

Cause No. Cause No. 25-10982

In the United States Court of Appeals
for the Fifth Circuit

JOE MARTIN BRAVO,
Plaintiff-Appellant,

v.

DALLAS INDEPENDENT SCHOOL DISTRICT;
TARRANT APPRAISAL DISTRICT,
Defendants-Appellees.

PLAINTIFF-APPELLANT'S PETITION FOR REHEARING EN BANC

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CERTIFICATE OF INTERESTED PERSONS

Plaintiff-Appellant Joe Martin Bravo certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal:

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The Court is advised that Tarrant Appraisal District only appeared in this case as a movant that filed a Motion to Quash Dallas ISD's third party subpoena ROA.7 (docket sheet items 38 to 42). The movant is included in the cover sheet and this page pursuant to the Court's briefing

notice letter dated September 24, 2025 (Doc. #16).

/s/ Peter F. Bagley

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Rule 40(b) Statement

This appeal involves a question of exceptional importance that warrants initial en banc hearing: What authority governs Title VII judicial review when no comparator exists?

The panel's decision in this case effectively treated the absence of comparator evidence as dispositive despite the unique circumstances of this case and the victim's class-of-one status and therefore did not evaluate whether the remaining circumstantial evidence could permit a reasonable jury to infer discrimination to allow Appellant to survive summary judgment. A copy of the decision is attached hereto.

Title VII of the Civil Rights Act of 1964 ("Title VII") prohibits discrimination because of race and national origin. 42 U.S.C. § 2002e-2. It does not mention comparators, require comparator evidence, or condition judicial review upon the existence of a similarly situated employee. Comparator evidence is a judicially created evidentiary tool, not a statutory prerequisite to enforcement of the Act. *Ames v. Ohio Department of Youth Services*, 605 U.S. 303, 311 (2025), reaffirmed that the *McDonnell Douglas* framework must not be applied in a rigid, mechanized, or ritualistic manner. *U.S. Postal Serv. Bd. of Governors v.*

Aikens, 460 U.S. 711, 714 (1983), directs courts to focus on the ultimate question of discrimination. *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 147, 150 (2000), requires courts to consider the totality of the evidence and recognizes that circumstantial and pretext evidence may support an inference of discrimination. *Tolan v. Cotton*, 572 U.S. 650, 656-57 (2014), and Federal Rule of Civil Procedure 56 require courts at summary judgment to view the evidence in the light most favorable to the nonmovant and draw all reasonable inferences in his favor.

Against the backdrop of this case law, is a victim of discrimination situated in the Fifth Circuit entitled to Title VII protections consistent throughout the Nation, or do they still lose the protection of Title VII without a comparator no matter what the facts might otherwise show? Appellant suggests that the panel's decision of the one-size-fits-all comparator requirement in this case conflicts with decisions of the United States Supreme Court and authoritative decisions of other United States court of appeals.

Statement of the Facts

Appellant Joe Martin Bravo, a proud, Hispanic American male and son of Mexican immigrants, who worked as a middle school teacher in the

Dallas Independent School District (“DISD”) filed a lawsuit against DISD for unlawful employment discrimination under Title VII. In his complaint, Mr. Bravo alleges that he suffered at the hands of Principal Tameca Ward, an African American female who was Mr. Bravo’s direct supervisor who had a history of racial bias against non-Black employees in the middle school.

After several students complained that Mr. Bravo made inappropriate statements over two years during classroom instruction (which Mr. Bravo vehemently denied), Ms. Ward handled the investigative process regarding the allegations in a manner that Mr. Bravo maintains was tainted by racial bias against him and ensured that he would not receive due process to prove his innocence, leading to a series of adverse employment actions. While DISD claims it has legitimate, non-discriminatory grounds for taking action against Mr. Bravo, Mr. Bravo’s pretext evidence raised issues of fact that indicate that his direct supervisor, Ms. Ward (and, in turn, DISD) did not or could not have sincerely believed in the complaints against him and that Ms. Ward conducted an investigative process regarding the complaints in a manner that was unfair, riddled with misrepresentations, and which

denied Mr. Bravo a chance to defend himself against the complaints because of her bias against Mr. Bravo because of his protected status.

Ms. Ward had a consequential effect on the internal DISD body that decided to propose the termination of Mr. Bravo's employment because it adopted the supervisor's recommendation to end his employment as well as her bias embedded in the investigative file, having failed to comply with statutorily mandated CPS reporting or conduct its own separate investigation into the complaints. Mr. Bravo presented ample evidence to show Ms. Ward displayed bias against non-Blacks in other settings within the campus where Mr. Bravo worked and that he wound up being another victim of her demonstrated bias.

Statement of the Proceedings

The Fifth Circuit panel affirmed a decision of the trial court granting DISD's Motion for Summary Judgment to dismiss, finding that Mr. Bravo failed to meet the prima facie burden to establish racial discrimination in an employment context by circumstantial evidence under Title VII by presenting evidence of a similarly situated comparator.

Issues presented

- Whether treating the prima facie framework as a threshold barrier that prevents courts from evaluating the totality of the circumstantial evidence is consistent with the ultimate inquiry required by Title VII, *McDonnell Douglas*, *Ames*, *Aikens*, *Reeves*, *Tolan*, and Rule 56 that courts focus on the paramount question of discrimination?
- Whether Title VII permits courts to require comparator evidence as a prerequisite to judicial review when no comparator exists because the challenged conduct itself created a unique factual scenario?

Summary of the Argument

The panel in this case did not conclude that Mr. Bravo's circumstantial evidence failed to support an inference of discrimination. Rather, Mr. Bravo's evidence was a mere footnote¹ viewed as legally irrelevant because no comparator existed. The panel affirmed summary judgment without evaluating whether a reasonable jury could infer discrimination from the remainder of the record where the alleged discrimination created a unique factual scenario for which no comparator exists.

¹ Because Bravo's Title VII claim fails this threshold inquiry, we do not reach his other arguments.

If comparator evidence is merely one method of establishing an inference of discrimination, how can a court determine that no inference exists without evaluating the circumstantial evidence offered to establish that inference? The panel's analysis appears to assume that comparator evidence is an absolute gateway before any other factor or evidence becomes relevant.

Accordingly, this petition presents a recurring legal question regarding the evaluation of circumstantial evidence under Title VII and Rule 56 after *Ames*, *Aikens*, *Reeves*, and *Tolan*. The issue extends well beyond the facts of this case and will affect how courts throughout the Circuit evaluate discrimination claims supported by substantial circumstantial evidence when comparator evidence is unavailable.

I. The Panel's Decision Departs from the Principles Reflected in *Ames*, *Aikens*, *Reeves*, *Tolan*, and Rule 56

The panel decision conflicts with decisions of the United States Supreme Court. The panel affirmed summary judgment after concluding that Mr. Bravo failed to identify a similarly situated comparator and expressly declined to reach Mr. Bravo's remaining arguments. In doing so, the panel effectively treated comparator evidence as a threshold prerequisite to judicial review and never evaluated whether the

substantial circumstantial evidence in the record could permit a reasonable jury to infer discrimination.

The panel's decision is therefore difficult to reconcile with the Supreme Court's repeated instruction that courts must evaluate discrimination claims by considering the evidence bearing on the ultimate question of discrimination rather than permit rigid evidentiary requirements to foreclose judicial review. See *Aikens*, 460 U.S. at 714-16; *Reeves*, 530 U.S. at 148-50; *Tolan*, 572 U.S. at 656-57; and *Ames*, 605 U.S. at 311.

II. The Panel Conflates Comparator Similarity with Comparator Existence

The panel relied on authority cautioning that comparator analysis should not be overly rigid. But the decision cited in the opinion concerns comparator similarity, not comparator existence. Mr. Bravo's argument is fundamentally different from the issue addressed by the panel. Mr. Bravo contends that Title VII does not mandate that comparator evidence is a prerequisite to judicial review when the alleged discrimination itself created a unique factual scenario for which no comparator exists because of the employer's engineered circumstances.

Under the panel's approach, a comparator similarity analysis is flexible, but the prerequisite of a comparator is not. Traditional comparator cases address comparator similarity, that is, whether a proposed comparator is sufficiently alike to permit a meaningful comparison. Mr. Bravo did not argue that the Fifth Circuit should adopt a more permissive standard when comparing two or more employees. Mr. Bravo's argument, by contrast, zeros in on the idea of comparator necessity. The question presented is whether substantial circumstantial evidence may otherwise support an inference of discrimination in the absence of an identical comparator.

In rejecting Mr. Bravo's reliance on *Ames*, the panel stated that Fifth Circuit precedent is "flexible enough to survive *Ames*" and cited authority cautioning that the comparator analysis "cannot be too rigid." The panel's cited authority addresses how courts evaluate whether two employees are sufficiently similar to qualify as comparators.

But that is not the issue that was presented by this appeal. Before the panel, Mr. Bravo argued that Title VII does not compel comparator evidence as a prerequisite to judicial review under an inflexible formula when the alleged discrimination itself creates a unique factual scenario

for which no comparator exists. By contrast, the panel, while claiming to invoke flexibility, treated comparator evidence as an indispensable threshold requirement and its absence here remained outcome determinative regardless of other facts. This approach is precisely what *Ames* cautioned against, the imposition of rigid evidentiary barriers that prevent courts from reaching the ultimate question of discrimination. The panel's rule creates such a barrier. The panel held that Mr. Bravo failed to establish a prima facie case because he lacked comparator evidence and therefore affirmed summary judgment, entirely ignoring evidence of pretext, discriminatory animus, cat's-paw causation, investigative irregularities, statistical evidence, and reinstatement.

III. The Panel Never Evaluated Whether a Reasonable Jury Could Infer Discrimination from the Remainder of the Record

The panel's application of the fourth prima facie element had the practical effect of functioning as a gatekeeping requirement preventing the ultimate inquiry: whether a reasonable jury, in the light most favorable to the nonmovant could infer discrimination from the evidence viewed as a whole. That concern is particularly significant because summary judgment is appropriate only when there is no genuine dispute

of material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). In applying Rule 56, courts must view the evidence in the light most favorable to the nonmovant, draw reasonable inferences in his favor, and refrain from weighing evidence or making credibility determinations. *Reeves*, 530 U.S. at 150. Courts likewise may not resolve genuine factual disputes in favor of the moving party. *Tolan*, 572 U.S. at 656.

Mr. Bravo's unreached evidence was not limited to a single isolated fact and the panel never reached the question whether the totality of Mr. Bravo's circumstantial evidence could permit a reasonable jury to infer discrimination. Once the court concluded that no comparator existed, it never analyzed the evidence bearing directly upon discriminatory intent:

- statistical evidence;
- coworker affidavits;
- Ms. Ward discrimination evidence;
- Texas Family Code child abuse reporting noncompliance evidence;
- investigative irregularities evidence;
- policy violations evidence;
- job abandonment, resignation, termination, reinstatement, and due process evidence;
- pretext evidence;
- DISD Legal Review Committee/cat's-paw evidence; or
- honest-belief evidence.

Instead, the analysis stopped once the court concluded that no comparator existed.

DISD maintained that Appellant engaged in serious misconduct warranting termination. Yet DISD later reinstated Appellant, restored employment privileges, awarded substantial back pay, and imposed no corrective discipline. By terminating the analysis solely because comparator evidence was unavailable, the panel never reached the evidence bearing on whether DISD followed its own procedures or whether DISD's stated rationale for adverse employment action was worthy of belief. The resulting decision therefore did not rest upon a judicial determination that Mr. Bravo's circumstantial evidence was insufficient. Rather, it rested upon a threshold conclusion that prevented judicial evaluation of that evidence altogether.

IV. Practical Consequences of Treating Comparator Evidence as a Threshold Requirement

The panel's rule allows a sophisticated employer to engineer a class of one by targeting a uniquely situated employee, creating a unique disciplinary process, eliminating meaningful comparators, and then invoking the absence of a comparator to avoid judicial scrutiny. Title VII does not condition protection on the existence of comparator evidence. Yet

under the panel's approach, comparator availability is outcome determinative regardless of other evidence.

The panel's approach creates a class-of-one safe harbor and the practical consequences extend far beyond this case. When comparator evidence becomes an indispensable prerequisite to judicial review, employers may effectively avoid Title VII scrutiny by directing adverse treatment toward uniquely situated employees.

A sophisticated discriminator need not avoid discrimination. He need only avoid comparators. Under the panel's rule, an employer can target a single employee, impose a disciplinary process unique to the employee, ensure that no similarly situated employee exists, and then invoke the absence of comparator evidence as a complete defense.

The more unique the discriminatory mechanism, the less likely comparator evidence exists and the issue recurs whenever discrimination is carried out through individualized investigations, singular disciplinary actions, executive decisions, or other unique employment actions for which no meaningful comparator exists. Consequently, the more sophisticated the discrimination, the less likely a jury will ever evaluate it.

This case demonstrates why comparator evidence cannot serve as an indispensable prerequisite to judicial review. When the information necessary to identify a comparator is shielded by confidentiality laws, controlled by the employer, and embedded within unique investigative processes, the absence of comparator evidence says little about whether discrimination occurred and much about whether comparator evidence was realistically obtainable.

This concern is particularly acute where the challenged conduct itself produces a unique factual scenario. In such cases, the absence of comparator evidence may reflect the practical realities of confidential employment and child-protection investigations rather than the absence of discrimination. Treating comparator evidence as a mandatory gateway to judicial review risks foreclosing consideration of substantial circumstantial evidence in precisely the cases where comparator evidence is least likely to be accessible.

This case illustrates the practical difficulty of relying upon comparator evidence in individualized investigations. Even investigations conducted within the same school campus, under the same district policies, procedures, and chain of command may fail to satisfy the

Fifth Circuit's comparator standard because of differences in positions, the underlying allegations, or the disciplinary context. The resulting absence of comparator evidence does not mean discrimination did not exist. It simply illustrates why comparator evidence cannot serve as an indispensable prerequisite to judicial review when substantial circumstantial evidence otherwise supports an inference of discrimination. Nothing in Title VII suggests Congress intended such a result.

V. *Ames* Requires Reconsideration of Rigid Comparator Requirements

The Supreme Court explained in *Ames* that prima facie standards were never intended to be “rigid, mechanized, or ritualistic.” *Ames* further cautioned against inflexible formulations of the prima facie case. Although the panel concluded that *Ames* did not unequivocally overrule existing Fifth Circuit precedent, the central reasoning of *Ames* undermines a framework that prevents courts from evaluating the record as a whole whenever comparator evidence is unavailable.

McDonnell Douglas is an evidentiary framework. It is not a substantive limitation on Title VII liability. The concerns expressed in *Ames* are reinforced by Justice Thomas's concurrence. Although the

majority assumed without deciding that *McDonnell Douglas* applies at the summary judgment stage, Justice Thomas observed that the Court has never squarely held that the framework governs summary judgment proceedings. 605 U.S. at 317. He further warned that rigid applications of the framework may impose burdens exceeding those required by Rule 56 and may prevent courts from considering the full range of circumstantial evidence through which discrimination may be proven. This case illustrates that concern. *Id.* at 322-23.

Justice Thomas's recent writings also reflect a broader concern regarding the expansion of judge-made doctrines beyond their proper role. Although arising in a different context, Justice Thomas recently questioned whether federal courts may transform judicially created doctrines into barriers unsupported by statutory text, procedural rules, or established judicial authority.² The same concern is implicated here. Comparator evidence originated as an evidentiary tool to assist courts in evaluating discrimination claims, and likewise, nothing in Title VII, Rule 56, or Supreme Court precedent suggests that comparator evidence may

² *Keathley v. Buddy Ayers Constr., Inc.*, No. 25-6, 2026 WL 1686028, at *8, 608 U.S. ----, slip op. at 6, (Jun. 11, 2026) (Thomas, J., concurring).

be elevated into an indispensable prerequisite that prevents courts from considering otherwise substantial circumstantial evidence.

The Supreme Court's guidance in *Ames* is not a passing observation or an isolated comment and the panel's decision departs from that by treating comparator evidence as a prerequisite to judicial review rather than as one evidentiary means of establishing an inference of discrimination.

VI. The Panel Acknowledged Growing Judicial Disagreement

The panel expressly cited contrary authority and recent Fifth Circuit opinions questioning the comparator framework. Those references demonstrate that the issue is unsettled and important. The opinion referenced other circuit authority permitting plaintiffs to survive summary judgment without comparator evidence and cited recent Fifth Circuit concurrences criticizing the circuit's comparator jurisprudence but identified no Fifth Circuit decision expressly holding that courts may disregard substantial circumstantial evidence solely because comparator evidence is unavailable.

The panel's approach raises a broader question concerning the uniform application of federal law. Whether courts may terminate the

analysis solely because a comparator is unavailable is an issue of recurring national significance in the administration of Title VII. Where some jurisdictions permit courts to consider the totality of the circumstantial evidence and others require comparator evidence before reaching that inquiry, the practical availability of Title VII remedies may turn on geography rather than the strength of the record. The purpose of a federal civil-rights statute is to provide a common national standard.

For example, the District of Columbia Circuit held that "the prima facie case is a largely unnecessary sideshow" and that the central inquiry is whether the employee has produced sufficient evidence for a reasonable jury to conclude that the employer's stated reason was not the actual reason and that intentional discrimination occurred. *Brady v. Office of Sergeant at Arms*, 520 F.3d 490, 494 (D.C. Cir. 2008).

The panel here took the opposite approach. Rather than evaluating whether Mr. Bravo's substantial circumstantial evidence could permit a reasonable jury to infer discrimination, the analysis ended once comparator evidence was deemed unavailable. The growing disagreement recognized by the panel among circuit courts therefore underscores the need for en banc clarification before the practical

enforcement of Title VII becomes dependent upon differing circuit-specific evidentiary requirements.

VII. This Case Is an Ideal Vehicle

This petition does not ask the Court to reweigh the facts of a single employment dispute. Nor does it ask the Court to determine whether Mr. Bravo ultimately proved discrimination. The question presented is a legal one after *Ames*: what is the proper methodology for evaluating circumstantial evidence at the summary judgment stage when comparator evidence is unavailable?

Specifically, the Court is asked to determine whether comparator evidence remains merely one method of establishing an inference of discrimination, or whether the absence of a comparator permits courts to terminate the analysis without evaluating the remaining circumstantial evidence. Because the panel resolved the appeal without reaching the substantial circumstantial evidence offered by Mr. Bravo, this case presents a vehicle for determining whether comparator evidence is an indispensable prerequisite to judicial review or merely one method of establishing an inference of discrimination.

Conclusion

Ames cautions against rigid evidentiary barriers given *Aikens*, *Reeves*, *Tolan*, and Rule 56 rationale. Mr. Bravo's concern is that the panel never reached that point because comparator evidence functioned as a threshold barrier to judicial review, preventing consideration of whether the totality of the evidence could permit a reasonable jury to infer discrimination.

Noting the national significance of the issue, the Court should grant rehearing en banc and clarify whether comparator evidence is merely one method of proving discrimination or a prerequisite to judicial review.

Because the panel declined to evaluate Mr. Bravo's substantial circumstantial evidence after concluding that comparator evidence was unavailable, the Court should vacate the panel opinion and remand for consideration of that evidence under the proper Rule 56 framework.

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By my signature below, I hereby certify that a true copy of the above and foregoing was served on all attorneys of record via electronic service on this 15th day of June, 2026.

/s/ Peter F. Bagley

Peter F. Bagley

United States Court of Appeals
for the Fifth Circuit

No. 25-10982

United States Court of Appeals
Fifth Circuit

FILED

June 1, 2026

Lyle W. Cayce
Clerk

JOE MARTIN BRAVO,

Plaintiff—Appellant,

versus

DALLAS INDEPENDENT SCHOOL DISTRICT; TARRANT
APPRAISAL DISTRICT,

Defendants—Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:23-CV-1596

Before WIENER, HAYNES, and GRAVES, *Circuit Judges*.

JAMES E. GRAVES, JR., *Circuit Judge*:

The Dallas Independent School District fired Joe Bravo after six students complained that he made racially insensitive remarks in the classroom. He sued, alleging that the District discriminated against him based on his Mexican-American ancestry, violating Title VII of the Civil Rights Act. The district court granted the District summary judgment, reasoning that Bravo failed to produce sufficient evidence to establish a prima facie case of discrimination under *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). We AFFIRM.

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I.

Title VII prohibits employment discrimination on the basis of race, ethnicity, or national origin. 42 U.S.C. § 2000e-2(a). “[D]irect evidence of discriminatory intent is rare.” *Saketkoo v. Adm’rs of Tulane Educ. Fund*, 31 F.4th 990, 997 (5th Cir. 2022). So an employee usually “proves [their] claim [through] circumstantial evidence.” *Id.* If they use circumstantial evidence, they must satisfy the *McDonnell Douglas* burden-shifting framework to survive summary judgment. *Id.*

Under this framework, an employee must first establish a prime facie case. *Id.* This means they must offer sufficient evidence that they (1) are a member of a protected class, (2) were qualified for their position, (3) suffered an adverse employment action, and (4) were treated less favorably than “other similarly situated employees who were not members of the protected class, under nearly identical circumstances.” *Lee v. Kan. City S. Ry. Co.*, 574 F.3d 253, 259 (5th Cir. 2009) (citation modified).

The district court granted summary judgment at the fourth prong, because Bravo “fail[ed] to offer any evidence of a similarly situated comparator.” *Bravo v. Dall. Indep. Sch. Dist.*, No. 3:23-CV-01596, 2025 WL 2163272, at *8 (N.D. Tex. July 30, 2025).¹ He appeals.

II.

Bravo concedes that our precedent required him to show a similarly situated comparator. But he argues that a recent Supreme Court decision, *Ames v. Ohio Department of Youth Services*, overruled our previous cases that required him to do so. 605 U.S. 303 (2025). We disagree.

¹ “We review a district court’s grant of summary judgment de novo.” *Barrett v. Atl. Richfield Co.*, 95 F.3d 375, 382 (5th Cir. 1996).

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Our rule of orderliness binds us to a previous panel’s decision “absent an intervening change in the law.” *Texas v. United States*, 126 F.4th 392, 406 (5th Cir. 2025). A Supreme Court decision may qualify as an intervening change, but the “decision . . . must unequivocally overrule prior precedent.” *Id.* (citation modified). The Court may do so implicitly when a decision “fundamentally changes the focus of the relevant analysis.” *In re Bonvillian Marine Serv., Inc.*, 19 F.4th 787, 792 (5th Cir. 2021) (citation modified). But this happens only if “the changed analysis clearly applies to the case before us, such that we are unequivocally directed . . . to overrule the” prior panel’s decision. *Martinelli v. Hearst Newspapers, L.L.C.*, 65 F.4th 231, 234 (5th Cir. 2023) (citation modified).

In *Ames*, the Supreme Court rejected the Sixth Circuit’s rule that required “majority-group plaintiffs . . . to produce certain types of evidence . . . that would not otherwise be required to make out a prima facie case.” 605 U.S. at 311. And the Court generally cautioned against “inflexible formulations of the prima facie standard.” *Id.* at 311 (citation modified).

Of course, if our previous decisions placed a greater evidentiary burden on some groups, *Ames* might implicitly overrule them. But *Ames*’s clarification of the Title VII analysis does not clearly apply here. And our *McDonnell Douglas* authority is flexible enough to survive *Ames*. Indeed, our court has already cautioned that our review of whether a comparator employee is similarly situated “cannot be too rigid.” *Moore v. Univ. Miss. Med. Ctr.*, 719 F. App’x 381, 385 (5th Cir. 2018) (citing *Lee*, 574 F.3d at 260 n.26).

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Hence, our previous decisions that require a similarly situated comparator still bind us.² To survive summary judgment, Bravo must offer evidence that he was treated less favorably than a similarly situated employee who was not a member of his protected class. *E.g.*, *Saketkoo*, 31 F.4th at 998. Because he cannot, he fails to carry his prima facie burden under *McDonnell Douglas*, and the district court properly granted summary judgment.³ We AFFIRM.

² *Contra Tynes v. Fla. Dep't of Juv. Just.*, 88 F.4th 939, 944–45 (11th Cir. 2023) (allowing a plaintiff to survive summary judgment without evidence of a comparator employee because the *McDonnell Douglas* prima facie case is an “evidentiary tool” not “a substantive standard of liability”); *see also Awe v. Harris Health Sys.*, 163 F.4th 969, 975–76 (5th Cir. 2026) (ELROD, C.J., concurring) (“[T]he Fifth Circuit’s reading of the *McDonnell Douglas* standard [is] foreign to both Title VII and Rule 56, [and] puts on blinders to the various ways . . . a plaintiff could prove [their] claim.” (citation modified)); *Nall v. BNSF Ry. Co.*, 917 F.3d 335, 349–50 (5th Cir. 2019) (COSTA, J., specially concurring); *Green v. HCTec Partners, L.L.C.*, No. 24-20554, 2026 WL 839112, at *6–8 (5th Cir. Mar. 26, 2026) (OLDHAM, J., concurring in the judgment).

³ Because Bravo’s Title VII claim fails this threshold inquiry, we do not reach his other arguments.