

No. 21-359

Supreme Court, U.S.  
FILED

JUL 23 2021

OFFICE OF THE CLERK

IN THE  
Supreme Court of the United States

Flomo Tealeh,

Petitioner,

v.

Ward County,  
Melissa Bliss,  
Sandy Richter,  
Briana Jensen, and  
Lenaise Clark

Respondents.

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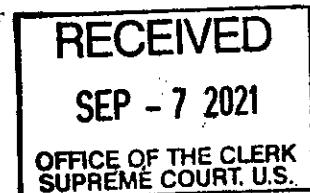
On Petition For Writ Of Certiorari To  
The Eighth Circuit Of The United States Court Of Appeals

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PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

1. Whether, in accordance with this Court's directive that the standard for the second prong of a *prima facie* case of discrimination under the *McDonnell Douglas v. Green*'s burden-shifting analysis is the plaintiff's objective qualification, or instead the standard created by the Eighth Circuit that requires the employer's "legitimate expectations"?
2. Whether this Court's instruction in *Crawford v. Metro. Gov't of Nashville & Davidson Cty.*, 555 U.S. 271 (2009) that an employee who communicated to his or her employer a belief that the employer has engaged in a form of employment discrimination in violation of Title VII, virtually always constitutes protected activity, or instead, employer's conduct must be illegal for employee to engage in protected activity?
3. Whether under Title VII, unsubstantiated accusations of incompetency, harassment, alienating, ridiculing employee, punishing employee without investigation, coercing an employee to use a name preferred by an employer, and employer's plan to intimidate an employee who engaged in protected activity that interfered with the employee's work condition and work-relationship constitute hostile work-environment?
4. Whether an employer who failed to investigate discrimination complaint violates Title VII?
5. Whether a trial court has discretion to not adjudicate claims before it that it has jurisdiction over?

## **PARTIES TO THE PROCEEDING**

Petitioner, Flomo Tealeh, Child Protection Specialist/Family Service Specialist, Ward County, North Dakota. Tealeh was Plaintiff in the District Court and Plaintiff-appellant in the Court of Appeals. Respondents are Ward County, Melissa Bliss, Sandy Richter, Briana Jensen and Lenaise Clark. Respondents were Defendants in the District Court and Defendants-appellees in the Eighth Circuit Court of Appeals.

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## **PETITION FOR WRIT OF CERTIORARI**

Pro Se Petitioner, Flomo Tealeh, Child Protection Family Services Specialist, Ward County, North Dakota, has advanced Bachelor of Science degree in Social Work with over four years of work experience with adults, children and family. Ward County hired Tealeh October 1, 2015. May 13, 2016, but terminated Tealeh abruptly after Tealeh communicated to Melissa Bliss, Director, Social Services, Ward County and Sandy Richter, Supervisor, Child Protection Service a belief that Richter had engaged in discriminatory practices in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. The County subjected Tealeh to particular malicious persecution and violated Tealeh's constitutional and statutory rights. Tealeh filed charges alleging discrimination, Fifth Amendment or Due Process rights violation and defamation. The district court granted the defendants' summary judgment and cost. The district court applied a new judicial created standard in analyzing Tealeh's claim, instead of the standard fashioned by this Court, and ignored Tealeh's other claims. The Eighth Circuit affirmed.

## **ORDERS/OPINIONS**

Judge Duane Benton, Judge Michael J. Melloy, and Judge Jane Kelly of the Eight Circuit Court of Appeals affirmed the district court's judgment. The Eighth Circuit's judgment and unpublished opinion, *Tealeh v. Ward County et al* were issued March 5, 2021, and the order for cost, *Tealeh v.*

*Ward County el al* was issued March 15, 2021. The District Court of North Dakota's Order granting the defendant's summary judgment, *Tealeh v. Ward County el al*, was issued on February 25, 2020. The District Court of North Dakota's Order granting defendants' cost, *Tealeh v. Ward County el al* was issued June 2, 2020, and The District Court of North Dakota's Order denying Tealeh's motion to amend his complaint and compel, *Tealeh v. Ward County el al*, was issued January 17, 2020. The District Court of North Dakota's recommendation for defendants' cost, *Tealeh v. Ward County el al*, was filed May 15, 2020. The District Court of North Dakota's Report and Recommendation to grant defendant's Summary Judgment motion, *Tealeh v. Ward County el al* was filed February 3, 2020.

## **JURISDICTION**

The Eighth Circuit issued its opinion and denied Tealeh's petition for rehearing on March 5, 2021. Tealeh then filed this timely petition for certiorari. This Court received Tealeh's petition on July 27, 2021. This Court instructed Tealeh to correct and resubmit the petition to this Court within 60 days. This Court has jurisdiction under 28 U.S.C. §1254(1).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

Fifth Amendment of the United States Constitutions, Title VII Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., reproduced at Appendix H, App.5, and 28 U.S.C. § 4101.

## STATEMENT OF THE CASE

Congress passed Title VII of the Civil Rights act of 1964, 42 U.S.C § 2000e et seq., and President Lyndon B. Johnson signed this statute in 1965 to combat prohibited wrongful discrimination in the nation's workplaces and in sectors of economic endeavor.

Ward County subjected Tealeh to particular malicious persecution and arbitrarily terminated him shortly after Tealeh complained of discrimination. Tealeh filed discrimination charges, defamation and Fifth Amendment rights violations against the defendants in the district court. The district court granted the defendants' Summary judgment and cost. In doing so, the district court applied a different standard under the *McDonnell Douglass v. Green*'s analysis instead of the standard fashioned by this Court and held that Tealeh can't establish *prima facie* case of discrimination. Similarly, the district court ignored this Court's instruction in *Crawford v. Metro. Gov't of Nashville & Davidson Cty.*, 555 U.S. 271 (2009) that employee who communicated to his or her employer a belief that the employer has engaged in discrimination always constitutes activity protected by Title VII. Instead, the district court held that Tealeh never engaged in protected activity because the defendants' conduct weren't illegal and failed to adjudicate Tealeh's defamation and Fifth Amendment claims; and the Eighth Circuit affirmed. This Court has jurisdiction to review the judgment.

## RELEVANT FACTS

The County claimed that it terminated Tealeh because Tealeh lacked the knowledge and skills for the job. It claimed Tealeh failed to complete a family service plan assignment; Tealeh lacked knowledge of North Dakota CPS law and policy; Tealeh lacked the skills needed in pursuit of a bachelor degree; Tealeh violated County policy; and Tealeh engaged in inappropriate behavior.

2013, Tealeh legally changed his name from Chris to Flomo because he wanted to identify with his ethnicity. Appendix E, Exh.2.

2014, Tealeh participated in a lawsuit against a former social service female supervisor who engaged in various misconducts including sexual misconduct. Tealeh's former employer has since engaged in various covert attempts to sabotage Tealeh's employment opportunities in retaliation.

2015, Tealeh found fulltime Truancy Case Management position with SEAMAAC in Philadelphia. SEAMAAC provides community-level services for children and young adults. Tealeh wanted advancement in his education and career and felt that to achieve this goal; he needed to work with agency that offers more opportunity for advancement. Also he wanted to move faraway from his former employer's sphere of influence.

July 2015, Tealeh submitted an online application to Ward County for the fulltime Family Services Specialist position. Tealeh felt the County was a better fit. SEAMAAC provided positive recommendation to the County.

Tealeh received a job offer letter addressed to "Chris Tealeh" from Bliss. Tealeh felt Bliss use of "Chris" instead of "Flomo" was a mistake.

Tealeh started work with the County October 1, 2015. Tealeh told everyone including Bliss, Karen and Richter that his name is "Flomo." Tealeh felt it was important to let Bliss and Richter know to prevent a mistake regarding his name going forward. Tealeh provided Social Security card, driver license and FBI background check for employment verification and showed his certificate of name change. Appendix E, Exh.2-4.

In October 2015, Supervisor Sandy Richter issued Tealeh several dozens business cards with "Chris" and told him to give to the County's clients and other professionals when doing County's Business. Tealeh thought Richter made a mistake. Tealeh asked Richter to change "Chris" to "Flomo." But Richter refused and told Tealeh that "Chris" sounds better. Tealeh felt uncomfortable; then asked Karen, Administrative Secretary to make him new cards with "Flomo." Tealeh tried to persuade Karen to get him new cards with "Flomo." So he told Karen that giving the public and/or clients business card with a different name would confuse them and could be an issue. Karen told Tealeh, "If anyone calls with concerns about your name, we will tell them we know who you are." Also Tealeh tried to persuade Richter, she refused and told Tealeh, "Chris sounds better." Then Tealeh told Richter it was not right to give him business cards with name that he doesn't want. Also Richter told the IT technician to use "Chris" to setup the State

database and computer user identification and password. The technician was unable to setup the computer under "Flomo." As a result, Tealeh was not able to access the computer or State database to perform certain task.

The County requires Child Welfare Certification Training for new hired. Richter registered Tealeh for the training as "Chris." Tealeh was unable to book room at the university for training. A training attendee had to help identify Tealeh before he was able to book a room. Tealeh told Richter about this situation but Richter ignored him.

In November 2015, Ward County Social Services was scheduled to move to its new building. The moving lasted through December 2015 because the building was still undergoing construction. The County has not assign Tealeh any case to work on this time. But Tealeh helped setup conference rooms and offices for some older employees who could not meet the physical challenges involved with the move. Tealeh sat in regular office meetings. Tealeh read materials in preparation for the County's new hired Child Welfare Certification Training while he awaited Richter's direction. Appendix E, App.4, p.5 ¶16-18.

Late December 2015, Richter told Tealeh to share a case with Briana. Also Richter assigned one other case to Tealeh. Tealeh was scheduled to make follow-up visit to one of those cases regarding a report of dirty home. Previously Tealeh completed an assessment with the caregiver about the report and the County recommended that the caregiver should clean the

home and install fire alarm. Tealeh was visiting to check whether the caregiver implemented the County's recommendations. Richter followed Tealeh and demanded that Tealeh perform interview. Richter provided no reason to interview the caregiver when asked. The caregiver was frightened and uncomfortable by Richter's demand. The Caregiver only expected to show Tealeh that she implemented the agency's recommendations. Tealeh felt Richter's behavior was strange, unprofessional and conspicuously illogical.

Appendix E, App.4, p.6 ¶23.

January 2016, Tealeh was scheduled to visit a client. Richter gave Tealeh a letter to give to the client. Richter introduced Tealeh to the client as "Chris." Tealeh asked Richter to change "Chris" to "Flomo." Richter refused and told Tealeh, "there is no time for that; the name isn't a big deal." Later that day Tealeh informed Richter to use "Flomo" instead of "Chris" going forward. Richter told Tealeh, "Your college transcript has "Chris." Richter told Tealeh to go to the federal court across the street; and change "Flomo" back to "Chris." At this point Tealeh felt that Richter's repeated refusal to consider his choice of name and continued attempts to coerce him to change his name to a name that Richter preferred was harassment and discrimination. Tealeh told Richter her behavior was discrimination and harassment and asked her to stop. Richter got angry and left. Tealeh didn't hear from Richter for several days and felt she was angry.

In January 2016, Tealeh got a ticket for alleged failure to signal. Tealeh was scheduled to court to argue the ticket based on video evidence. January 19, 2016, Briana, white female coworker, asked Tealeh for the name of the officer who issued the ticket. Tealeh told Briana the officer name was James. Briana told Tealeh there are two James at the Minot Police Department and she told Tealeh one of them is her best friend. Tealeh told Briana that he doesn't remember James' last name. Briana told Tealeh she wanted to see the ticket to know the officer last name if the officer was her friend. Tealeh told Briana he doesn't have the ticket on him. Then Briana asked Tealeh to bring the ticket. Tealeh brought the ticket the next day. Briana came to Tealeh's office and he showed her the ticket. Briana told Tealeh the officer is her best friend and she told Tealeh, "Just pay the fine, \$20 dollar is nothing." Briana told Tealeh the police cut her speeding but she got away with it because the officer knows her mother. Briana kept telling Tealeh that \$20 dollars is nothing just pay. From one thing to another Tealeh and Briana started arguing about black people been ticketed disproportionately than White. Tealeh told Briana he could not get away for speeding as she easily got away because he is not Briana. Briana got angry and walked out of Tealeh's office straight into Richter's office; spent lot of time talking with Richter. Appendix E, App4, p. 13 ¶ 51, Exh.12, 24.

About February 2016, what Tealeh thought were strange encounters quickly developed into an evaluation report. Richter suddenly gave Tealeh a

review to sign, Tealeh read the review and felt that the review was false and fabricated with a purpose to ruin his career, tarnish his reputation and have him fired. Tealeh refused to sign the report. Richter portrayed Tealeh as lacking knowledge of the job. Richter claimed Tealeh was unable to conduct interview with a caregiver. Richter accused Tealeh of inappropriate behavior toward Briana and accused Tealeh of County's policy violation. Richter's report was contradictory and incoherent; likewise defamatory, malicious, outrageous and despicable. Appendix E, Exh.19, p.1-6, Appendix D, AA9-AA11, ¶ 35-36.

In February 2016, Tealeh told Bliss that Richter's behavior were discrimination, harassment, defamation and prejudice and wanted Richter to stop. Appendix E, Exh.22. Then Bliss and Tealeh briefly met with Richter. Tealeh told Bliss that Richter's report was false and wanted him fire.

There were too much tension at the office due to Richter's report and rumors about the traffic ticket video regarding Briana's friend been posted on YouTube. Some employees criticized Tealeh and avoided him. Richter suspended Tealeh's CPS meeting participation.

In February 2016, Tealeh met with Bliss and asked her to investigate Briana and Richter's conduct. But Richter resigned suddenly in March and Tealeh's complaints were never investigated.

About February 22, 2016, Bliss extended Tealeh's probationary period to October 1, 2016, even though Tealeh's initial six-month probation that was

due to end in May 2016 was not halfway completed. Bliss claimed in the letter she and Richter discussed performance issues with Tealeh, despite Tealeh's immediate rejection of the notion that he have performance issues. Appendix E, Exh.1 & 17.

March 24, 2016, Tealeh was scheduled back to the University of North Dakota for training. Bliss came to Tealeh's office and told Tealeh that she removed Richter's boundary issues from the evaluation report because it was wrong and inappropriate. Bliss told Tealeh the evaluation would only contain performance improvement Plan (PIP) with a goal to complete the Child Welfare Training and work with Kim. Tealeh told Bliss that there was not any performance problem but staging a cover-up for his termination. Bliss told Tealeh, "don't worry about that; just complete the Child Welfare Training." Bliss told Tealeh his probationary period would end July 1, 2016, instead of October 1, 2016. Appendix E, Exh.17, 18 p.6. Tealeh felt the County would eventually terminate his employment because Bliss repeatedly deviated from his probation plan and setup unwarranted PIP. Tealeh could only follow Bliss' instruction and hope that the situation would improve.

About May 5, 2016, Tealeh successfully completed the County's Child Welfare Practitioner Certificate Training. Appendix E, Exh.7, 8 & 10.

May 13, 2016, Bliss suddenly called Tealeh into her office and handed Tealeh a termination letter; claimed that Tealeh lacked the knowledge and skills required for the job. Appendix E, Exh.20

Before Tealeh had full understanding of what had happened, within two days of his termination, Lenaise and Bliss discussed that Tealeh was vindictive toward his former employer by participating in a lawsuit against his former employer. Lenaise and Bliss planed that the police should escort Tealeh out of the office because of his participation. Tealeh only got to know Lenaise and each of the defendants at the office and never met them prior. Based on Lenaise and Bliss' discussion, Richter's behavior and reasonable suspicions, Tealeh believes that the County conspired with his former employer to sabotage his employment in retaliation for engaging in protected activity. Appendix E, App.4, ¶ 94-96, Exh.23, AA101¶ 9.

#### ON APPEAL

Tealeh renewed his argument that his Title VII, § 2000e-2(a) and § 2000e-3(a) rights were violated when the County terminated his employment shortly after he communicated to the County a belief that Supervisor Richter had engaged in discriminatory practices. Tealeh reiterated that Richter and the County's harassed him; discriminated against him based on his ethnic identity and for engaging in protected activity and failed to investigate his discrimination complaint. Tealeh argued that the Defendants violated his rights under US Defamation Laws when Richter, Lenaise and Briana knowingly and maliciously fabricated false stories; published and distributed them to a third party with reckless disregard for his rights. And lastly, Tealeh argued that the County violated his Fifth Amendments rights when

Richter maliciously made up false story that Tealeh had inappropriate behavior and that he violated County's policies, and took disciplinary action without any due process.

### **1. Status Discrimination.**

This Court held that a plaintiff in an employment discrimination case may prove discrimination by direct evidence or the *McDonnell Douglas v. Green*, 411 U.S. 792 (1973) burden-shifting analysis where the plaintiff lacks direct evidence. *Reeves v. Sanderson Plumbing Prods. Co.*, 530 U.S. 133, 151 (2000).

#### **I. Direct evidence**

This Court has said, a plaintiff can prove a claim of discrimination by either direct evidence that a workplace policy, practice, or decision relies expressly on a protected characteristic. In *Price Waterhouse v. Hopkins*, 490 U.S. 228, 258, 268-69 (1989), a plurality of this Court held that the discrimination provision of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a), requires a plaintiff to prove only that discrimination was "a motivating factor" for an adverse employment action.

Tealeh argued that the County discriminated against him when the County made the decision to issue him County's business cards with a name that he doesn't want and the County's refusal to accept his choice of name and repeated attempts to coerce him to change "Flomo" to "Chris," a name that the County preferred for its' business purposes. Appendix E, Exh.6.

Tealeh felt that the County believes that Tealeh's ethnic name "Flomo" was not good for the county's business purposes motivated the County's decision. The County's decision escalated into a hostile work environment and retaliation. A supervisor's repeated referencing or preferring a name for an employee outside the employee's choice is discrimination. *EL-Hakem v. BZY inc.*, 415 F.3<sup>rd</sup> 1068 (9<sup>th</sup> Cir. 2005). The district court erroneously held that Tealeh doesn't have direct evidence and the Eighth Circuit agreed.

## **II. *McDonnell Douglas' Burden-Shifting Analysis***

In *Texas Dept. of Community Affairs v. Burdine* 450, U.S. 248, 253 (1981), this Court instructed that an employment discrimination plaintiff may apply the McDonnell Douglas' burden-shifting analysis to establish a *prima facie* case and pretext evidence.

### **a. *Prima Facie***

First, Tealeh argued that he belongs to a protected class. The defendants conceded and the district court agreed.

Second, Tealeh argued that he possessed the education, skills and experience necessary to perform the essential function of the job. Tealeh has a Bachelor of Science degree in Social Work with more than four years work experience; held positions as a Child Protective Specialist, Case Planner, Truancy Case manager and have received various awards including been named to the dean's list of York College of the City University of New York for academic excellence. Tealeh successfully completed all required assignments and tasks

for the County's new hire Child Welfare Practitioner Certificate Training with excellent performance in Child abuse and neglect or Child Maltreatment and North Dakota CPS Law and Policy. The trial court concurred. Appendix E, Exh.5,7-8, 10&15, Appendix F, AA124-132. Instead of considering Tealeh's objective qualifications, the trial court held that courts are split on the issue of a plaintiff qualification and the employer's "legitimate expectation." The trial court believed the defendants' explanation that Tealeh failed to meet the County's "legitimate expectation," adopted the employer's "legitimate expectation" standard, and circumvented this Court's guidance, believed the Defendants' explanation, ignored Tealeh's *prima facie* evidence, conflicted the McDonnell Douglas's analysis and erroneously analyzed Tealeh's *prima facie* case and held that Tealeh failed to establish a *prima facie* case. The Eighth affirmed the trial court's decision.

This Court has instructed that, "Judge's function at summary judgment is not to weight the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Tolan v. Cotton*. U.S. 572 (2014). In *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986) this Court instructed that in ruling on summary judgment motion, "[t]he evidence of the non-movant is to be believed and all reasonable inferences are to be drawn in his or her favor." The trial court disregarded this Court's instruction.

And third, Tealeh argued that he suffered several adverse employment actions as a result of the defendants' discriminatory practices. Tealeh was alienated and prohibited from attending CPS meetings, ridiculed, subjected to false accusations, punished, his reputation and career ruined and terminated. The district court erroneously held that Tealeh's termination was the only adverse action.

**b. Pretext**

In *Reeves v. Sanderson Plumbing Prods. Co.*, 530 U.S. 133, 151 (2000), this Court instructed that a plaintiff may establish pretext by showing that the employer is unworthy of credence because its explanation is false. Also in *Dixon v. Pulaski County Special School District.* (8<sup>th</sup> Cir. 2009), the court stated, a plaintiff can establish pretext either by showing the employer's proffered explanation is unworthy of credence because it has no basis in fact; contradictory, employer deviated from its policy or prohibited reasons more likely motivated the employer.

First, Tealeh argued that the County's explanation that he lacked the skills and knowledge for the job is false. The County's performance review and explanations are arbitrary and inaccurate measure of Tealeh's knowledge, skills and performance. The County offered Tealeh the position on the basis of Tealeh's education, experience, his demonstrated ability on the County's written test for the position and positive recommendation by Tealeh's prior employer. Tealeh's test scores in the County's Child Welfare

Practitioner Certification Training, certificate and letters from Pete Tunseth, Director of training, his work experience and education and the County's written test for the position are accurate and objective measure of Tealeh's knowledge, skills and performance and established that Tealeh has the education, skills, experience and training necessary to perform the essential job function. The district court agreed. Appendix C, ADDU p.11 ¶ 1-2. See also Appendix E, App.4 ¶63-¶74 & P-Exh.5, Appendix F, AA124-132.

Second, Tealeh argued that Director Bliss's explanation that Tealeh failed to prepare family service plan assignment has no basis in fact. Appendix K, AAP14. The record showed that Tealeh attended a family team meeting for the family service plan and completed the plan. See Appendix E, Exh.8, 10 & 25.

Third, Tealeh argued that the County's explanation that after the child welfare training, still he lacked the skills and knowledge needed to perform the job is false, outrageous and despicable. The County made the decision to terminate Tealeh's employment while Tealeh was in training. Tealeh completed the Child Welfare Training about May 5, 2016 and the County terminated Tealeh on May 13, 2016. Tealeh was never given the opportunity to apply his experience and the knowledge and skills acquired. Considering Tealeh's excellent performance at the training, reasonable fact finder could find that Tealeh met the County's requirement for the job and could find the County's assertion implausible.

Fourth, Tealeh argued that the County's explanation that it wanted Tealeh to be consistent with his name use is contradictory. See AAP12. The record shows the County issued Tealeh two identification cards with two different names. The County issued business cards with "Chris" and a work ID card with "Flomo." Appendix E, Exh.6, Appendix K, AAP11, AAP13

Fifth, the County's explanation that it referred to Tealeh as "Chris" because Tealeh submitted a resume with "Chris" is false. The record showed Tealeh submitted resume with "Flomo" and it matched the information on the job application submitted to the County and the one with "Chris" doesn't matched. Appendix G, AA64 &AA113-AA117. The record also established that Tealeh provided US government issued identification cards with "Flomo" for employment verification and repeatedly informed Richter and Director Bliss he preferred "Flomo." Appendix K, AAP16. Tealeh used his email registered under his previous name to request a meeting with Richter with respect to the workplace condition due to Richter's discriminatory behavior. Defendants seem to argue that Tealeh legally change his name only to prefer the name he doesn't want. Reasonable fact finder could find that implausible.

Sixth, Bliss' asserted that Tealeh never communicated to the County a belief that Richter engaged in discriminatory practices Appendix K, AAP9, Appendix K, AAP10. The record shows that Tealeh communicated to the County about Richter's discriminatory behavior. Appendix E, Exh.11, 14A, 16A, 22.

Seventh, the County's explanation that Tealeh lacked the core competency skills required in pursuit of Social Work Degree and not able to work independently; inappropriate behavior toward coworkers and violated the County's policy is false and contradictory and senseless. The County's own record contradicts it'd assertion. Director Bliss and Richter made these assessments regarding Tealeh's work practice in relevant part.

"Tealeh has, positive attitude with staff; the ability to work with others regardless of position, build positive working relationships, shows sensitivity to and consideration of others' feelings, makes positive contributions to morale; the ability to adapt to changes and deal with a variety of situations; willingness to assist coworkers or to work extra hours when needed; understand and comply with county policies; dependable, can be counted on for attendance, to carry out assignment with careful follow-through and follow-up; meets predetermined targets and goals; can overcome obstacle to meet goals; can adapt to changes as necessary and can be counted on for consistent performance, is personally accountable for his own actions; performs activities in a safe manner and understands and supports the Ward County Risk Management Program; the ability to organize one's time in order to maximize efficiency in processing paperwork, determining priorities, and reducing job overload; the ability to be self reliant in managing work and in follow-up; and the ability to analyze conflict situations and apply the best approach in a particular situation." Appendix E, Exh.18&19 p.1 ¶ 4 & 6, p.2 ¶ 1-4.

Eighth, Tealeh argued that Richter deviated from the County's probation plan when Richter arbitrarily gave him evaluation report shortly after he communicated to Richter that her repeated attempts to coerce him to change "Flomo" to a name preferred by the County and Richter's refusal to accept his choice of name was a discrimination and intimidation. *EL-Hakem v. BZY inc.*, 415 F.3<sup>rd</sup> 1068 (9<sup>th</sup> Cir. 2005).

Tealeh was required to complete six-month probation. The County was to notify Tealeh of its decision whether to extend the probation within fifteen days after completion of the six-month. Appendix E, Exh.1. The notice should have been issued in May 2016; instead January 2016, barely three months into Tealeh's probation, Richter suddenly issued Tealeh a review. Tealeh argued that his ethnic identity motivated Richter's attempts to coerce Tealeh to change his name and rejected "Flomo" and to issue business card with name that the County preferred. Tealeh's complaint motivated Richter's arbitrary evaluation report because Richter's explanation for issuing Tealeh a negative review is less than candid.

And ninth, Tealeh argued that documentations including emails and a Wraparound Certificate submitted to the trial court and the Eighth Circuit by the County are fake and fraud. Appendix K, AAP15. Tealeh argued that the County created those records as a result of this lawsuit.

Tealeh argued that genuine material facts exist because the County is unworthy of credence because its explanations are false; therefore the County is not entitled to a summary judgment. *Reeves v. Sanderson Plumbing Prods. Co.*, 530 U.S. 133, 151 (2000). See Fed. Rule Civ. Proc. 56 reproduced at Appendix J, App. 8. In *Reeves v. Sanderson Plumbing Prods. Co.*, 530 U.S. 133, 151 (2000), this Court said, "the fact-finder's disbelief of the reasons put forward by the defendant (particularly if disbelief is accompanied by a suspicion of mendacity) may, together with the elements of the *prima facie*

case, suffice to show intentional discrimination, thus, rejection of the defendant's proffered reasons will permit the Trier of Fact to infer the ultimate fact of intentional discrimination." Similarly, *Wright v. West*, 505 U.S. 277, 296 (1992), this Court held, "Proof that the defendant's explanation is unworthy of credence is simply one form of circumstantial evidence that is probative of intentional discrimination, and it may be quite persuasive. "[P]roving the employer's reason false becomes part of (and often considerably assists) the greater enterprise of proving that the real reason was intentional discrimination"). In appropriate circumstances, the Trier of fact can reasonably infer from the falsity of the explanation that the employer is dissembling to cover up a discriminatory purpose. Such an inference is consistent with the general principle of evidence law that the fact-finder is entitled to consider a party's dishonesty about a material fact as "affirmative evidence of guilt."

Facts, combined with disjointed information, contradiction and/or *prima facie* and *pretext* evidence are exactly the kinds of circumstantial evidence sufficient to create a genuine issue of material fact of a causal connection. *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 100 (2003). See *Stallings v. Hussmann Corp.*, 447 F.3d 1041 (8<sup>th</sup> Cir. 2006). Tealeh's *prima facie* evidence and *pretext* evidence establish that the County's proffered explanations for its decision are false and accompanied by dishonesty. The trial court ignored Tealeh's *prima facie* and *pretext* evidence, disregarded

Fed. Rule Civ. Proc. 56, this Court's guidance and intervening precedence, and erroneously held that there is no genuine issue of material fact and the Eighth Circuit agreed.

## 2. Retaliation

Title VII, §2000e-3(a) prohibits employer's retaliation on account of an employee's opposition to employment discrimination, and the employee's submission of or support for a complaint that alleges employment discrimination.

In *University of Texas Southwestern Medical Center v. Nassar*, 570 U.S. \_\_\_\_ (2013), this Court held that "a plaintiff making a retaliation claim under § 2000e- 3(a) must establish that his or her protected activity was a "but-for" cause of the alleged adverse action by the employer. This requires proof that the unlawful retaliation would not have occurred in the absence of the alleged wrongful action(s) of the employer."

Tealeh argued that his discharge and other adverse actions would not have taken place "but for" engagement in the protected activity.

Tealeh opposed Richter's decision to issue him county's business cards with "Chris," a name that Tealeh doesn't want, repeated attempts to coerce Tealeh to change "Flomo" to "Chris" a name the County preferred on it's business purpose. Richter suddenly issued Tealeh a negative evaluation; made wild accusations that Tealeh lacked knowledge in North Dakota CPS Law, behaved inappropriately toward coworkers and violated County's policy.

Richter contradicted herself in the same review stating that Tealeh have positive attitude and positive relationship with staff and comply with the County's policy. Richter issued the evaluation report one week after Tealeh complained that Richter's behavior was discrimination. Richter's accusations and disciplinary action without any inquiry or justification harmed Tealeh's reputation and ruined his career.

Tealeh argued that prior to Richter's abrupt evaluation, he never had any performance concerns or any report of negative behavior. Tealeh's opposition to Richter's attempts to change his name caused Richter to issue negative review. Richter issued the review shortly after Tealeh complained of Richter's behavior. Richter would not have issued negative review in the absence of Richter's decision and Tealeh's opposition because the County cannot provide any logical and/or factual explanation for Richter's arbitrary review and deviation from the County's probation plan.

Tealeh argued that he communicated to Director Bliss a belief that Richter had engaged in discriminatory practices. The trial court erroneously held that, "Tealeh cites no evidence showing that Richter harassed him to change his name. Tealeh used both names, leading to confusion on the defendants' part; no jury could reasonably conclude this confusion constitutes unlawful discrimination, as such there was no unlawful activity for Tealeh to oppose." Appendix C, ADDU p.18 ¶4, p.19 ¶1. Eighth Circuit affirmed. The trial court ignored Tealeh's evidence and erroneously analyzed protected

activity that the defendant's conduct must be illegal for a plaintiff's to engage in protected activity. In *Crawford v. Metro. Gov't of Nashville & Davidson Cty.*, 555 U.S. 271 (2009), this Court unanimously held that "When an employee communicates to her employer a belief that the employer has engaged in a form of employment discrimination, that communication virtually always constitutes the employee's opposition to the activity."

Tealeh argued that he suffered adverse employment actions because of his opposition to Richter's discriminatory practices. The County prohibited Tealeh's participation in CPS staff meetings, made false accusations, ruined Tealeh's reputation and career, punished Tealeh and terminated his employment.

Absence Richter's discrimination and Tealeh's protected activity, neither Richter or the County could have made those adverse employment decisions because Tealeh's *prima facie* and pretext evidence established that the County's argument is untenable because it is apparent that the County's explanations for its decisions are false. The County is negligent for the adverse employment actions because the County has a duty under Title VII, § 2000e-3 (a) but failed to uphold that duty.

Likewise, Tealeh argued that his participation in a lawsuit involving a former employer played a significant factor in the County's decisions. Tealeh's opposition combined with his participation was the "but-for" cause of the County's adverse actions. Within two days of Tealeh's termination,

Director Bliss and Lenaise, an employee and agent of Tealeh's former employer, discussed that Tealeh was vindictive to his former employer because Tealeh participated in a lawsuit against his former employer. Because of Tealeh's protected activity, Bliss and Lenaise discussed plan to have a police officer escort Tealeh out of the office. Appendix E, Exh.23

The oddly timing between Tealeh's complaints about Richter's discrimination and Richter's abrupt evaluation and arbitrary corrective actions a week after Tealeh complained and sudden termination two months following the complaints gave the appearance, and reasonable inference, that the County ended Tealeh's employment because of the protected activity. These facts, combined with the disjointed, contradictory, disorganized evaluation process that Tealeh was subjected throughout his employment, and the County's false and dishonest explanations for its decisions are the kinds of circumstantial evidence sufficient to create a genuine issue of material fact of a causal connection. *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 100 (2003).

Tealeh argued that the issuance of negative review, corrective action within a week after he complained of Richter's discriminatory practices; sudden termination two months following Tealeh's complaints of discrimination and within two days of Tealeh's termination, Director Bliss and Lenaise's plan to have Tealeh escorted out the office because Tealeh engaged in protected activity, satisfy the requirement that the protected

activity and adverse employment actions are not “wholly unrelated.” *Hite v. Vermeer Manuf. Co.*, (8<sup>th</sup> Cir. 2006), *Jones v. Gulf Coast Health Care of Del., LLC*, 854 F.3d 1261, 1271 (11th Cir. 2017), also *Hudson v. Tyson Fresh Meat Inc.*, (8<sup>th</sup> Cir. 2015).

In *Gilooly v. Missouri Department of Health*, 421 F.3d 734 (8th Cir. 2005), the court held that, “When an employer is presented with a “he said, she said” set of facts involving two employees, and the employer chooses to disbelieve and discipline the employee who had engaged in protected opposition to unlawful activity, then the employee’s claim of retaliation must go to a jury.” (internal quotations omitted).

### **3. Failure to Investigate Discrimination**

Title VII prohibits wrongful discrimination in the workplaces and required employers to investigate complaint of discrimination and/or harassments.

Tealeh argued that Richter, Bliss and the human resource had knowledge of his complaint but failed to investigate.

Additionally, Richter claimed December 23, 2015, Briana reported to her that Tealeh made comments that Briana felt was uncomfortable and also claimed Tealeh offered to purchase provocative clothes for female coworkers. Richter never provided the names of the female coworkers. December 2015 thru February 2016 Richter met with Tealeh, but never at anytime discussed any complaints or concerns with Tealeh. Richter waited several months,

never investigated, reached conclusions, and took corrective actions against Tealeh; a week after Tealeh complained of Richter's discrimination.

The court in *Dragon v Connecticut*, 211 F. Supp. 3d 441 (D. Conn. 2016), held that "An employer's inadequate or bad faith investigation is a basis for holding the employer liable for racial and sexual harassment in the workplace." See also *Swenson v potter*, 271 F.3d 1184 (9<sup>th</sup> Cir. 2001) and *Crawford v. Metro. Gov't of Nashville & Davidson Cty.*, 555 U.S. 271 (2009).

The district court failed to consider Tealeh's evidence and failed to draw all inferences in Tealeh's favor but erroneously held, "The conduct Tealeh complains, to the extend that it occurs at all, does not rise to the level of discrimination and harassment."

"Judge's function at summary judgment is not to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Tolan v. Cotton*, supra at 572, same *Hudson v. Tyson Fresh Meat, Inc.* (8<sup>th</sup> Cir. 2015).

The district court usurped the role of the juror, and also made erroneous legal conclusion.

#### **4. Hostile Work Environment.**

Tealeh argued that he was subjected to a hostile work environment. Tealeh has just moved from Pennsylvania to North Dakota to work with the County, knew nobody in Minot. The County prohibited Tealeh name from the County's business cards, issued Tealeh County's business cards with name that it preferred, attempted to force him to change "Flomo" to "Chris," made false accusations against him and took disciplinary actions that was

unwarranted without any due process, shortly after Tealeh complained about Richter's discriminatory behavior. Bliss and Lenaise threatened to have the police escort Tealeh out of the office for engaging in protected activity; Richter exposed Tealeh to unwarranted ridicule, Bliss, Misty and other staff made false claim that Tealeh failed to complete family plan assignment; accused Tealeh of been incompetent, lied on Tealeh for inappropriate behavior, and made him feel venerable, anxious, disadvantaged, excluded from CPS staff meetings, ridiculed for participation in previous lawsuit against a former employer, Tealeh's reputation and career were ruined, Tealeh felt that the world have caved in on him and felt unsafe. Tealeh argued these encounters were highly severed and pervasive; altered his work relationship and condition. Appendix D, AA21 ¶93-AA22 ¶100, AA6-AA9 ¶31, ¶33-¶35, AA13-AA15 ¶39, ¶41, ¶45, ¶49, AA17-AA19 ¶61-¶62, ¶66, ¶68, ¶72, ¶75, ¶77. Appendix E, Exh.14A, 16A, 19, 22, 23. Tealeh argued any reasonable person in the same position, could conclude that Tealeh's experience was a severe and pervasive hostile work environment considering all circumstances Tealeh experienced, interfered with Tealeh's work performance altered his work relationship and condition. In *Harris v. Forklift Systems, Inc.*, 510 U.S. 17-(1993), this Court held that, hostile work environment should be considered from the objective view of the overall circumstances of the individual victim. Considering Tealeh's *prima facie* and pretext evidence and the circumstances as a whole, reasonable fact-finders

could conclude that Tealeh was subjected to hostile work environment. The trial court failed to consider Tealeh's pretext evidence and all circumstances, made erroneous conclusion of fact and erroneous legal conclusion. The district court believed only the County's explanations, and erroneously held that:

"There are boundless reasons why two employees meet and that concerns about Tealeh's employment predicted any conversation on January 20, 2016; the facts that Tealeh argued with a co-worker, that the co-worker later met with a supervisor, and Tealeh eventually received a poor performance review, don't raise to the level of a hostile work-environment. "Tealeh's allegations are insufficient to raise a genuine issue of material fact on the issue of any harassment whatsoever". Appendix C, ADDU p21 ¶3, p.23 ¶3.

The trial court failed to consider Tealeh's evidence, instead considered the County's mere explanations. There are genuine issues of material fact whether Bliss, Richter and interested witnesses' explanations are unworthy of credence. Tealeh's *Prima facie* and pretext evidence do just that. See *Stallings v. Hussmann Corp.*, 447 F.3d 1041 (8th Cir. 2006).

In ruling on summary judgment motion, "[t]he evidence of the non movant is to be believed and all reasonable inferences are to be drawn in his/her favor." See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).

The trial court's decision erroneously usurped the jury's fact-finding duty. This Court held that, "courts may not resolve genuine disputes of fact in favor of the party seeking summary judgment." See *Brosseau v. Haugen*, 543 U.S. 194, 195, n.2 (2004) (per curiam).

## 5. Defamation and Due Process.

28 U.S. Code § 4101 prohibits any person from publishing and distributing false information about a person.

Tealeh argued that the Defendants made defamatory statements about him. The defendants' defamatory statements have harmed Tealeh's career, character and emotion. Richter, Briana, Bliss and Lenaise falsely accused Tealeh of inappropriate behavior, incompetency without any evidence. Lenaise and Bliss discussed that Tealeh harassed a female he worked with in Philip and the employer allowed Tealeh to getaway with it. Lenaise falsely stated Tealeh has a history of vindictive behavior toward a former employer. Defendants published and distributed these false statements to a third party. Defendants knew these statements were false but published and distributed them. As a result of these false statements, Tealeh continue to suffer emotional distress, Tealeh's character and career are ruined. Tealeh have struggled to find employment in his profession with no success. Appendix D, AA18 ¶ 66, AA21¶89, AA22 ¶99. See also Appendix E, App.4 ¶31, ¶ 94-96, P-Exh.22-23, AA101 ¶8- ¶9. The trial court has jurisdiction but failed to adjudicate Tealeh's defamation claim.

The Fifth Amendments of the US Constitution prohibit a state or government and or its person against harming any person without following the exact course of the law.

Tealeh argued that the County deprived him of Due Process. Richter falsely accused Tealeh of offensive sexual behavior, denied Tealeh opportunity to defend himself; made conclusion of fact and took corrective actions against Tealeh. Appendix E, App.4 ¶31, ¶ 52. As a result, Tealeh suffered and continued to suffer emotional distress, due process deprivation, reputation and career harmed. The trial court has jurisdiction, instead failed to adjudicate Tealeh's Fifth Amendments claim. This Court should review the trial court's decision not to adjudicate.

## **6. Motion to Amend Complaint**

The trial court erroneously stated Tealeh never requested to amend his Complaint. Appendix C, ADDU p. 4 ¶1. March 11, 2019, motion to amend Tealeh's Complaint was filed and was denied. Appendix B, ADD4. Tealeh appealed the district court's decision. The Eighth Circuit Court of Appeals said it has no jurisdiction.

## **7. Defendants' Bill of Cost.**

Tealeh argued that the defendants are not entitled to summary judgment and cost because the defendants' reasons for its decision are less than candid. Additionally, Tealeh has not exhausted every available legal remedy that could justify the grant of summary judgment and cost. The trial court abused its discretion by erroneously awarding defendants' bill of cost. The Eighth circuit affirmed. This Court should review the decision.

## REASONS FOR GRANTING THE PETITION

The Eighth Circuit's decision deepens an entrenched circuit conflict and contradicts the clear teaching of this Court's decisions in *Green* and *Burdine*. The circuits have embraced at least two different views of the standard of *prima facie* second prong. The issue is important, the circuit split is entrenched, and the decision is erroneous. The case for plenary review is apparent. In addition, this Court should grant certiorari to eliminate the threat to Title VII, Fifth and 28 U.S.C. § 4101 values posed by the decision. As this Court made clear in *Tolan*, the grant of summary judgment is appropriate where there is no genuine issue of material fact. See also Fed. Rule of Civil Prod. 56. This Court should grant review on all questions presented.

### **1. The Eighth Circuit Compounded A Circuit Conflict And Misapplied This Court's Precedent On The Plaintiff's Objective Qualification Standard.**

In holding that a plaintiff can establish a *prima facie* case of employment discrimination using the *McDonnell Douglas v. Green*'s analysis by a plaintiff showing that he or she belongs to a qualified group, qualified for the position and suffered adverse employment action(s), then the defendant is provided an opportunity to rebuff the Plaintiff's *prima facie* by producing a non-discrimination reason(s) for its decision, and then the burden shifts back to the plaintiff to establish a pretext by showing that the defendant's explanation is false; the Eight Circuit deepened an existing circuit conflict

and disregarded this Court's clear instructions about the standard for proving a *prima facie* case of discrimination. Absent correction, the Eighth Circuit's decision will further undermine principles of consistency, predictability, and fairness in the law governing employment and other contractual relationships.

The Eight Circuit's decision conflicts with decisions of the other courts of appeals. While the courts of appeals were already divided between those that apply the plaintiff's objective qualification standard that this Court's precedents demand and those that apply an employer's "legitimate expectations" standard approach believed the employer's explanation, and even adopted more employer-friendly views by believing the employer's mere explanations with no consideration for the pretext stage contrary to this Court's teaching.

Majority of the federal circuits have adopted the objective qualification standard. The court in *Bienkowski v. Am. Airlines, Inc.*, 851 F.2d 1503 (5th Cir. 1988), adopted the employee's objective qualification standard; *Carter v. Three Springs Residential Treatment*, 132 F.3d 635, 643 (11th Cir. 1998), held plaintiff must show only that he had minimum qualifications for the job to establish *prima facie* case; the Third Circuit adopted the same approach in *Sempier v. Johnson & Higgins*, 45 F.3d 724, 729 (3d Cir. 1995), denying an employer's summary judgment motion because plaintiff had the objective experience and education necessary to qualify as a viable candidate for the

positions he held; *Weldon v. Kraft, Inc.*, 896 F.2d 793, 797-99 (3d Cir. 1990) denying summary judgment to employer because plaintiff had both the intelligence and the ability required for the position); *Tealeh v. Ward County et al.* (8<sup>th</sup> Cir. 2021), the court adopted employer's "legitimate expectation" standard, affirmed employer's summary judgment. This Court should take this case to resolve the circuit split.

## **2. The Eighth Circuit Disregarded *Douglas and Burdine*.**

The Eighth Circuit's decision conflicts not only with the decisions of its sister circuits but also with the clear teaching of this Court In *McDonnell Douglas v. Green*. 411, U.S. 792 (1973), this Court held that the discrimination provision of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a), requires a plaintiff to establish a *prima facie* case of discrimination by satisfying three prongs. First, that he or she belongs to a protected class; second, have the qualification for the job, and third, suffered adverse employment action(s). This Court held that if a plaintiff establishes a *prima facie* case then the employer has the burden to prove a non-discrimination reason(s) motivated its decision. If the employer provides a non- discrimination reason(s), the burden shifts back to the plaintiff to establish a pretext by showing that the employer is unworthy of credence because the employer's reason(s) for it's decision is false.

The trial court based its analysis largely on the assumptions that the employer's explanation is true, disregarded Tealeh's *prima facie* evidence and

this Court's instruction on the stages involved in establishing a prima facie case of discrimination. The Eighth Circuit's decision affirming the trial court's ruling in favor of the employer's "legitimate expectations" standard was especially unjustified in light of the fact that Tealeh's prima facie and pretext evidence showed that the County is unworthy of credence because the reasons presented for its decision are false and accompanied by mendacity; and this Court's instruction required the plaintiff's objective qualification standard. This Court created this standard as a way of giving both a plaintiff and a defendant a fair chance to prove their case and has since been used by majority of the Circuits to test 42 U.S.C. § 2000e -2(a) claims.

The Eight Circuit, by contrast, operated solely against the longstanding instruction of prima facie standard. There is no authority or plausible basis for deviating from this Court's instruction. The Eighth Circuit's contrary decision is irreconcilable with this Court's decisions in *Green and Burdine*.

### **3. The Prima Facie Second Prong Standard Is Exceptionally Important**

This Court recognized the importance of getting Title VII discrimination case right by creating the proper test for a plaintiff to prove a claim of discrimination and a defendant to prevail if the defendant can show that a non-discriminatory reason(s) motivated its decision, and a chance for a plaintiff to prove that the defendant's showing is false in numerous cases involving the proper standard. See, e.g., *McDonnell Douglas Corp. v. Green*,

411 U.S. 792 (1973) and *University of Tex. Southwestern Medical Center v. Nassar*, 570 U.S.338

This Court likewise recognized the importance of providing uniform rules for the *McDonnell Douglas v. Green's* analysis for status-based claim. The Eighth Circuit's judicial created employer's "legitimate expectations" standard will have serious consequences that will undermine discrimination law and which underscore the need for this Court's review.

First, the Eighth Circuit's decision will transform the *Green's Analysis* into the preferred medium for not advancing discrimination claims in the circuit because, unlike under plaintiff's objective qualification standard, there will be no *prima facie* case or even pretext defense available to a plaintiffs. *See Tealeh v. Ward County-* (8<sup>th</sup> Cir. 2021). Under objective qualification standard, a plaintiff's showing that he or she has the required qualification for the job would required a defendant to prove that non-discrimination reason motivated its decision. Over the years, this Court has taken pains to construct an analysis grounded and carefully balanced prophylactic measure designed to combat racial discrimination. But by converting the analysis into burdensome demanding anti-discrimination standard, the Eighth Circuit has effectively displaced this Court's thoughtful analysis with a new judicial creation.

Eighth Circuit's employer's "legitimate expectations" standard will impede courts' ability to consider claims at the summary judgment stage. To

prevail, a defendant would have to show only explanations regarding whether a plaintiff met its “legitimate expectations,” but not show non-discriminatory motive for its decision regardless whether its explanation is false.

While a jury may ultimately reject a defendant’s false explanations that its decision was not motivated by discrimination, requiring a large number of claims that actually have merit to not advance to trial would increase the level of petition for certiorari and drain judicial resources, and delaying the timely adjudication of claims. As this Court explained in *Nassar*, the “proper interpretation and implementation of” an antidiscrimination statute’s “causation standard have central importance to the fair and responsible allocation of resources in the judicial and litigation systems.” Similarly, a deviation from this Court’s teaching and misapplication of the *Green’s Analysis* could contribute to the petitioning for review, which would drain resources from efforts to combat discrimination.

#### **4. The Eighth Circuit’s judgment Cannot Be Reconciled With This Court’s Precedence For Justice.**

Many times in the context of federal anti-discrimination laws, this Court has instructed that under the *McDonnell Douglas v. Green’s Analysis* the standard requirement for the second prong of a *prima facie* case in employment discrimination dispute is evidence establishing that the plaintiff is qualified for the position. *McDonnell Douglas v. Green*, 411 U.S. 792 (1973). See also *Texas Dept. of Community Affairs v. Burdine* 450, U.S. 248, 253 (1981). However, the Eighth Circuit read the second prong requirement as

evidence that the plaintiff met the employer's "legitimate expectations" to allow a plaintiff establish a prima facie case of discrimination applying the *McDonnell Douglas*' analysis for the employer's cause of action in 42 U.S.C. §2000e 2(a). The Eighth Circuit not only disregarded *Green* and *Burdine*, but exacerbated a circuit split on the standard of prima facie second prong that should apply to claims under section 2000e 2(a). The Eighth Circuit then applied its burdensome standard in a manner that would place a plaintiff's qualifications in issue at both the prima facie case and pretext stages of a termination case; an unnecessary redundancy, despite this Court's contrary teaching in cases like *Crawford v. Metro. Gov't of Nashville & Davidson Cty.*, 555 U.S. 271 (2009), *McDonnell Douglas v. Green*, 411 U.S. 792 (1973), and *Texas Dept. of Community Affairs v. Burdine* 450, U.S. 248, 253 (1981). Likewise, the Eighth Circuit's decision cannot be reconciled with this Court's precedence. The defendants' reasons for its decision are untenable, implausible and its mere explanations are less than candid and have no probative value. Tealeh moved for review because defendants failed plausibly to demonstrate that racial animus and Tealeh's protected activity were not the reason of its decision. Tealeh's prima facie and pretext evidence and this Court's precedence demonstrate that genuine issue of material facts exist for a jury trial and the defendants are not entitled to summary judgment on all claims as a matter of law. *Reeves v. Sanderson Plumbing Prods. Co.*, 530 U.S.

133, 151 (2000) and *Wright v. West*, 505 U.S. 277, 296 (1992) & *Celotex v. Catrett*, 477 U.S. 317, 325 (1986). See also Fed. Rule Civ. Proc. 56.

The trial court acknowledged that under the *McDonnell v. Green*'s analysis, Tealeh would certainly survive summary judgment if the plaintiff's objective qualification standard were applied. But ignored this Court's instruction that a plaintiff's objective qualification is the standard; instead applied employer's "legitimate expectations" standard. The Eighth Circuit's approach conflicts with this Court's *McDonnell Douglas v. Green*'s burden-shifting analysis. The decision on Tealeh's retaliation claim also conflicts with *Crawford*. Left in place, the Eight Circuit's employer's "legitimate expectations" and holding that employer's conduct must be illegal for employee to engage in protected activity will exacerbate the compelling fear of retaliation which work to undermine the individual's will to resist or oppose and compel him/her to communicate a belief of discrimination to his/her employer; likewise have a devastating chilling effect on a plaintiff's rights to challenge his or her termination as Title VII's aggrieved individuals could be discouraged from engaging in protected activity. This Court, and institutions' efforts to combat prohibited wrongful discrimination in the workplaces and in sectors of economic endeavor could be harmed as well.

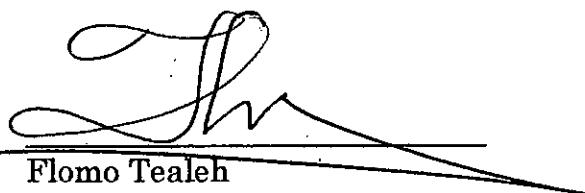
## CONCLUSION

For the foregoing reasons, this Court should grant the petition for certiorari.

Respectfully submitted,

Dated August 26, 2021.

Respectfully submitted,



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