

CASE NO. 25-20261
UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

VENISHA ARNOLD, Plaintiff-Appellant
VERSUS
1600 WEST LOOP SOUTH LLC, et al Defendant-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
NO. 4:25-CV-01337

**PETITION FOR REHEARING *EN BANC* FOR PLAINTIFF-APPELLANT
VENISHA ARNOLD**

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APPEAL COUNSEL FOR PLAINTIFF/APPELLANT

CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel certifies that the persons having an interest in the outcome of this case are:

1. Venisha Arnold, Plaintiff-Appellant
2. 1600 West Loop South LLC, Defendant-Appellee
3. Joshua Barry, Defendant-Appellee

This certificate is made so that the judges of this Court may evaluate possible disqualification or recusal.

/s/ Venisha Arnold

Venisha Arnold, Pro Se

II. Panel decision

The panel's opinion affirmed the district court's ruling. The panel's opinion was largely indecipherable so the plaintiff-appellant is not sure why the panel decided the way they did. The plaintiff-appellant cannot determine if the panel actually reviewed the trial record, the plaintiff's original complaint, amended complaint or any of the plaintiff-appellant's briefs or motions. Also the plaintiff-appellant was not able to determine if the panel actually wrote their own "opinion." or if the defendants lawyers wrote the panel's opinion.

STATEMENT OF FACTS

This case is about young attorney Venisha Arnold who has no criminal record and was falsely accused of the absurd accusation of impersonating a prosecutor, falsely arrested, maliciously prosecuted and defamed by her character and career being attacked on television for millions to see because the security director at the Post Oak Hotel thought she was "harassing" the mistress/relative of the hotel owner. The plaintiff-appellant does not know the hotel owner or his relative/mistress. The influence of the hotel owner Tilman Fertitta and the now fired Harris County District Attorney Kim Ogg who was known for her corruption¹ led to the plaintiff-appellant being falsely arrested, maliciously prosecuted and defamed. There were material warrant omissions and other police misconduct that led to the plaintiff-appellant's false accusation. If this case is ultimately remanded the plaintiff-appellant will submit her grand jury packet and evidence of the warrant

¹ <https://houstonwatch.substack.com/p/crime-stoppers-caught-seeking-special>
<https://houstonwatch.substack.com/p/meet-the-strip-club-owner-fueling>
<https://houstonwatch.substack.com/p/resignation-letters-reveal-a-district>
<https://houstonwatch.substack.com/p/kim-oggs-terrible-horrible-no-good>

omissions to the trial court. As a pro se litigant/formerly accused the plaintiff has had issues with getting this evidence.

On March 30, 2023, the plaintiff, Attorney Venisha Arnold who has no criminal record, was falsely arrested and falsely accused of impersonating a prosecutor by the Public Corruption Division in Harris County by Former Corrupt District Attorney Kim Ogg's office and the out-of-jurisdiction Harris County Precinct One Constables Office in conjunction with the Post Oak Hotel, when she went to the hotel seeking clarification with management regarding "harassment" of individuals she does not know that are affiliated with the hotel **after** she was contacted by defendant Kevin Malonson at Harris County Precinct One Constables Office. On April 3, 2023, KPRC-TV in Houston, Texas ran a defamatory news story about the plaintiff's dismissed false accusation. The plaintiff-appellant, a private individual with no criminal record was defamed on KPRC which reaches 5+ million viewers in Houston, (the plaintiff is from Houston) the plaintiff released a statement via social media regarding her false accusation. See Document 36-3 in the trial record. The plaintiff, a Houston native is a Washington DC Attorney who was in the middle of her application for admission to the Texas Bar when her false accusation began. The Plaintiff has no criminal record, the plaintiff is Black which means the plaintiff has:

-No Racist Privilege in society

-No Racist Protection in society

The plaintiff has vehemently contended on social media that her false accusation of impersonation was regarding, a false accusation of "harassment" disguised as the false accusation of felony impersonation. Someone was allegedly "harassing" the hotel owner's mistress/relative with text messages. See Document 36-3 in the trial

record². The plaintiff-appellant's false accusation was a misdemeanor disguised as a felony by malicious individuals intending to cause the plaintiff career and reputational harm by falsely accusing the plaintiff, a Black woman attorney and defaming her on television. The "harassment" charge revolved around white people the plaintiff does not know and white people the plaintiff has never met and these are people the plaintiff has **never** contacted. The "harassment" was based on unreliable "evidence" from a non-human third party. The plaintiff's false accusation was dismissed due to insufficient evidence of her guilt almost two years later in January 2025. The plaintiff filed suit for claims under state and federal law. It should be noted all "witnesses" used in the plaintiff's false accusation were employees of the hotel owner thus no real probable cause. Also the hotel never produced a video of the alleged offense and the hotel security director defendant-appellee Joshua Barry who initiated the plaintiff-appellant's false accusation was never orally dismissed from the litigation. See the Transcript for the hearing on June 11, 2025 Page 50 Line 5-Line 10 in the trial court record³. Also **the panel flat out lied** regarding the plaintiff-appellant's timely filing of her amended pleading after the June 2025 hearing. The hearing was on June 11, 2025, the court requested an amended complaint with a deadline of ten days, the plaintiff filed her timely amended complaint on June 12, 2025. See Document 38⁴ in the trial record filed June 12, 2025.

ARGUMENT AND AUTHORITIES

This Court should grant this petition and re-hear the case en banc. The petitioner motions the United States Court of Appeals for the Fifth Circuit for a re-hearing en

² ROA.36-3

³ June 11, 2025 Page 50 Line 5-Line 10 in the trial court record

⁴ ROA.38

banc. The plaintiff-appellant is asking for a re-hearing en banc because there are significant errors in the panel's decision. In short, the panel's opinion is flawed. The panel appeared to not understand what the plaintiff-appellant's case is about based on their opinion. The issues requiring the full Court's resolution concern 42 U.S.C. 1983, Federal Rules of Civil Procedure 12(b)(1) and the Texas malicious prosecution statute. Review by the full Court is "necessary to secure or maintain uniformity of the Court's decisions." Fed. R. App. P. 35(a)(1). The question is also one of "exceptional importance." Fed. R. App. P. 35(a)(2).

I. This court should grant the petition for rehearing *en banc* because the panel erred by not remanding the plaintiff-appellant's claim for lack of subject matter jurisdiction regarding the plaintiff-appellant's Malicious Prosecution State Claim.

As the panel and defendant-appellee Joshua Barry and defendant-appellee 1600 West Loop South LLC all agreed, the plaintiff-appellant's case began in state court before defendants removed the plaintiff's claim to federal court. The plaintiff-appellant's claims include state⁵ and federal claims. The defendants-appellees Joshua Barry and 1600 West Loop South LLC keep trying to make the claim that they are not state actors. The panel deemed defendants-appellees are private actors. Thus there is no federal claim and this portion of the plaintiff-appellant's claims should have been remanded to state court. The court must review this en banc because this matter is of exceptional

⁵ ROA.6-30: Amended Complaint Document 6 Page 30 The Plaintiff-Appellant's claim for malicious prosecution under Texas law

The court must review this issue en banc because it is “necessary to secure or maintain uniformity of the Court’s decisions.” Fed. R. App. P. 35(a)(1) and the question is also one of “exceptional importance.” Fed. R. App. P. 35(a)(2).

If this issue is denied it is likely the US Supreme Court will review this matter and reverse.

II. This court should grant the petition for rehearing *en banc* based on the fact that the panel’s opinion regarding defendant Joshua Barry and defendant 1600 West Loop South LLC is flawed and wrong regarding their status as state actors and whether defendant Joshua Barry conducted himself as a state actor under 42 U.S.C. 1983.

The panel gave a short brief flawed sentence regarding the liability of defendant Joshua Barry. Per the evidence from the Harris County District Attorney’s Office under fired District Attorney Kim Ogg, defendant Joshua Barry is and was the security director of the Post Oak Hotel at the time the plaintiff-appellant's false accusation began. Defendant-appellee Joshua Barry is also a reserve constable for Harris County Precinct One Constables Office. Per the evidence from the District Attorney the petitioner’s false accusation started with defendant-appellee Joshua Barry, the hotel security director again per the evidence from the District Attorney’s office.

The bulk of the cases defendants-appellees rely on regarding the plaintiff’s 42 U.S.C. 1983 claims involve private individuals. Joshua Barry is not a private individual he is a state actor, he is a reserve constable for Harris County Precinct One who was acting under the color of law and the Security Director of the Post Oak Hotel he played the main role in the plaintiff's false accusation, this is factual

evidence on file at Harris County District Attorney's Office. Joshua Barry's misconduct can be deemed as acting under the color of law in a 1983 claim because why did Tilman Fertitta's relative Lauren Ware go to defendant Joshua Barry instead of calling the police? The answer is because Joshua Barry is a cop, he is a reserve constable, the panel erroneously ignored this fact.

For example the defendants-appellees cite to *Morris v Dillard Department Stores* the *Morris* case fails because defendant Joshua Barry is **not** a private security guard, Joshua Barry is **not** a part-time worker, Joshua Barry is the security director for the Post Oak Hotel **again the evidence from Harris County District Attorney's Office proves this**. Therefore defendant-appellee Joshua Barry and his employer defendant-appellee 1600 West Loop South LLC are liable to the plaintiff-appellant.

The court must review this issue en banc because it is "necessary to secure or maintain uniformity of the Court's decisions." Fed. R. App. P. 35(a)(1). If this issue is denied it is likely the US Supreme Court will review this matter and reverse.

CONCLUSION

Based on the foregoing reasons, the plaintiff-appellant respectfully requests that this Court grant re-hearing en banc and settle these very important questions of federal law.

Respectfully submitted,

Venisha Arnold

/s/ Venisha Arnold