

No. _____

In the
Supreme Court of the United States

JAWAN N. TARQUINII,

Applicant,

v.

HUNG CAO, ACTING SECRETARY, US DEPARTMENT OF THE NAVY,

Respondent.

**APPLICATION DIRECTED TO THE HONORABLE JOHN G. ROBERTS, JR.
FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A
WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

BEN HARRIS
LATHAM & WATKINS LLP
1271 Avenue of the Americas
New York, NY 10020
(212) 906-4619

ROMAN MARTINEZ
Counsel of Record
LATHAM & WATKINS LLP
555 11th Street, NW
Suite 1000
Washington, DC 20004
(202) 637-3377
roman.martinez@lw.com

Counsel for Applicant

August 14, 2026

TO THE HONORABLE JOHN G. ROBERTS, JR., CHIEF JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE DISTRICT OF COLUMBIA CIRCUIT:

Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5, 22, and 30.2, Applicant Jawan N. Tarquini (Applicant), respectfully requests a 30-day extension of time, to and including September 30, 2026, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in this case. On June 2, 2026, the D.C. Circuit issued that judgment, which is unreported but available at 2026 WL 1552251 (per curiam). *See* App. A. Currently, a petition for a writ of certiorari would be due on August 31, 2026. This application is filed at least 10 days before the date a petition would be due. *See* Sup. Ct. R. 13.5. This Court has jurisdiction under 28 U.S.C. § 1254(1) to review the decision in this case.

This case implicates an entrenched conflict among the courts of appeals over whether a Title VII plaintiff must expressly invoke the motivating-factor theory of discrimination, 42 U.S.C. § 2000e-2(m), in order to have a district court consider that theory at summary judgment. The court of appeals held that Applicant forfeited the theory because she had not “expressly develop[ed]” it below. App. A at 2. It so held even though Applicant litigated summary judgment *pro se*, and even though the theory was pressed on appeal by court-appointed amicus curiae. Six other circuits enforce preservation requirements of the same kind. But the Second and Ninth Circuits have rightly rejected such requirements at the summary judgment stage, and the Sixth Circuit accepts an implied invocation of the theory as sufficient for

preservation purposes. Whether an employee reaches a jury thus turns on the circuit in which she happens to sue.

There is good cause for granting a 30-day extension of time to prepare and file a petition for a writ of certiorari in this case. Undersigned counsel Ben Harris served as court-appointed amicus curiae in support of Applicant in the court of appeals, and undersigned counsel have since agreed to represent Applicant, *pro bono*, before this Court. Counsel have competing professional obligations both before and after the date the petition is currently due, and additional time is required to consult with Applicant, review the record below, and prepare a petition that adequately addresses the legal issues presented and best assists the Court. The additional time will assist potential amici in considering this case. Applicant has not previously sought an extension of time from this Court.

An extension would not work any meaningful prejudice on any party or prevent the Court from timely considering the petition. With or without an extension, if certiorari is granted, the case would be briefed and argued next Term.

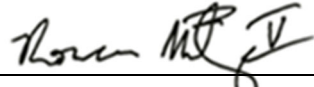
CONCLUSION

For these reasons, Applicant respectfully requests a 30-day extension of time, to and including September 30, 2026, within which to file a petition for a writ of certiorari in this case.

Dated: August 14, 2026

BEN HARRIS
LATHAM & WATKINS LLP
1271 Avenue of the Americas
New York, NY 10020
(212) 906-4619

Respectfully submitted,



ROMAN MARTINEZ
Counsel of Record
LATHAM & WATKINS LLP
555 11th Street, NW
Suite 1000
Washington, DC 20004
(202) 637-3377
roman.martinez@lw.com

Counsel for Applicant

APPENDIX A

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24-5243

September Term, 2025

FILED ON: JUNE 2, 2026

JAWAN N. TARQUINII,
APPELLANT

v.

HUNG CAO, ACTING SECRETARY, US DEPARTMENT OF THE NAVY,
APPELLEE

Appeal from the United States District Court
for the District of Columbia
(No. 1:21-cv-01567)

Before: PILLARD, WILKINS, and KATSAS, *Circuit Judges*

J U D G M E N T

The Court has considered this appeal and determined that a published opinion is unwarranted. *See* Fed. R. App. P. 36; D.C. Cir. R. 36(d). It is **ORDERED** that the judgment of the district court be **AFFIRMED**.

I

Jawan Tarquinii worked as a civilian at a United States Marine Corps base in Japan. She served as the chief of a human-resources department. An inspector-general investigation found that Tarquinii had improperly used her position to help hire her husband and brother. The Corps fired Tarquinii and rejected her administrative appeals.

Tarquinii sued *pro se*. She alleged claims of discrimination and retaliation in violation of Title VII of the Civil Rights Act. The district court granted summary judgment against her. It reasoned that the government had stated a legitimate, non-discriminatory reason for the termination—violation of anti-nepotism rules—and that Tarquinii had produced insufficient evidence that this stated reason was a pretext for discrimination or retaliation. *Tarquinii v. Del Toro*, No. 21-cv-1567, 2024 WL 4298857 (D.D.C. Sept. 26, 2024). Tarquinii appealed *pro se*, and we appointed Ben Harris as *amicus curiae* to support her position.¹

¹ Mr. Harris has ably discharged his responsibilities, and the Court thanks him for his assistance.

II

We review a grant of summary judgment *de novo*. *Thompson v. District of Columbia*, 832 F.3d 339, 344 (D.C. Cir. 2016). Like the district court, we must view the evidence in the light most favorable to the non-movant and must draw all reasonable inferences in her favor. *Id.*

Title VII prohibits the federal government from discriminating against employees “based on race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e-16(a). To establish Title VII liability, the plaintiff may show that one of these prohibited considerations was a “but-for cause” of an adverse employment action. *Mayorga v. Merdon*, 928 F.3d 84, 89 (D.C. Cir. 2019) (citing 42 U.S.C. § 2000e-2(a)(1)). Alternatively, the plaintiff may show that the prohibited consideration was a “motivating factor” behind the adverse action. *Id.* (quoting 42 U.S.C. § 2000e-2(m)). The latter causation standard is easier to meet, but plaintiffs invoking it cannot obtain damages or reinstatement. *See* 42 U.S.C. § 2000e-5(g)(2)(B)(ii).

In cases lacking direct evidence of discrimination, we apply the evidentiary framework established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). This framework applies to both but-for and motivating-factor theories. *See Mayorga*, 928 F.3d at 89. When an employer proffers a legitimate reason for its action, we focus on whether “the employee produced sufficient evidence for a reasonable jury to find that the employer’s asserted non-discriminatory reason was not the actual reason and that the employer intentionally discriminated against the employee on the basis of race” or another prohibited consideration. *Brady v. Off. of Sergeant at Arms*, 520 F.3d 490, 494 (D.C. Cir. 2008). This Court has held that “actual reason” does not mean “sole reason.” *Ponce v. Billington*, 679 F.3d 840, 845–46 (D.C. Cir. 2012). Instead, we must assess whether a reasonable jury could find that discrimination was one but-for cause or motivating factor. *See, e.g., St. Mary’s Honor Ctr. v. Hicks*, 509 U.S. 502, 515–16 (1993); *Stoe v. Barr*, 960 F.3d 627, 640 (D.C. Cir. 2020); *Johnson v. Perez*, 823 F.3d 701, 706 (D.C. Cir. 2016).

Under these standards, the district court correctly granted summary judgment. The government claims to have fired Tarquini for an obviously legitimate reason—her violation of anti-nepotism rules reflected in a federal regulation and longstanding Marine Corps policy. And Tarquini has pointed to no evidence from which a reasonable jury could infer that this stated reason was pretextual and that unlawful discrimination was a but-for cause of her termination. Moreover, while the *amicus* vigorously presses a motivating-factor theory of discrimination, Tarquini did not raise that theory before the district court and thus failed to preserve it. We have held that the plaintiff must expressly develop a motivating-factor theory in order to preserve it before the district court and on appeal. *See Ponce*, 679 F.3d at 845; *Sledge v. District of Columbia*, 63 F. Supp. 3d 1, 16 (D.D.C. 2014) (K.B. Jackson, J.) (“a plaintiff is required to make the specific argument that race was a ‘motivating factor’ if he desires for the court to consider a mixed-motive theory when ruling on a summary judgment motion”) (applying *Ponce*). On this record, we see no reason to excuse Tarquini from that basic requirement. *See Ford v. Massarone*, 902 F.3d 309, 314 (D.C. Cir. 2018).

Tarquini’s retaliation claims fare no better. To establish liability, she must show that “protected activity,” such as alleging unlawful discrimination, was “a but-for cause” of her termination. *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 362 (2013); *see Walker v.*

Johnson, 798 F.3d 1085, 1091 (D.C. Cir. 2015) (citing 42 U.S.C. § 2000e-3(a)). The summary-judgment record contains insufficient evidence to support such a finding.

Tarquinii's remaining claims, which the *amicus* does not press, also lack merit. Her Fifth Amendment claims of unconstitutional discrimination or retaliation track her primary Title VII claims and suffer from the same failures of proof. *See Ethnic Emps. of the Libr. of Cong. v. Boorstin*, 751 F.2d 1405, 1414–15 (D.C. Cir. 1985). So do Tarquinii's claims of disability-based discrimination in violation of the Rehabilitation Act, which likewise present no genuinely disputed issues of causation or pretext. *See Baloch v. Kempthorne*, 550 F.3d 1191, 1196 (D.C. Cir. 2008). Finally, this Court already has summarily affirmed the grant of summary judgment on Tarquinii's hostile-work-environment and reasonable-accommodation claims, as well as on her plea for further discovery. *See* Per Curiam Order, No. 24-5243 (Mar. 6, 2025). Tarquinii's brief hints at various other claims or theories, but none of them is adequately developed. *See Schneider v. Kissinger*, 412 F.3d 190, 200 n.1 (D.C. Cir. 2005).

* * * *

For these reasons, we affirm the district court's judgment. The Clerk is directed to withhold issuance of the mandate until seven days after resolution of any timely petition for rehearing or rehearing *en banc*. *See* Fed. R. App. P. 41(b); D.C. Cir. R. 41(a)(1).

Per Curiam

FOR THE COURT:

Clifton B. Cislak, Clerk

BY: /s/

Daniel J. Reidy
Deputy Clerk