tecum Tangible Evidence Mandatory Production*

Holbert argues that Thompson Industrial is legally obligated to search for and produce the requested items, including emails, text messages, phone records, employment files, and digital data.

Specifically, the plaintiff requests the following discovery from January 5, 2023, to August 16, 2023:

1. Company phone logs which were used for discrimination.
2. Corporate records from Thompson Industrial/Clean Harbors including memos, emails, or documents regarding the dispute involving Wiggins.
3. Access to Third Party Evidence from Steel Dynamics because some of the incidence happened on their properties.
4. The Letter of Termination, Notice of Breach of Contract and employee files regarding David Wiggins.

Holbert argues the lawsuit against Wiggins is relevant to the plaintiff's discrimination case, because Wiggins is a biased witness with zero credibility due to Wiggins selective enforcement of rules and racial bias.

Holbert requests a motion for relief from judgement under Federal Rule 60B which allows a case to be reopened based on newly discovered evidence of misconduct by an opposing party. The Plaintiff requests the court vacate the dismissal of his case to allow for the amendment of his Complaint based on new facts which meet the plausibility standards he previously failed to reach. Holbert argues for fraud or misrepresentation of Federal Rule 60(B)(3). Holbert argues that these documents may contain evidence of the racial slurs and inappropriate conduct he alleged which

the company previous claimed did not exist inconsistent statements. Any affidavits or testimony Wiggins give in his breach of contract case that contradicts the statement he or the company made during Holbert's *EEOC* investigation can be used to prove the company provided shifting explanations for its action.

Holbert requested Federal Rule 60(B) Relief. The lawsuit against David Wiggins could not have be found earlier newly discovered evidence. Holbert argues for the motion of relief from judgment under Federal Rule of Civil Procedure 60(B) in the District Court.

Holbert argues that identifying the specific legal basis for the termination—including violations of non-compliance and non-solicitation provisions, misuse of proprietary information, and failure to perform contractual duties—is essential. Holbert argues both defendants, David Wiggins and Thompson Industrial, claim breached of contract. Holbert argues in *Davis v. Alaska* (1974) the U.S. Supreme Court ruled that a defendant has the right to confront witness via cross examination which is paramount even when it conflicts with other state interests. Holbert argues that he should have the right to explore potential bias of a crucial witness such as David Wiggins, especially when Wiggins' own legal conflict with Thompson Industrial Confrontation Clause protection. The Sixth Amendment protects a defendant's ability to cross-examine witness to expose possible bias.

#### Holbert Argues Impeachment Over Privacy.

Holbert argues witness bias, asserting that Wiggins as a former manager who is now being sued by the company, may have had a notice to testify in a particular manner to protect his own position or contractual interests at the time of the initial proceedings. At the time of the initial investigation, Holbert argued that Wiggins statements were a crucial link in the company's defense,

making cross-examination vital to enduring a fair trial. Exposing motivation, Holbert argues that the breach of contract lawsuit reveals a fundamental conflict that the jury or the courts should have been allowed to consider when weighing Wiggins' credibility.

#### Application

Holbert argues that the Supreme Court should grant review because the lower courts dismissed the plaintiff's case based on management narratives provided by a supervisor, Wiggins, whom the company now officially labels as untrustworthy in a separate litigation.

Holbert argues against pleading standards under *Ames v. Ohio Department of Youth Services*, which by a unanimous 2025 Supreme Court's ruling finding the evidentiary burden required at the early stages of a case were onerous. Holbert argues that the existence of a lawsuit against his own manager for policy violations makes his claim of harassment more plausible, meeting the standard to survive a motion to dismiss. Holbert argues that Thompson Industrial Services' failure to disclose internal conflicts with Wiggins during the discovery phase constituted a misrepresentation, justifying the vacating of the prior dismissal. Holbert argues for a cover-up of discrimination.

#### District Courts Common Scenario and Examples

District Court may dismiss a case if the Plaintiff fails to meet the burden of producing some evidence, yet appellate courts normally reverse these rulings, thus allowing the Plaintiff to amend complaints using Seventh Circuit cases. Holbert argues improper exclusion as evidence. Holbert argues the district court and later the appeal courts' rulings to be overly strict and fails to consider or produce key evidence missing evidence rule. Holbert also argues procedural misstep thus requesting an amended/new trial. Further, Holbert argues to appeal the primary remedy. Holbert

argues Nocc Pro Tone insufficient evidence. Holbert argues improper exclusion of evidence leading to reversal. Holbert argues *Healy v. Milliman*. Holbert argues failure to amendment. Holbert argues improper procedure Authentication. Holbert argue key legal principles involved burden of proof. Holbert argues Federal Rules of Procedure 37 and 103. Holbert argues waiver of rights. Holbert argues remand for a new trial. Holbert argues insufficient evidence for verdict consequences and remedies abuse of discretion. Holbert argues unauthenticated or unreliable evidence.

#### Key Scenario of Evidence

Failure Holbert argues forms of an offer. Summary of Requirements Arguments for Abuse of Discretion Federal Rule of Evidence Rule 403. Preponderance of the Evidence. Argument of Reversible Error. Substantial rights without the evidence the judge or jury received a skewed version of the facts. Timely offer of proof Holbert argues one last chance to correct the error citing Rule 60(B) newly discovered evidence, and/or mistake for a Motion for Reconsideration relevant to Failure to Present Evidence photographic or video is power for Holbert. Argues pre-suit optimal.

#### Discovery and Summary Judgment

The courts have reinforced the need for sufficient discovery allowing plaintiffs to seek evidence like video that might create genuine factual disputes which impact the summary judgment decision. Holbert cites Civil Rights attorney, Gay Gilson, filed the original Complaint advising Thompson Industrial Services investors of the lawsuit and the video evidence to hold for litigation.

Holbert requests for the IFP to continue his complaint pursuant to 28 U.S.C. § 1915 for a motion to leave to proceed in *forma pauperis* before February 26, 2026. Holbert requesting 60-day extension to file a Petition of Certiorari.

Holbert requests the United States Courts to email a copy to Thompson Industrial Services' attorney, Jeffery Shannon Mays.

Sincerely,

February 16, 2026

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*Joe Holbert 2-16-2026*

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**United States Court of Appeals  
for the Fifth Circuit**

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No. 25-40018

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United States Court of Appeals  
Fifth Circuit

**FILED**

November 24, 2025

Lyle W. Cayce  
Clerk

JOE HOLBERT,

*Plaintiff—Appellant,*

*versus*

THOMPSON INDUSTRIAL SERVICE, L.L.C.; CLEAN HARBORS  
ENVIRONMENTAL; STEEL DYNAMICS, INCORPORATED, *Sinton*  
*Division*; LOUIS GARCIA; MICHAEL PENNA; JAMES CABLER;  
ERNEST MUNGIA; GEORGE GOMEZ; DAVID WIGGIANS;  
MONTANA WIGGIANS; MATTHEW,

*Defendants—Appellees.*

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 2:24-CV-68

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Before JONES, DUNCAN, and DOUGLAS, *Circuit Judges.*

PER CURIAM:\*

Appellant Joe Holbert, proceeding pro se, appeals the dismissal of his employment discrimination and hostile work environment claims under Title

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\* This opinion is not designated for publication. See 5TH CIR. R. 47.5.

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VII.<sup>1</sup> The district court dismissed Appellant’s claims for failure to state a claim under 28 U.S.C. § 1915 and Rule 12(b)(6). We AFFIRM.

Appellee argues that Appellant did not present any issue on appeal contesting the merits of the dismissal, and has therefore waived review. Our court liberally construes briefs of pro se litigants, but pro se parties must still brief the issues and reasonably comply with Federal Rule of Appellate Procedure 28. *Hodge v. E. Baton Rouge Par. Sheriff’s Off.*, 394 F. App’x 124 (5th Cir. 2010). However, we have declined to dismiss an appeal on waiver alone when the plaintiff’s brief contains some assertion of trial court error. *Abdul-Alim Amin v. Universal Life Ins. Co. of Memphis, Tenn.*, 706 F.2d 638, 640 n.1 (5th Cir. 1983); *see also Grant v. Cuellar*, 59 F.3d 523, 525 (5th Cir. 1995) (noting we have “considered a *pro se* appellant’s brief despite its technical non-compliance with the Rules of Civil Procedure when it at least argued *some* error on the part of the district court”).

Nevertheless, dismissal of the Appellant’s claims was still proper. We review the dismissal of a claim under 28 U.S.C. § 1915(e)(2)(B) de novo, applying the same standards used for a Rule 12(b)(6) dismissal. *Legate v. Livingston*, 822 F.3d 207 (5th Cir. 2016). Complaints that contain “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face’” must survive a motion to dismiss. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) (quoting *Bell Atl. Corp. v. Twombly* 550 U.S. 544 (2007)). In order for a claim to have facial plausibility, the plaintiff must plead factual content that allows the court to draw the reasonable inference that the defendant is liable for the alleged misconduct. *Id.*

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<sup>1</sup> Appellant uses “Halbert” throughout the briefing and notes that “Holbert” is an alternative spelling.

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Here, Appellant raises factual allegations for the first time on appeal despite being offered multiple opportunities to support his claim through an amended complaint and more definite statement or in response to the motion to dismiss. Holbert's "added amendment" filed before the district court failed to allege key elements of each of his claims. Accordingly, dismissal for failure to state a claim was proper.

Appellant also raises two discovery issues on appeal. Holbert argues that the district court erred by not assisting him in preserving and subpoenaing video evidence. Holbert also argues that the district court erred by not assisting him with the subpoenaing of certain witnesses. However, Holbert's argument that the district court erred by dismissing his claims without assisting him in discovery is unavailing because 28 U.S.C. § 1915(e)(2) permits a district court to dismiss the case "at any time" if it fails to state a claim.

Accordingly, the judgment of the district court is **AFFIRMED**.