

# Racial Epithets and Title VII Hostile Work Environment Claims: Case Commentary on *Smith v. P.A.M. Transportation Company* (6<sup>th</sup> Cir. 2025)

VINAY HARPALANI & WILEY WAGGONER\*

## ABSTRACT

In order to rule fairly in employment discrimination cases, courts cannot adhere to rigid categories of harassment. In *Smith v. P.A.M. Transportation Company*, two African American truck drivers sued their employer under Title VII of the Civil Rights Act after their supervisors—one of whom was also African American—referred to them by the term, “monkey ass.” The plaintiffs also claimed that their supervisors cursed, threatened, and shouted at them while treating white employees with respect. After the district court granted summary judgment in favor of the defendant, the Sixth Circuit reversed. The Sixth Circuit reasoned that “monkey ass” is a racial slur because of its history and usage, that employment discrimination plaintiffs do not need to prove the racial self-identification of workplace comparators, and that the race of the supervisor does not obviate the severity of the harassment without more evidence. In addition, we address the concurring opinion’s use of ChatGPT by exploring whether large language models can help courts determine the meanings of racially sensitive, composite phrases in the context of employment discrimination. Overall, the Sixth Circuit embraced an interpretation of Title VII that acknowledges the nuance and factual complexity of workplace interactions, thus allowing plaintiffs to articulate claims in language that is familiar to them.

## INTRODUCTION

When balancing the interests of justice and efficiency, judges often rely on distinctions that may seem bizarre to the average person. In the case of *Smith v. P.A.M. Transportation Company*, the District Court for the Middle District of Tennessee demonstrated that when a court commits itself to rigid distinctions, plaintiffs will struggle to make claims that can survive summary judgment.<sup>1</sup> In *Smith*, the plaintiffs asserted a Title VII hostile work environment claim based in large part on the usage of racial epithets by their supervisors—one of whom was of the same race as the plaintiffs. But while this provided a complex and challenging set of facts, the U.S. Court of Appeals for the Sixth Circuit ultimately provided a model for handling such

---

\* © 2026 Vinay Harpalani & Wiley Waggoner. Vinay Harpalani is the Don L. & Mabel F. Dickason Endowed Chair in Law and Professor of Law, University of New Mexico School of Law and Affiliated Faculty in the University of New Mexico Department of Africana Studies. Wiley Waggoner is a J.D. candidate (expected 2027) at the University of New Mexico School of Law. The authors would like to thank the editors of the *Connecticut Public Interest Law Journal* for the invitation to publish this Essay and their diligent work in preparing it for publication.

<sup>1</sup> See *Smith v. P.A.M. Transp., Inc.*, 154 F.4th 375, 387 (6th Cir. 2025).

cases with proper nuance and sensitivity. And in the process, it gave us some food for thought on the use of artificial intelligence tools by judges.

In *Smith*, the plaintiffs, Michael Thomas Smith and Monaletto Sneed, brought a case against their employer, P.A.M. Transportation Company, each alleging race discrimination, retaliation, and hostile work environment claims.<sup>2</sup> Smith and Sneed are both African American.<sup>3</sup> They had two supervisors, one white and one who was also African American.<sup>4</sup> Smith claimed that his supervisors assigned him lengthier and more arduous routes than those assigned to non-African American coworkers.<sup>5</sup> Both testified that their supervisors addressed them with offensive remarks, including the terms “monkey” and “monkey ass.”<sup>6</sup> In addition, Sneed stated that both supervisors “would criticize, threaten, scream at, and curse at him.”<sup>7</sup> For example, Sneed testified that on at least one occasion, the African American supervisor “threatened to ‘write [him] up’ if [he] did not get his ‘monkey A-S-S out there and do the job.’”<sup>8</sup> In contrast to this behavior, the plaintiffs alleged that the supervisors acted professionally toward non-African American employees.<sup>9</sup>

The plaintiffs brought claims under Title VII of the Civil Rights Act of 1964,<sup>10</sup> 42 U.S.C. § 1981,<sup>11</sup> and the Tennessee Human Rights Act,<sup>12</sup> alleging race discrimination, retaliation, and hostile work environment.<sup>13</sup> The district court granted summary judgment in favor of the defendant on all of the plaintiffs’ claims.<sup>14</sup>

Plaintiffs appealed only the grant of summary judgment on their hostile work environment claim, and the Sixth Circuit only considered that claim.<sup>15</sup> Hostile work environment claims are analyzed identically under Title VII, 42 U.S.C. § 1981, and the Tennessee Human Rights Act.<sup>16</sup> To prevail on a hostile work environment claim, a plaintiff must prove five elements: “(1) [he] was a member of a protected class; (2) [he] was subjected to unwelcome [] harassment; (3) the harassment was based on race; (4) the harassment unreasonably interfered with [his] work performance by creating an intimidating, hostile or offensive work environment; and (5) the employer is liable.”<sup>17</sup> The district court had concluded that the plaintiffs could not

---

<sup>2</sup> *Smith v. P.A.M. Transp., Inc.*, No. 3:21-cv-00262, 2024 WL 2097102 (M.D. Tenn. May 9, 2024), *rev’d*, 154 F.4th 375 (6th Cir. 2025).

<sup>3</sup> 154 F.4th at 380.

<sup>4</sup> *Id.* at 380–81.

<sup>5</sup> *Id.* at 381.

<sup>6</sup> *Id.* at 381.

<sup>7</sup> *Id.* at 381.

<sup>8</sup> *Smith*, 2024 WL 2097102, at \*44.

<sup>9</sup> *Smith*, 2024 WL 2097102, at \*29.

<sup>10</sup> 42 U.S.C. § 2000e et seq. (2018).

<sup>11</sup> 42 U.S.C. § 1981 (2018).

<sup>12</sup> Tenn. Code Ann. § 4-21-101 et seq. (2023).

<sup>13</sup> 154 F.4th at 382.

<sup>14</sup> *Smith*, 2024 WL 2097102, at \*45.

<sup>15</sup> 154 F.4th at 382.

<sup>16</sup> *Id.* at 383.

<sup>17</sup> 154 F.4th at 382 (quoting *Barrett v. Whirlpool Corp.*, 556 F.3d 502, 515 (6th Cir. 2009)).

demonstrate elements (3) or (4).<sup>18</sup> Consequently, the district court granted summary judgment in favor of the defendant.<sup>19</sup>

The Sixth Circuit reversed the district court's ruling. It recognized that when evaluating complaints about workplace harassment, courts would do well to analyze racial terms in the context of the workplace.<sup>20</sup> The appeals court was particularly critical of the lower court's refusal to recognize well-known racial epithets and its use of rigid racial categories.<sup>21</sup> Judge Jane Stranch's opinion for the Sixth Circuit took a practical approach, assessing legal categories by deferring to common parlance rather than subverting it. This interpretation also makes it easier for plaintiffs to assert cognizable legal claims because they can make their arguments by using language that is familiar to them.

### I. HARASSMENT BASED ON RACE

The Sixth Circuit overruled the district court's holding that the harassment faced by Smith and Sneed was not based on race.<sup>22</sup> In order to prove that harassment was based on race, the plaintiff must show either "(1) direct evidence of the use of race-specific and derogatory terms or (2) comparative evidence about how the alleged harasser treated members of both races in a mixed-race workplace."<sup>23</sup>

#### A. Direct Evidence

Smith and Sneed both claimed that they were the targets of racial harassment because their supervisors had repeatedly called each of them "monkey" and "monkey ass."<sup>24</sup> The district court in *Smith* decided that the terms "monkey" and "monkey ass" did not directly implicate race in their use.<sup>25</sup> Rather, "a factfinder would need to infer that the use of 'monkey ass' was derogatory specifically toward African Americans," thus holding that there was no direct evidence of harassment based on race.<sup>26</sup> The district court stated that although a reasonable person might make the connection between the term "monkey" and a specific race, the fact that a connection needs to be made at all makes the reference indirect.<sup>27</sup>

The Sixth Circuit, on the other hand, pointed out that "[t]he term 'monkey' has an extensive history as a racial slur against African Americans."<sup>28</sup> The court marshaled precedent from multiple circuits holding

---

<sup>18</sup> Smith, 2024 WL 2097102, at \*43.

<sup>19</sup> *Id.* at \*45.

<sup>20</sup> *See id.* at 387 ("we have routinely accepted, at summary judgment, plaintiff testimony of disparate, race-based treatment grounded in experience and perception.").

<sup>21</sup> *Id.* at 383–87.

<sup>22</sup> *Id.* at 386.

<sup>23</sup> Smith, 2024 WL 2097102, at \*43.

<sup>24</sup> 154 F.4th at 381.

<sup>25</sup> Smith, 2024 WL 2097102, at \*31.

<sup>26</sup> Smith, 2024 WL 2097102, at \*31.

<sup>27</sup> *Id.* at \*15 n. 43.

<sup>28</sup> 154 F.4th at 383. In Western contexts, imagery associated with monkeys and apes has often been deployed to dehumanize Black people. *See, e.g.,* Wulf D. Hund & Charles W. Mills, *Comparing Black*

that “monkey” is a racial slur.<sup>29</sup> For example, a previous Sixth Circuit case found that African American firefighters suffered racial harassment when they “were assigned to workstations labeled ‘Monkey Island.’”<sup>30</sup>

In the face of these cases, the district court’s reasoning constituted a misreading of Sixth Circuit and Supreme Court precedent.<sup>31</sup> The district court had interpreted language from *Oncale v. Sundowner Offshore Services, Inc.*<sup>32</sup> “as imposing a literal ‘direct evidence’ requirement.”<sup>33</sup> In *Oncale*, the Supreme Court considered whether sex-specific terms could be considered evidence of sex-based harassment.<sup>34</sup> Rather than exclude all evidence of indirect sex-based harassment, the *Oncale* court held that such terms should be considered when they raise “an inference of discrimination on the basis of sex.”<sup>35</sup> Because the word “monkey” and its derivatives “have a long and well-understood history as racial slurs when directed at African Americans,” the Sixth Circuit ruled that use of these terms is enough to raise an inference of discrimination.<sup>36</sup> Therefore, Smith and Sneed presented direct evidence that the harassment they suffered was based on race.<sup>37</sup>

As the Sixth Circuit’s analysis suggests, a literal direct evidence requirement would unreasonably raise the bar for potential plaintiffs.<sup>38</sup> Such a standard would make it nearly impossible for plaintiffs to establish the use of a term as a racial slur where the term does not literally refer to a racial classification. Many racial slurs do not directly refer to race, but are instead

---

*People to Monkeys Has a Long, Dark Simian History*, CONVERSATION, Feb. 28, 2016, <https://theconversation.com/comparing-black-people-to-monkeys-has-a-long-dark-simian-history-55102>; WULF D. HUND, CHARLES W. MILLS, & SILVIA SEBASTIANI, SIMIANIZATION (2015). Most recently, this phenomenon became international news when President Donald Trump posted an online video depicting former President Barack Obama and former First Lady Michelle Obama as apes. See Natalie Allison, *Trump Refuses to Apologize Over Video Showing the Obamas as Apes*, WASH. POST, Feb. 6, 2026, <https://www.washingtonpost.com/politics/2026/02/06/donald-trump-obamas-ape-video/>. In some instances, simianization has been deployed to dehumanize other groups: for example, in 2006, Virginia Senator George Allen referred to a dark-skinned South Asian American as “macaca”—a term that refers to monkeys and is an epithet in Francophone countries. Vinay Harpalani, *DesiCrit: Theorizing the Racial Ambiguity of South Asian Americans*, 69 N.Y.U. ANN. SURV. OF AM. LAW 77, 175-77 (2013).

Nevertheless, in other cultural and religious contexts, simianization may carry different meanings: for example, the portrayal of simianized deity Hanuman, the “divine-monkey” in Hindu theology. Mrinalini Mitra, *Reimagining the Myth of Hanuman through Animation*, 18 DENISON J. OF RELIGION 64, 66 (2019). See also Philip Lutgendorf, *Monkey in the Middle: The Status of Hanuman in Popular Hinduism*, 27 RELIGION 311, 327 (1997); PHILIP LUTGENDORF, HANUMAN’S TALE: THE MESSAGES OF A DIVINE MONKEY (2007). Ironically, President Obama himself “always carries the statuette of Lord Hanuma and seeks inspiration from it whenever he feels tired or discouraged.” *Why former US president Barack Obama keeps a Lord Hanuman statuette*, ECON. TIMES, (Sept. 30, 2023), <https://economictimes.indiatimes.com/news/new-updates/why-former-us-president-barack-obama-keeps-a-lord-hanuman-statuette/articleshow/104064191.cms?from=mdr>.

<sup>29</sup> *Id.* at 384.

<sup>30</sup> *Id.* at 384 (citing *Jordan v. City of Cleveland*, 464 F.3d 584, 596–87 (6th Cir. 2006)).

<sup>31</sup> *Id.* at 384.

<sup>32</sup> *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75 (1998).

<sup>33</sup> 154 F.4th at 384.

<sup>34</sup> *Oncale*, 523 U.S. at 80.

<sup>35</sup> 523 U.S. at 80.

<sup>36</sup> 154 F.4th at 384.

<sup>37</sup> *Id.* at 385.

<sup>38</sup> See *Id.* at 384.

based on stereotypes and a history of invidious usage.<sup>39</sup> This is the exact kind of harassment that Title VII is meant to protect against.<sup>40</sup>

The use of the term “monkey ass,” however, is complicated by the fact that one of the supervisors who used it was himself African American.<sup>41</sup> The district court seemed to believe that this fact strengthened the defense’s argument that the use of the term did not constitute direct racial harassment.<sup>42</sup> In response, the Sixth Circuit cited precedent holding that “Title VII can be violated by members of the same race or sex as the victim of discrimination.”<sup>43</sup> While it is true that the race of the harasser may matter in some circumstances, Title VII is intended to protect the victim from workplace discrimination.<sup>44</sup>

### *B. Comparative Evidence*

Although it found direct evidence of racial harassment, the Sixth Circuit thought that it was important to critique the district court’s analysis of workplace comparators. The district court rejected the plaintiffs’ comparative evidence.<sup>45</sup> The plaintiffs had testified that they were assigned longer routes and more damaged trucks than their white counterparts.<sup>46</sup> In addition, the plaintiffs claimed that their supervisors subjected them to verbal harassment while speaking to white coworkers in a professional manner.<sup>47</sup>

The district court declined to use any of this evidence as a basis for establishing a hostile work environment claim.<sup>48</sup> First, it held that the employment-related disparities—such as assigning longer routes and damaged trucks—could not be considered forms of “harassment” under Title

<sup>39</sup> For example, the Supreme Court held that a supervisor’s use of the word “boy” when directed toward African American employees served as potential evidence of racial harassment based on the context. *Ash v. Tyson Foods, Inc.*, 546 U.S. 454, 456 (2006) (“Although it is true the disputed word will not always be evidence of racial animus, it does not follow that the term, standing alone, is always benign. The speaker’s meaning may depend on various factors including context, inflection, tone of voice, local custom, and historical usage.”).

<sup>40</sup> *See, e.g., Henson v. Dundee*, 682 F.2d 897, 902 (11th Cir. 1982) (“Sexual harassment which creates a hostile or offensive environment for members of one sex is every bit the arbitrary barrier to sexual equality at the workplace that racial harassment is to racial equality. Surely, a requirement that a man or woman run a gauntlet of sexual abuse in return for the privilege of being allowed to work and make a living can be as demeaning and disconcerting as the harshest of racial epithets.”).

<sup>41</sup> Smith, 2024 WL 2097102, at \*31.

<sup>42</sup> *Id.* at \*31 (explaining that the court had less of a reason to believe that “monkey ass” referenced race because “Davis—one of the two individuals that Smith claims called him “monkey ass”—was himself African American”).

<sup>43</sup> 154 F.4th at 385 (quoting *EEOC v. Harvert-Yeargin, Inc.*, 266 F.3d 498, 513 (6th Cir. 2001)). *See also* *Oncale*, 523 U.S. at 75, 78 (noting that in “context of racial discrimination in the workplace [the U.S. Supreme Court Justices] ha[ve] rejected any conclusive presumption that an employer will not discriminate against members of [their] own race[]” and that “[b]ecause of the many facets of human motivation, it would be unwise to presume as a matter of law that human beings of one definable group will not discriminate against other members of their group.”) (quoting *Castaneda v. Partida*, 430 U.S. 482, 499 (1977)).

<sup>44</sup> *See* 42 U.S.C. § 2000e-2(a)(1). *See also* *Oncale*, 523 U.S. 79 (“[S]tatutory prohibitions often go beyond the principal evil to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed.”).

<sup>45</sup> Smith, 2024 WL 2097102, at \*32.

<sup>46</sup> *Id.* at \*32.

<sup>47</sup> 154 F.4th at 388.

<sup>48</sup> Smith, 2024 WL 2097102, at \*43–44.

VII.<sup>49</sup> Second, the district court held that even though verbal abuse constitutes harassment, the plaintiffs had not provided a adequate comparator because they had “not established a basis for personal knowledge about the race of the individuals that [they] overheard speaking with Davis.”<sup>50</sup> The district court reasoned that “because [plaintiffs’] protected class is African American—as opposed to Black, importantly—the relevant comparators for him must be non-African American, which is not synonymous with being ‘white.’”<sup>51</sup> It explained that a person may be characterized as “white,” but have enough African ancestry to self-identify as African American.<sup>52</sup>

The Sixth Circuit reversed both of these holdings.<sup>53</sup> First, it held that employment related actions may be considered forms of harassment so long as they contribute to “the pervasive humiliation of an employee.”<sup>54</sup> There are no rigid categories of harassing conduct; rather, courts focus on the experience of the employee in the workplace.<sup>55</sup>

Second, the Sixth Circuit repudiated the district court’s requirement that the plaintiffs demonstrate evidence of their comparator’s racial self-identification.<sup>56</sup> It noted that race and color are often used interchangeably “in common parlance.”<sup>57</sup> Citing Professor Vinay Harpalani’s law review article, *Civil Rights Law in Living Color*, the Sixth Circuit pointed out that “[c]olor terms such as ‘Black’ and ‘White’ commonly designate specific racial groups.”<sup>58</sup> Given that there were several White employees working for the defendant, it is quite possible that the plaintiffs’ claims are true.<sup>59</sup> The fact that the plaintiffs perceived White coworkers had received preferential treatment was enough to establish a genuine issue of material fact.<sup>60</sup> Requiring the plaintiff to demonstrate personal knowledge of the comparator’s race would impose another burden beyond that contemplated by Title VII.<sup>61</sup> As a result, the Sixth Circuit again interpreted the legal language in the context of the workplace.

## II. SEVERE AND PERVASIVE HARASSMENT

The Sixth Circuit further held that the harassment suffered by the plaintiffs was sufficiently severe to survive a motion for summary judgment.<sup>62</sup> After the district court held the verbal abuse suffered by the

---

<sup>49</sup> *Id.* at \*43.

<sup>50</sup> *Id.* at \*44.

<sup>51</sup> *Id.* at \*21.

<sup>52</sup> *Id.*

<sup>53</sup> 154 F.4th at 388, 391.

<sup>54</sup> *Id.* at 389 (quoting *McNeal v. City of Blue Ash*, 117 F.4th 887, 902 & n.14 (6th Cir. 2024)).

<sup>55</sup> *Id.* at 389.

<sup>56</sup> *Id.* at 387.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* (quoting Vinay Harpalani, *Civil Rights Law in Living Color*, 79 Md. L. Rev. 881, 887–88 (2020)).

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* (“By relying on this narrow conception of racial identity, unadorned by legal precedent, the district court effectively imposed a heightened burden on Plaintiffs beyond what Title VII, § 1981, and the THRA require.”).

<sup>62</sup> *Id.* at 393.

plaintiffs was not motivated by race, it considered whether the uses of the words “monkey” and “monkey ass” rose to the level of severe and pervasive harassment.<sup>63</sup> It decided that these slurs were not severe or pervasive because the plaintiffs’ vague testimony suggested that the terms were used too sporadically “to significantly alter [plaintiffs’] working conditions.”<sup>64</sup>

Conversely, the Sixth Circuit reasoned that courts cannot look at allegedly harassing conduct in isolation; they must consider the totality of the circumstances.<sup>65</sup> In this case, that meant looking at the use of racial slurs in conjunction with the shouts, curses, threats, and employment-related discrimination directed toward the plaintiffs.<sup>66</sup> For example, Sneed’s supervisor called him a “monkey ass” in conjunction with a threat: “you’re going to get your monkey A-S-S out there and do the job or ... I’m going to write you up.”<sup>67</sup> Construing the record in the light most favorable to the plaintiffs, it also appears that these terms were used multiple times.<sup>68</sup> Furthermore, the Sixth Circuit noted that some slurs are so “odious” that a single use—especially when made to an employee by his direct supervisor—can be a sufficient basis for a hostile work environment claim.<sup>69</sup> The emotional experience of the plaintiffs is significant here too; “both testified that the harassment caused them significant anxiety and diminished morale.”<sup>70</sup> Applying a “reasonable person” standard,<sup>71</sup> the Sixth Circuit found that these factors combined to make the alleged harassment sufficiently severe and pervasive.<sup>72</sup>

### III. EMPLOYER LIABILITY

Finally, the plaintiffs must show that the employer was liable for the racial harassment.<sup>73</sup> Even without direct knowledge of the workplace environment, “employers are vicariously liable for harassment by supervisors.”<sup>74</sup> Given that the perpetrators of the racial harassment were the plaintiffs’ direct supervisors, the Sixth Circuit held that the employer was liable.<sup>75</sup>

An employer can rebut a presumption of liability, however, if it can show “(1) that it exercised reasonable care to prevent and correct promptly any racially harassing behavior by its supervisor, and (2) that the plaintiff employee unreasonably failed to take advantage of any preventative or

---

<sup>63</sup> Smith, 2024 WL 2097102 at \*44

<sup>64</sup> *Id.* at \*44 (quoting *Cleveland v. So. Disposal Waste Connections*, 491 Fed. App’x 698, 708 (6th Cir. 2012)).

<sup>65</sup> 154 F.4th at 391.

<sup>66</sup> *Id.* at 392–93.

<sup>67</sup> *Id.* at 392.

<sup>68</sup> *Id.* at 392.

<sup>69</sup> *Id.* at 392. *See also* *Woods v. Cantrell*, 29 F.4d 284, 285 (5th Cir. 2022) (holding that “a single incident of harassment, if sufficiently severe,” can be basis for Title VII claim).

<sup>70</sup> *Id.* at 393.

<sup>71</sup> *Id.* at 392, 393.

<sup>72</sup> 154 F.4th at 393.

<sup>73</sup> *Id.* at 393.

<sup>74</sup> *Id.* at 393 (quoting *Barrett v. Whirlpool Corp.*, 556 F.3d 502, 516 (6th Cir. 2009)).

<sup>75</sup> *Id.* at 393.

corrective opportunities provided by the employer.”<sup>76</sup> The plaintiffs in this case testified that they reported the harassment “to management-level employees” and the defendant did not provide any evidence that it acted to prevent or correct the harassing behavior.<sup>77</sup>

The Sixth Circuit therefore ruled that the plaintiffs had demonstrated a genuine dispute of material fact as to every element of a hostile work environment claim, allowing their case to survive the defendant’s motion for summary judgment. It reversed the district court’s ruling and remanded the case.<sup>78</sup>

#### IV. CONCURRING OPINION

In his concurring opinion, Judge Chad Readler largely agreed with the majority, but he contended that the court should not have reached a discussion of comparators because the usage of the words “monkey” and “monkey ass” constituted direct evidence of racial harassment.<sup>79</sup> Additionally, Judge Readler’s opinion is interesting because he tempered the majority’s criticism of the district court by emphasizing the complexity of the issues involved in this case.<sup>80</sup>

Determining whether a composite phrase exhibits racial animus poses some issues for courts. First, composite terms—especially slang—are not typically found in dictionaries. Second, the meaning of these terms is often context dependent. In grappling with these problems, Judge Readler, in his concurring opinion, cited to a ChatGPT query.<sup>81</sup> Judge Readler asked ChatGPT, “What does monkey ass mean?”<sup>82</sup> ChatGPT explained that the insult can be “potentially racial (depending on context),” an “insult or put-down (non-specific),” a phrase “emphasizing someone acting wild or stupid,” or a term “used in joking or aggressive banter.”<sup>83</sup> Judge Readler used the ChatGPT inquiry to demonstrate that it can be difficult to discern the precise meaning of composite phrases used as slang.<sup>84</sup>

A year earlier, Judge Kevin Newsom on the Eleventh Circuit encountered similar questions when it came to discerning the “ordinary meaning” of certain words; he contended that Large Language Models (LLMs) could be part of the solution.<sup>85</sup> In thinking through how a circuit

---

<sup>76</sup> *Id.* at 393 (quoting *Clark v. UPS, Inc.*, 400 F.3d 341, 348 n.1 (6th Cir. 2005)).

<sup>77</sup> *Id.* at 394.

<sup>78</sup> 154 F.4th at 394.

<sup>79</sup> *Id.* at 395.

<sup>80</sup> *Id.* at 394–95 (Readler, J., concurring). Judge Readler specifically raises three issues: (1) “how do we assess intent, context, and other relevant considerations in a setting where the individual who purportedly engaged in race discrimination is a member of the plaintiff’s race?” (2) “Does the term ‘monkey ass,’ a phrase understandably not included in traditional dictionaries, have the same racial connotation as the term, ‘monkey?’” (3) “And is there daylight, for the purposes of a race discrimination claim, between the terms ‘black’ and ‘African American.’” *Id.*

<sup>81</sup> *Id.* at 395 (Readler, J., concurring).

<sup>82</sup> *Id.* at 395.

<sup>83</sup> *Id.*

<sup>84</sup> 154 F.4th at 394 (“Does the term “monkey ass,” a phrase understandably not included in traditional dictionaries, have the same racial connotation as the term “monkey?””).

<sup>85</sup> *Snell v. United Specialty Ins. Co.*, 102 F.4th 1208, 1221–22 (11th Cir. 2024) (Newsom, J., concurring) (“Those, like me, who believe that “ordinary meaning” is *the* foundational rule for the evaluation of legal

judge might use an LLM to determine the meaning of a phrase, Judge Newsom provided a number of pros and cons which help ground our discussion of Judge Reader's use of ChatGPT.<sup>86</sup>

Judge Newsom pointed out that an LLM can be particularly helpful when dealing with a composite phrase that cannot be found in a dictionary.<sup>87</sup> The phrase, "monkey ass," is both slang and a composite phrase, meaning that there is no reliable, static repository for its definition.<sup>88</sup> Perhaps LLMs can fill this gap. LLMs are also trained on a wide variety of material that theoretically captures the ordinary meanings of various phrases.<sup>89</sup> This can especially help when it comes to slang because LLMs "learn" the phrases along with their context.

On the other hand, LLM training data excludes all interactions which are not recorded and uploaded online, potentially skewing the resulting interpretations of different words.<sup>90</sup> Current LLMs also train on datasets that can be manipulated by AI researchers and executives.<sup>91</sup> These issues compound to cast doubt on an LLM's interpretation of racially specific terms. For example, employment discrimination cases can be highly dependent on context that ChatGPT does not have access to.<sup>92</sup> Racial terms may also be more frequently used in the kinds of conversations that never make it into an LLM's training material for the reasons noted above. Therefore, while LLMs could be helpful in interpreting statutory language,

---

texts should consider—*consider*—whether and how AI-powered large language models like OpenAI's ChatGPT, Google's Gemini, and Anthropic's Claude might—*might*—inform the interpretive analysis."); see also *United States v. Deleon*, 116 F.4th 1260, 1277 (11th Cir. 2024) (Newsom, J., concurring).

<sup>86</sup> Judge Newsom lists the following pros: "1. LLMs train on ordinary-language inputs," "2. LLMs can 'understand' context," "3. LLMs are accessible," "4. LLM research is relatively transparent," and "5. LLMs hold advantages over other empirical interpretive methods." Snell, 102 F.4th at 1226–30 (Newsom, J., concurring). He further lists the following cons: "1. LLMs can 'hallucinate,'" "2. LLMs don't capture offline speech, and thus might not fully account for underrepresented populations' usages," "3. Lawyers, judges, and would-be litigants might try to manipulate LLMs," and "4. Reliance on LLMs will lead us into dystopia." *Id.* at 1230–32.

<sup>87</sup> See *Deleon*, 116 F.4th at 1271–72 (Newsom, J., concurring) ("But because there's no ready dictionary definition of the composite phrase, because by their very nature LLMs aim to capture and reflect how real people ordinarily use both individual words and multi-word phrases, and because, well, I couldn't help myself, I queried ChatGPT.").

<sup>88</sup> Judge Reader's concurring opinion also cited to Urban Dictionary for a definition of "monkey ass." 154 F.4th at 394–95 (Reader, J., concurring). But Urban Dictionary, once a go-to resource for the meaning of slang, is moderated by volunteers with their own biases, making it a generally unreliable source. See Julia Carpenter, *The Slow Decline of Urban Dictionary*, N.Y. TIMES (Dec. 15, 2025) ("The puerile jokes and irreverent snark of the old Urban Dictionary has curdled into a world of vicious, vitriolic vulgarity, racism and sexism."). Nevertheless, Judge Stranch's majority opinion in *Smith* viewed Urban Dictionary as a more reliable source than ChatGPT and pointed out the unreliability of the latter. See 116 F.4th at 385 n.5 ("The concurrence cites a ChatGPT inquiry asking, 'What does monkey ass mean?' Conc. op. at 395. ChatGPT functions as a consolidator of information, synthesizing patterns from a vast body of text, but it does not independently verify the accuracy of any material or its unknown sources. The information provided in the concurrence's permalink to Urban Dictionary speaks for itself.").

<sup>89</sup> *Id.*

<sup>90</sup> *Id.* at 1231 ("People living in poorer communities (perhaps disproportionately minorities and those in rural areas) are less likely to have ready internet access and thus may be less likely to contribute to the sources from which LLMs draw in crafting their responses to queries.").

<sup>91</sup> See Dara Kerr, *Musk's AI Grok bot rants about 'white genocide' in South Africa in unrelated chats*, GUARDIAN (May 14, 2025), <https://www.theguardian.com/technology/2025/may/14/elon-musk-grok-white-genocide>; see also 102 F.4th at 1231–32 (Newsom, J., concurring).

<sup>92</sup> This could be solved by giving an LLM the facts of the case, but this raises another issue: in providing context to an LLM, judges may be searching for a response that affirms their biases. See Snell, 102 F.4th at 1231–32 (Newsom, J., concurring).

they may not be ideal for determining the meanings of words used in more informal exchanges; courts should be especially careful when using a chatbot's reasoning in a racial harassment case and need to provide the full text of their inquiries and the full text of the LLM's responses in order to ensure transparency.<sup>93</sup>

#### CONCLUSION

The Sixth Circuit's 2025 ruling in *Smith v. P.A.M. Transportation Company* provides model guidance for handling hostile environment cases that involve racial harassment and present complex fact patterns. It is unlikely that a jury will ever hear the case and grapple with its facts, as most cases of this nature settle before trial. But of course, allowing the plaintiffs to defeat a summary judgment motion will drive the settlement value and incentivize employers to ensure that workplaces are free of racial harassment.

In overruling the district court, the Sixth Circuit correctly ruled that the use of terms with "a long and well-understood history as racial slurs" should raise an inference of discrimination even if used by a supervisor of the same race.<sup>94</sup> Of course, that inference can be rebutted by proper evidence, and it is well-known that members of a group also may at times claim racial slurs for friendly colloquial usage among themselves.<sup>95</sup> But in real cases this should be treated a matter of factual dispute. And in cases that involve lesser-known racial epithets, or terms that are usually not racial epithets but can be viewed as such in certain contexts,<sup>96</sup> expert evidence from linguistics, anthropology, or ethnic studies scholars may be helpful to clarify matters.

The Sixth Circuit's position that widely known racial epithets are, on their face, direct evidence of racial discrimination also has broader social implications. It discourages any use of racial epithets in employment settings. While the First Amendment and related protections may limit sanction for using racial epithets in some other settings,<sup>97</sup> the Sixth Circuit's

---

<sup>93</sup> See *Snell v. United Specialty Ins. Co.*, 102 F.4th 1208, 1229 (11th Cir. 2024) (Newsom, J., concurring). Judge Reader did not provide the full text of ChatGPT's response, further clouding the reliability of LLMs in this case. See 154 F.4th at 395.

<sup>94</sup> 154 F.4th at 384–85.

<sup>95</sup> See Wyman King, Richard C. Emanuel, Xavier Brown, Niroby Dingle, Vertis Lucas, Anissa Perkins, Ayzia Turner, Destinee Whittington & Qwa'dryna Witherspoon, *Who has the "Right" to Use the N-Word? A Survey of Attitudes about the Acceptability of Using the N-Word and its Derivatives*, 6 INT'L J. OF SOC'Y, CULTURE & LANGUAGE 47, 47 (2018) (noting that "... over time, N-word derivatives have become popular terms of endearment by the descendants of the very people who once had to endure the N-word.").

<sup>96</sup> See, e.g., Harpalani, *supra* note 28, at 92 n.75 (2013) (noting how "desi" is commonly used by people of South Asian subcontinental ancestry, usually for ethnic pride but sometimes in derogatory fashion).

<sup>97</sup> See, e.g., Robert C. Post, *Racist Speech, Democracy, and the First Amendment*, 32 WM. & MARY L. REV. 267, 327 (1991) (arguing that "those who advocate ... regulation [of racist speech] in ways incompatible with the value of deliberative self-governance carry the burden of moving us to a different and more attractive vision of democracy."). For a different perspective on the First Amendment and racist speech, see Richard Delgado, *Words That Wound: A Tort Action for Racial Insults, Epithets, and Name-Calling*, 17 HARV. C.R.-C.L. L. REV. 133 (1982) (arguing racist speech inflicts concrete psychological and social injury and should be subject to tort liability despite traditional First Amendment protection of offensive speech). See also generally MARI J. MATSUDA, CHARLES R. LAWRENCE III, RICHARD DELGADO & KIMBERLÉ WILLIAMS CRENSHAW, *WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH, AND THE FIRST AMENDMENT* (1993).

position does allow more accountability in perhaps the most significant context for adult social interaction: the workplace.<sup>98</sup> And while factual intricacy can always complicate employment discrimination cases,<sup>99</sup> norms that discourage racially offensive language are preferable and promote greater sensitivity and less hostility.<sup>100</sup>

Finally, Judge Readler's use of ChatGPT for his concurrence raised eyebrows among the majority, since the tool is relatively new and judges are grappling with its possibilities and limitations.<sup>101</sup> But the use of artificial intelligence tools by judges, lawyers, and other members of the legal community is rising rapidly.<sup>102</sup> Our discussion of LLM usage is but an initial glance of an issue that will continue to evolve and garner more attention in the future.

---

<sup>98</sup> The Sixth Circuit's ruling in *Smith* is consistent with Professor Robert Post's analysis. See Post, *supra* note 97, at 289 ("... [E]ven if the first amendment were to immunize from legal regulation the circulation of certain racist ideas in newspapers, it would not follow that the expression of those same ideas could not be restrained by the government within the workplace[.]").

<sup>99</sup> See *Scaife v. U.S. Dep't of Veterans Affs.*, 49 F.4th 1109, 1116–17 (7th Cir. 2022) (finding one-time use of n-word in reference to Plaintiff insufficient to support Plaintiff's hostile work environment claim, because 1) racial epithet was not directly stated to Plaintiff; 2) Plaintiff did not find about racial epithet until over six months after it was stated; 3) Person who stated racial epithet was not in supervisory role over Plaintiff, although he was supervisor of different department and had history of racial insensitivity).

<sup>100</sup> The NAACP has taken the position that the n-word should never be used by anyone "in any capacity, or in any artistic endeavor that does not allude to the historical context of the word, or that does not highlight the prejudicial nature of the word." See *NAACP Official Position on the Use of the Word "Nigger" and the "N" Word*, NAACP (2014), <https://naacp.org/resources/naacp-official-position-use-word-nigger-and-n-word>. The NAACP itself was founded as the National Association for the Advancement of Colored People, but due to the arcane nature of the term "colored people", the organization now only goes by the acronym, NAACP, in public usage. See NAACP, <https://naacp.org/> (last visited Apr. 4, 2026) (not including founding name of organization on website). The NAACP's practice regarding its name also underscores the fact that terms which were once not offensive may become so as norms evolve, and vice versa.

<sup>101</sup> See text accompanying *supra* notes 81–93.

<sup>102</sup> See, e.g., Andrew M. Perlman, *The Implications of ChatGPT for Legal Services and Society*, HARV. L. SCH. CTR. ON THE LEGAL PROF.: THE PRACTICE (Mar./Apr. 2023), <https://clp.law.harvard.edu/knowledge-hub/magazine/issues/generative-ai-in-the-legal-profession/the-implications-of-chatgpt-for-legal-services-and-society>; Kalliopi Terzidou, *Generative AI Systems in Legal Practice Offering Quality Legal Services While Upholding Legal Ethics*, 21 INT'L J.L. CONTEXT 431 (2025); John G. Browning, *The Dawn of the "A.I. Judge"? Generative Artificial Intelligence and Its Impact on the Appellate Courts*, 25 J. APP. PRAC. & PROCESS 341 (2025); Daniel Wu, *Judges are increasingly using AI to draft rulings and prepare for hearings*, WASH. POST, Apr. 2, 2006, <https://www.washingtonpost.com/nation/2026/04/02/judges-ai-hearings-rulings/>