

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

ESTHER DARNELL, Petitioner

v

DEPARTMENT OF JUSTICE, DRUG ENFORCEMENT ADMINISTRATION, WILLIAM P. BARR, U.S. ATTORNEY GENERAL,
THIMOTHY SHEA, ACTING ADMINISTRATOR OF THE DRUG ENFORCEMENT ADMINISTRATION, Respondents

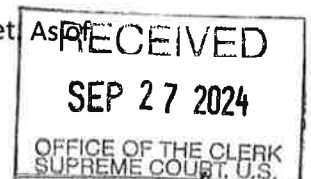
**MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI FOR UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT NO. 23-20399**

To the honorable Samuel A. Alito, Associate Justice of the United States Supreme Court:

1. Petitioner, Esther Darnell, pursuant to Rule 13(5) of the Rules of the Supreme Court respectfully seeks a sixty (60) day extension of time within which to file this petition for writ of certiorari in this Court. Respondents, Department of Justice, Drug Enforcement Administration, et al are herein after referred to as DEA. Petitioner's cause of action against DEA is under Title VII. She maintains at all times she was a contract employee, and in the alternative, she maintains that, if she is deemed to have been an Independent Contractor, she was discriminated against based on that status and therefore, brings this cause of action under 42 U.S.C. § 1981. ***The jurisdiction of this Court is invoked under 28 U.S.C §1254 an appeal from the United States Court of Appeals for Fifth Circuit.***

2. **July 1, 2024**, is United States Court of Appeals Fifth Circuit entry date for its order affirming the Petitioner's final district court's decision. A copy of the order is attached as Exhibit A. No petition for rehearing was filed. **July 5, 2024**, the Governor of Texas declared ***a state of disaster for 121 counties, including Petitioner's County, Harris County, Houston, Texas because of an act of God, Hurricane Beryl.***

Petitioner suffered property damages to her home including loss of power and no internet



September 18, 2024, the phone lines to her office equipment are still not working. The phone company said that the cable lines were damaged from the hurricane and that it is still going to take weeks to repair. Also, property repairs including electrical repairs are still ongoing.

3. **September 30, 2024**, is Petitioner's deadline date to file a petition for writ of certiorari, which is within ninety (90) days from **July 1, 2024**, the entry date of the Fifth Circuit's decision, to September 29, 2024, a Sunday. ***This application is submitted more than 10 days prior to the scheduled filing date for the petition for writ of certiorari.***

4. When filed this application will meet the requirements of Rule 10 of the Supreme Court Rules, and specifically, its requirement of compelling reasons for writ of certiorari based on the following: During this litigation, as reflected below, the federal crime of evidence tampering with the electronic time-stamped dates on DEA emails was committed by DEA law enforcement officers, and or DEA employees, contractors. ***The Public would be alarmed and very concerned to know that it is possible and most likely that DEA law enforcement officers changed electronic time-stamped dates on DEA emails and then submitted the same emails as the basis for direct evidence in the granting of a favorable "DEA summary judgment."***

5. This is an employment discrimination case involving the Fifth Circuit's order affirming the district court's final order which denied Petitioner's overtime and termination claims including a request partial summary judgment for overtime claims and granted DEA its summary judgment. The Fifth Circuit also affirmed the district court's acceptance a DEA Notice of Discovery Compliance from an attorney from DEA Headquarters.

6. Petitioner intends to ask this Court to grant review on whether the Fifth Circuit erred when it affirmed the district court's acceptance of DEA's Notice of Discovery Compliance in a declaration from a DEA attorney in DEA Headquarters with no personal knowledge of matters in his declaration. The circuit

courts are split about acceptance of conclusory affidavits and declarations from attorneys in summary judgment motions.

In the Second Circuit in *Attorney General v. Irish Northern Aid Comm.*, 668 F.2d 159, 162 (2nd Cir. 1982) held that attorney's "conclusory affidavit," not based on personal knowledge, insufficient in summary judgment motion.

The Fifth Circuit accepted the attorney's conclusory declaration about compliance with discovery request from Petitioner. Petitioner in her declaration stated that she did not receive the requested discovery document. The district court accepted the attorney's declaration. The district court overruled Petitioner's objections and motion to strike the Notice of Discovery Compliance due to declarant's lack of personal knowledge. **DEA refused to comply with Petitioner's document discovery requests including providing Petitioner with the race and sex of Petitioner's replacement which is critical information in determining whether discrimination occurred.** Petitioner made multiple good faith attempt to obtain this critical discovery information by filing, all with no success, motions to compel discovery and impose sanctions, requests for Federal Rules of Procedure Rule 59(e) and 56(d), motions for stays and extensions of discovery deadlines and finally motions to strike.

Next Petitioner plans to seek Court review on whether the Fifth Circuit committed error when it affirmed the district court's final decision that Petitioner's termination claims did not meet the *McDonnell Douglas* burden-shifting framework. *Davis v. Dall, Area Rapid Transit*, 383 F.3d 309, 316-17 (5th Cir. 2004). Under this framework, Petitioner must establish a prima facie case of disparate treatment discrimination by showing: (1) she was in a protected class (Petitioner is a black female); (2) she was qualified for the position (Petitioner former IRS Special Agent and Licensed Attorney); (3) Petitioner lost when job position was moved from Jackson, MS to Little Rock, AK (Copy of Email dated June 22, 2015 is attached as Exhibit B) ; (4) she was replaced by a person outside of her protected class (DEA refuses to

give to Petitioner the race and sex of replacement). *Green v. McDonnell-Douglas Corp.*, 463 F.2d, 802 (8th Cir. 1970). In addition both Fifth Circuit and district court state that Petitioner's position was closed despite Exhibit B email attached requesting move of job position to Little Rock and the hiring of a replacement for Petitioner's job position. Petitioner's position is that refusal constitutes a genuine dispute and the granting of a DEA summary judgment should be reversed with instructions to jury to assume this information would have been unfavorable to DEA. If this Court rules otherwise. Petitioner documentary evidence of related evidence tampering with emails proves that DEA's alleged legitimate reason for Petitioner's termination is a pretext for discrimination.

The final issue for the Court's review is whether the Fifth Circuit erred when it affirmed the district court's orders for the denial of Petitioner's overtime claims because allegedly the claims were untimely. Petitioner worked hundreds of hours continuously under duress from May 2014 to June 2015, For the month of June 2015, Petitioner worked 12 hours of overtime. The last day of overtime worked was June 18, 2015. Per DEA email dated July 13, 2015, Petitioner had a meeting with DEA about overtime. July 20, 2015, Petitioner contacted the EEO counselor to file a complaint. According to the continuing violations doctrine in *National Railroad Passenger Corporation v. Morgan*, 536 U.S. 101 (2002), the 12 worked in June 2015, were timely and because the hours were worked in a hostile environment all the hours worked from May 2014 to July 2015 are also timely. The Fifth Circuit relied primarily on *McDonnell Douglas* burden-shifting framework. *Davis v. Dall. Area Rapid Transit*, 383 F.3d 309, 316-17 (5th Cir. 2004) and DEA management officials affidavits for the overtime and termination claims.


There is a split in the circuit courts in determining whether factual issues can be settled by a judge in a summary judgment. In the Fifth Circuit the above factual issues can be settled by in judge. For example, the following fact issue was settled by the judge and Petitioner presented documentary evidence to the district court that that proved otherwise—no other PRM contractor works in

Petitioner's office in Mississippi and therefore she cannot use other PRM Senior Financial Investigators as a comparator for the *McDonnell Test*. This is not true. Attached is Exhibit C, Calvin Boyer Affidavit and at Number 14 he states that he works cases in Mississippi. Attached is Exhibit D, August 23, 2015 email with DEA supervisor Baker telling Petitioner is assigned to New Orleans office. Attached is Exhibit E Email proof of discrimination of sex and race because I was the only financial investigator who was not allowed to prepare a subpoena request form for bank records. In the Second Circuit the above factual issues cannot be settled by a judge in summary judgment. *Gallagher v Delaney*, 139 F.3d 338, 345 (2d Cir. 2000).

13. Opposing Counsel, Assistant United States Attorney Ariel Wiley is opposed to this motion.

For the foregoing reasons, Petitioner respectfully prays that this Court grant an extension of sixty (60) days to and including November 29, 2024.

Respectfully submitted,


Esther Darnell

Pro-Se Petitioner

Attorney at Law

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TX State Bar No. 05391225

EXHIBIT A

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

July 1, 2024

Lyle W. Cayce
Clerk

No. 23-20399
Summary Calendar

ESTHER DARNELL,

Plaintiff—Appellant,

versus

DEPARTMENT OF JUSTICE, DRUG ENFORCEMENT
ADMINISTRATION; WILLIAM P. BARR, *U.S. Attorney General*;
TIMOTHY SHEA, *Acting Administrator of THE DRUG ENFORCEMENT
ADMINISTRATION,*

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:20-CV-4143

Before ELROD, OLDHAM, and WILSON, *Circuit Judges.*

PER CURIAM:*

Esther Darnell, a black woman, worked as an independent contractor in the United States Drug Enforcement Agency (DEA) office in Jackson, Mississippi, until her position was closed and relocated to Little Rock,

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

Arkansas, in 2015 due to an increase in cases in Little Rock. She alleges that, because of her race, she was not paid for overtime work, her contract was improperly terminated, and she was “segregated or classified” separately from other DEA team members. She alleges these actions violated Title VII. The district court granted summary judgment to the defendants.¹

On appeal, Darnell raises five issues: She claims the district court (1) abused its discretion by accepting DEA’s notice of discovery compliance, (2) used the wrong comparator to evaluate Darnell’s termination claim, (3) failed to consider her overtime pay claims under the continuing violations doctrine, (4) erred in denying Darnell’s substantive overtime pay claim, and (5) failed to investigate allegedly fraudulent emails. We review the grant of summary judgment de novo, and we may affirm on any ground supported by the record. *Wantou v. Wal-Mart Stores Tex., LLC*, 23 F.4th 422, 430 (5th Cir. 2022).

To maintain her Title VII claims, Darnell must “establish a *prima facie* case of discrimination.” *Septimus v. Univ. of Houston*, 399 F.3d 601, 609 (5th Cir. 2005). To make this showing, Darnell must show she “was replaced by someone outside [her] protected class, or that other similarly situated persons were treated more favorably.” *Id.*; see also *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973). Darnell has presented no facts suggesting she was treated differently from another independent contractor—she was the only one in her work group. And she was not replaced at all—her position was closed. Darnell’s claims, including her overtime pay claim, therefore fail

¹ Darnell also sued two contractor companies and alleged a claim under 42 U.S.C. § 1981. The district court dismissed those claims at other points in the litigation, and they are not part of this appeal.

for substantially the same reasons explained by the magistrate judge and adopted by the district court.

Finally, the district court did not abuse its discretion by requesting and accepting Defendants' notice of discovery compliance: Defendants had reasonably complied with Darnell's requests as directed by the court.

AFFIRMED.

**Additional material
from this filing is
available in the
Clerk's Office.**

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THIMOTHY SHEA, ACTING ADMINISTRATOR OF THE DRUG ENFORCEMENT ADMINISTRATION, Respondents

PROOF OF SERVICE

I Esther Darnell make this declaration on the basis of personal knowledge and information available to me. I Esther Darnell declare and state the following:

I do swear that on September 19, 2024. I served the enclosed extension request on by depositing in envelope in the United States mail for delivery within 3 days:

Ariel ~~Wiley~~ *Wiley EA*
1000 Louisiana Suite 2300
Houston, Tx 77002
Emailed to: ariel.wiley@usdoj.gov

Solicitor General of United States
Department of Justice Room 5616
950 Pennsylvania Ave N W
Washington DC 20530

Clerk of Court
Supreme Court of United States
1 First Street N.W.
Washington, DC 20543

I hereby make this declaration in lieu of oath, as permitted by Section 1746 of Title 28 of the United States Code. I hereby declare and affirm under penalty of perjury that the information in this declaration is true and correct to the best of my knowledge.

Date

9/19/24

Esther Darnell

Esther Darnell