

No. 22-231

IN THE
Supreme Court of the United States

ARTUR DAVIS,
Petitioner,

v.

LEGAL SERVICES ALABAMA, INC., ET AL.,
Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

PETITIONER'S SUPPLEMENTAL BRIEF

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PETITIONER'S SUPPLEMENTAL BRIEF

Petitioner Artur Davis files this supplemental brief to address one point raised by the United States' invitation brief.

The question presented seeks review of Davis's claims under both Title VII and Section 1981. Pet. i. The United States agrees that this Court should grant review of Davis's Title VII claim. U.S. Br. 18-21. It maintains that the decision below "contradict[s] Title VII's text, structure, and purpose," has "no basis in this Court's precedents," and "conflicts with the decisions of other courts of appeals." *Id.* at 6-7, 16; *see id.* at 6-18. And it explains that the "question presented with respect to Title VII is undeniably important." *Id.* at 18.

Turning specifically to Davis's Section 1981 claim, the United States recognizes that Section 1981 "echoes" Title VII by using the same "terms, conditions, and privileges" language and that, "[a]s a result, the lower courts often treat the two statutes as coextensive in the employment context." U.S. Br. 21. And though the United States says that "this Court should not take up [the Section 1981] question *directly*," *id.* at 6 (emphasis added), the United States' question presented expressly *includes* Davis's Section 1981 claim as well as his Title VII claim, *see id.* at i. Thus, the United States' position appears to be that this Court should grant review on that question but give *plenary* consideration to only Davis's Title VII claim because the courts below did not separately analyze the Section 1981 question and because no circuit split exists regarding the scope of Section 1981 distinct from the circuit conflict as to Davis's Title VII claim. *See id.* at 21-22.

Granting review on the question presented but giving plenary review to only the Title VII claim would allow the Section 1981 claim to be resolved on remand in a manner consistent with this Court's disposition of Davis's Title VII claim. Then, if the two statutes "carr[y] the same meaning, this Court's resolution of the Title VII question will resolve the Section 1981 issue as well," and, to the extent that the statutes differ, "the lower courts [can] address those arguments in the first instance" on remand. U.S. Br. 22.

That approach—in which the Section 1981 claim would be carried with the case but not separately briefed or decided by this Court—would be appropriate. No one disputes that Davis has preserved his Section 1981 claim. The lower courts squarely ruled on that claim, rejecting it for the same reasons they rejected Davis's Title VII claim. *See* Pet. App. 7a, 29a; U.S. Br. 5, 6. The United States expressly maintains that the Section 1981 claims of plaintiffs *other than* Davis should be considered in the lower courts in light of this Court's resolution of Davis's Title VII claim. *See* U.S. Br. 22. Davis's Section 1981 claim should receive the same treatment.

We thus ask this Court to grant review on the question presented. Then, if this Court addresses only Davis's Title VII claim and resolves it in his favor, Davis's opportunity to litigate his Section 1981 claim on remand would be preserved.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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