No. 23-836

IN THE

Supreme Court of the United States

SAMER ALI-HASAN,

Petitioner,

v.

ST. PETER'S HEALTH PARTNERS MEDICAL ASSOCIATES, P.C., *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Did the lower court correctly hold that Petitioner could not state a gender discrimination claim because he was not qualified for his position based upon criteria identified by his employer?

2. Did the lower court correctly hold that Petitioner could not state a gender discrimination claim because he failed to establish that his termination occurred under circumstances giving rise to an inference of discrimination?

3. Is there a conflict of opinion amongst lower courts regarding the appropriate standard for analyzing gender discrimination claims under Title VII?

DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Respondent St. Peter's Health Partners Medical Associates, P.C. certifies that its parent company is St. Peter's Health Partners, whose parent company is Trinity Health Corporation, and that no publicly traded company owns 10% or more of its stock.

Respondent St. Peter's Health Partners certifies that its parent company is Trinity Health Corporation, and that no publicly traded company owns 10% or more of its stock.

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INTRODUCTION

Petitioner Samer Ali-Hasan, M.D. ("Petitioner") was an Interventional Cardiologist employed by Respondent St. Peter's Health Partners Medical Associates, P.C. ("SPHPMA") from 2015 through January 2020. On July 31, 2019, Petitioner was notified that his Physician Employment Agreement with SPHPMA (the "Physician Employment Agreement" or "Agreement") was being terminated as of January 27, 2020, without cause, pursuant to the Agreement's "Termination for Convenience" provision.

SPHPMA made the decision to terminate Petitioner's Agreement due to several ongoing issues, including: (i) significant concerns regarding Petitioner's Interventional Cardiology skills; (ii) SPHPMA's realization that Petitioner was not board certified in Interventional Cardiology despite an express contractual requirement; and (iii) repeated reports that Petitioner was difficult to work with, was prone to outbursts, and had regular conflicts with other male and female employees.

Despite the overwhelming evidence, Petitioner filed a lawsuit claiming that the termination of his Agreement was discriminatorily based upon gender in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"). Both the District Court and the Second Circuit Court of Appeals analyzed Petitioner's claim using the well-established burden-shifting framework set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), and dismissed Petitioner's claim. Both courts held that

Petitioner failed to satisfy his initial *prima facie* burden for two reasons.[1]

First, Petitioner failed to establish that he was qualified for his position because he was not board certified in Interventional Cardiology. It is undisputed that board certification was explicitly required by Petitioner's Physician Employment Agreement, and because Petitioner lacked board certification, he did not meet SPHPMA's qualification criteria for the position of Interventional Cardiologist. *Second*, Petitioner's claim also failed because he could not establish that his termination occurred under circumstances giving rise to an inference of discrimination. Both courts held that Petitioner presented no evidence that would suggest SPHPMA was motivated by gender animus in deciding to terminate his employment.

Petitioner now asks this Court to hold that the Second Circuit's analysis of his Title VII claim was contrary to this Court's holding in *Bostock v. Clayton County*, 590 U.S. 644 (2020), and that there is a split amongst the Circuits regarding the correct analytical framework for gender discrimination claims under Title VII.

Petitioner's arguments fail and should be rejected. As discussed in detail below, this Court's decision in *Bostock*

1. The District Court also held that even if Petitioner had satisfied his *prima facie* burden, his claim ultimately failed because SPHPMA established a legitimate, non-discriminatory reason for his termination, and Petitioner could not demonstrate that SPHPMA's stated reasons were pretextual. The Second Circuit did not reach this issue based upon their finding that Petitioner failed to satisfy his *prima facie* burden.

is not contrary to, and has no impact on, the Second Circuit's analysis in the decision below. Similarly, there is no conflict between the Circuits on how to analyze gender discrimination claims, and even if there was, Petitioner's claim would be subject to dismissal under any method of analysis.

In sum, although couched as a request for this Court to resolve conflict among the Circuits, Petitioner's request for *certiorari* amounts to nothing more than his attempt to get another bite at the apple. Petitioner has not identified any true conflict in authority, but is instead asking this Court to review the Second Circuit's application of established law to the undisputed facts. As such, Petitioner has presented no "compelling reason" for this Court to grant c*ertiorari* and his Petition should be denied. *See* Sup. Ct. R. 10.

STATEMENT OF THE CASE

A. SPHP, SPHPMA and Albany Associates in Cardiology

Respondent St. Peter's Health Partners ("SPHP") is a not-for-profit integrated health care network that provides various medical services through its many affiliates. (PA-93).[2] One of SPHP's affiliates is SPHPMA, a multi-specialty physician group with various medical practices operating under its corporate umbrella. *Id.* Albany Associates in Cardiology ("AAC"), a cardiology practice in the Albany, New York area, is one of SPHPMA's affiliated medical practices. (PA94).

2. All references to "PA" refer to the Petitioner's Appendix filed with the Second Circuit.

From 2015 through 2019, AAC employed approximately fifteen to twenty physicians who fell into one of two categories – interventional cardiology or non-interventional cardiology. *Id.* AAC is governed by a Joint Operating Committee (the "JOC"), which is a management committee of AAC cardiologists that oversees the day-to-day administration and operation of the medical group. (PA-94). The JOC's authority is limited to AAC; it does not oversee or manage other practice groups affiliated with SPHPMA. *Id.*

AAC is ultimately subject to the oversight of the SPHPMA Executive Committee (the "Executive Committee"). (PA-140). While the JOC is responsible for day-to-day operations, the Executive Committee directs more significant decisions such as those related to compensation, hiring, and termination. (PA-140). Though the JOC is involved in some personnel-related decisions, the Executive Committee has the ultimate decision-making authority. (PA-94, 140). For example, the JOC is involved in recruiting physicians to work for AAC, but it must first obtain approval from SPHPMA to do so. (PA-140). Similarly, the JOC does not make termination decisions with respect to physicians. *Id.*

B. Petitioner's Employment with SPHPMA

On or about June 15, 2015, Petitioner was hired by SPHPMA to work as an Interventional Cardiologist in the AAC practice group. (PA-140 – 141; SA-9 – 10).[3] Petitioner was initially hired for a three-year term pursuant to an

3. All references to "SA" refer to Respondents' Supplemental Appendix filed with the Second Circuit.

employment agreement with SPHPMA. (PA-140 – 141; SA-18).

In 2018, Petitioner became a partner of AAC. (PA-141; SA-15, 18). The decision to make Petitioner a partner was not easily made. (PA-141). In fact, it was the subject of internal debate because there were several physicians within AAC who did not want Petitioner to become a partner due to concerns regarding his clinical competence. *Id*. Ultimately, Petitioner was elected to be a partner based upon a split vote of the existing AAC partners. *Id*.

Petitioner's job title and position remained consistent throughout his employment with SPHPMA. (SA-14). As an Interventional Cardiologist, Petitioner's duties included providing interventional cardiology services within the Capital Region. (PA-103; SA-12). Petitioner saw patients and worked in AAC's private office in Troy, New York as well as in several Albany, New York-area hospitals where he performed interventional procedures in the catheterization laboratory (the "Cath Lab"). (PA-141; SA-12 – 13).

In conjunction with becoming a partner, Petitioner entered into a Physician Employment Agreement, which was fully executed on April 30, 2018. (PA-103 – 115; SA-15, 18). For purposes of the present litigation, this Agreement is the operative contract that governed the terms and conditions of Petitioner's employment through his separation. (PA-103 – 115).

The Physician Employment Agreement stated that Petitioner "shall provide Interventional services in the specialty of Interventional Cardiology." (PA-103).

The Agreement also identified several "Physician's Qualifications," which required Petitioner to, among other things, be board certified in Interventional Cardiology. (PA-105 – 106). More specifically, the Physician's Qualifications section explicitly states:

> C. Physician's Qualifications. Prior to providing Services and continuously through the Term of the Agreement, Physician shall meet all of the following qualifications:
>
> . . . .
>
> 6. Board Certification. Physician shall be board certified in the specialty of Interventional Cardiology

(PA-106).

It is undisputed that despite this explicit requirement, Petitioner ***was not*** board certified in Interventional Cardiology at any time during his employment with SPHPMA. (PA-275).

The Agreement set an initial term of twenty-four months, unless terminated by either party in accordance with the "Termination" provisions set forth in Section IX. (PA-108 – 109). Section IX included several sub-sections, which detailed how and when the Agreement could be terminated. (PA-108 – 111). Among other methods of termination, Section IX included a "Termination for Convenience" provision, which provided:

> 1. Termination for Convenience. ***The Agreement may be terminated for any or no reason by either party on at least 180 days' prior written notice.*** Provided, however, neither party may effect termination of the Agreement under this provision before [June 15, 2019].

(PA-109) (emphasis added). Section IX also identified various other ways by which the Physician Employment Agreement could be terminated, including subsections describing "Automatic Termination," "Termination by Employer," "Termination by Physician," "Termination by Mutual Agreement," and "Early Termination." *Id*.

Finally, the Agreement stated that it "constitutes the entire Agreement between the Parties with respect to the subject matter herein and supersedes all prior agreements, arrangements and/or understandings between the Parties with respect to the subject matter herein." (PA-113). In other words, the Physician Employment Agreement constitutes the only contractual agreement between Petitioner and SPHPMA regarding Petitioner's employment. *Id*.

1. Petitioner's Interventional Cardiology Skills Are Repeatedly Questioned

Throughout Petitioner's employment, concerns were repeatedly raised by Petitioner's colleagues regarding his clinical skills and interventional cardiology capabilities, including his performance in the Cath Lab. (PA-96, 141). The consistent testimony of Petitioner's colleagues and JOC members establishes that the issues regarding Petitioner's interventional skills were recurrent and significant. (PA96,

141 – 143; SA-225 – 228, 280 – 282). Concerns were raised at various points by AAC cardiologists Jorge Constantino, M.D. ("Dr. Constantino"), Alain Vaval, M.D. ("Dr. Vaval"), Eric Roccario, M.D. ("Dr. Roccario"), Gregory Bishop, M.D. ("Dr. Bishop"), and Robert Phang, M.D. ("Dr. Phang"), as well as by AAC Director of Cardiology, Craig Knack. (PA-96, 141; SA-319 – 320, 322).

For example, Dr. Constantino brought concerns to the JOC regarding the amount of radiation Petitioner used during cases, as well as complications following Petitioner's cases. (PA-142). Other providers also brought concerns to the JOC about Petitioner's medical judgment. (PA-96, 142). Concerns were also brought forward regarding Petitioner's refusal to take certain patients into the Cath Lab for a procedure. (PA-142). One particular case was so concerning that it was brought before a meeting of the senior partners of AAC, at which Petitioner was not present. *Id*. There was a discussion regarding this case and the consensus was that Petitioner exercised poor medical judgment. *Id*.

The JOC met with Petitioner on several occasions to address these concerns. (PA-142 – 143). The first of these meetings, which occurred sometime in Petitioner's first year of employment, was scheduled when the JOC began to receive concerning feedback from staff and physicians in the hospitals where Petitioner worked. (PA142). There were questions about whether Petitioner's level of expertise was where the JOC expected it to be. *Id.* To address these concerns, the JOC requested a meeting with Petitioner. *Id*. No formal restrictions were imposed following its discussion with Petitioner, however, the JOC continued to monitor his work. *Id*.

At some point in 2018 or 2019, similar concerns about Petitioner's clinical abilities resurfaced. (PA-142 – 143). This time, the concerns prompted the JOC to undertake a more formal review of Petitioner's interventional skills. (PA-96, 142 – 143). As part of this review, several of Petitioner's cases were reviewed by AAC's other Interventionalist Cardiologists. (PA-142 – 143). The Interventional Cardiologists performing the review stated that they had concerns with Petitioner's clinical skills, but no action was taken. *Id.*

Another concern regarding Petitioner's interventional skills was raised by Reid Muller, M.D. ("Dr. Muller"), a fellow cardiologist member of AAC. (SA-282 – 285). Dr. Muller became concerned that Petitioner's skills were inadequate when he failed to bring one of Dr. Muller's patients to the Cath Lab, and the patient deteriorated as a result. *Id.* This concern was also discussed by the JOC at one of its meetings. (SA-283). Though no definitive action was taken, several AAC physicians, including Dr. Muller and Dr. Constantino, expressed an unwillingness to refer patients to Petitioner. (PA-143; SA-284, 319 – 320).

In addition, several of Petitioner's cases were brought before the SPHP morbidity and mortality conference. (PA-143). This is a conference where patient complications or deaths are discussed and presented to a group of physicians. *Id.* Several of Petitioner's cases were presented to this conference in the last year of his employment alone. *Id.*

Finally, the JOC also had to discuss concerns regarding Petitioner's behavior with him on several occasions. (PA-143; SA-225 – 228, 280 – 282). In particular, the JOC tried

to explain to Petitioner how he was perceived by people and that some staff members had a hard time with the way he interacted with or talked to them, and that he needed to be more aware of how he related to staff. (PA-96, 143). Reports about Petitioner's workplace interactions and conduct with colleagues and staff members were also brought to the attention of SPHPMA President Rik Baier on multiple occasions. (PA-96). Specifically, Mr. Baier was made aware of complaints regarding Petitioner's behavior by Dr. Phang and Mr. Knack. *Id*. These individuals complained that Petitioner invaded others' personal space and habitually yelled at staff. *Id*.

2. It Comes to Light That Petitioner is Not Board Certified in Interventional Cardiology

In or about May 2019, Respondents became aware that Petitioner was not board certified in Interventional Cardiology, his purported area of specialty. (PA-96, 143). Petitioner's lack of board certification was a significant concern for Respondents as it was their understanding that he maintained that crucial credential. *Id*. After learning this fact, Mr. Baier and the JOC had collective discussions about no longer allowing Petitioner to be an Interventional Cardiologist because he was not board certified. (PA-96). As board certification is ***expressly required by the Physician Employment Agreement***, Petitioner's lack of certification was merely an oversight during his hiring process. (PA-106, 143 – 144).

Indeed, board certification "in the specialty of Interventional Cardiology" is one of the "Physician Qualifications" expressly and unequivocally listed in the Physician Employment Agreement. (PA-105 – 106). As

such, it was a condition of his employment. *Id*. By signing the Physician Employment Agreement which clearly included this requirement, Petitioner misrepresented his board certification status. *Id*.

Following the realization that Petitioner was not board certified in Interventional Cardiology and Mr. Baier's discussions with the JOC, it was Mr. Baier's understanding that the JOC wanted to seek termination of Petitioner's Physician Employment Agreement without cause. (PA-97). As a result, on June 24, 2019, Mr. Baier informed the SPHPMA Executive Committee of the JOC's desire to terminate Petitioner's Agreement. (PA-97, 175). The meeting minutes from the June 24, 2019 Executive Committee meeting reflect these discussions. *Id*. They state: "Issues with Ali-Hasan, M.D., never boarded in interventional cardiology. JOC made recommendation to give 120-day notice for no cause." *Id*. Although the Executive Committee discussed Petitioner's termination in June 2019, and the process was started to terminate Petitioner's Agreement, no final decision was reached at that time. (PA-175).

3. An Anonymous Complaint Regarding Petitioner's Behavior is Made to SPHP's Compliance Hotline

On or about July 12, 2019, several weeks *after* discussions about Petitioner's termination were underway, the SPHP Compliance Hotline (the "Compliance Hotline") received an anonymous telephonic complaint regarding Petitioner's allegedly demeaning and demoralizing behavior (the "Compliance Complaint"). (PA-146, 153 – 156). The Compliance Hotline, which is managed

by a third-party operator, allows SPHP employees to anonymously make complaints regarding workplace issues. (PA-147).

The Compliance Complaint made several accusations about Petitioner's behavior. (PA-147, 155 – 156). The caller specifically alleged that Petitioner engaged in a pattern of demeaning and demoralizing behavior "for approximately two years" and entered the physical space of employees while speaking to them in an intimidating manner.

Neither the identity ***nor gender*** of the caller who reported Petitioner's behavior to the Compliance Hotline was ever ascertained. (PA-98, 148). In addition, the caller did not claim that Petitioner's behavior was specifically directed toward one gender or another. Moreover, the Compliance Complaint did not allege, or even imply, that Petitioner was engaged in sexual harassment, gender discrimination, or sexual misconduct of any kind. *Id.*

Once a complaint is made through the Compliance Hotline, it is immediately provided to the SPHP Director of Compliance, Kate Barnhart ("Ms. Barnhart"). *Id.* Complaints made using the SPHP Compliance Hotline are processed and investigated pursuant to the procedures set forth in the SPHP Integrity & Compliance Line and Web-Reporting Program Policy (the "Compliance Line Policy"). (PA-158 – 162). This policy identifies the appropriate procedure for investigating and responding to a complaint. With respect to the investigative procedure, the policy states, "Management staff member(s) will take the necessary steps to investigate the report, which may include reviewing documents and interviewing employees." (PA-161). Notably, the Compliance Line

Policy does not require an interview of the accused, nor does it provide any required procedural steps or any other direction regarding how the investigation is to be conducted. *Id.*

The Compliance Complaint regarding Petitioner was received by Ms. Barnhart on July 12, 2019. (PA-147). It was then immediately provided to Anna Bauer ("Ms. Bauer"), Human Resources Business Partner for SPHPMA, Mr. Baier, and other members of the SPHPMA and AAC staff. (PA-98, 147).

In accordance with the Compliance Line Policy, the Compliance Complaint triggered an investigation into the allegations concerning Petitioner, which was promptly commenced by Human Resources. (PA-99, 148). Although the Compliance Complaint was anonymous, Human Resources identified several individuals to be interviewed who had frequent contact with Petitioner. (PA-148). Interviews were conducted on July 16, and July 17, 2019. *Id.* The individuals interviewed included Mr. Knack, Dr. Constantino, Melissa Vermilye (an Administrative Liaison), and Edith Warrender (a Registered Nurse). *Id.*

These interviews revealed that there were pre-existing problems with Petitioner and that several of his colleagues—both male and female—found him abrasive and difficult to work with. (PA-164 – 168). The individuals interviewed also discussed the ongoing concerns with Petitioner's clinical skills. In particular, the interviews revealed the following:

- Craig Knack reported that he had personally "been at the other end of [Petitioner's] wrath." Mr. Knack

reported that Petitioner "gets in your personal space," pushes back and becomes extremely intimidating when he does not get his way. (PA-164 – 165).

- Dr. Constantino described Petitioner as having a tendency to yell at, and become impatient with, non-physician staff members, which created a difficult working environment. Dr. Constantino identified a situation where Petitioner had an outburst when he made a vascular colleague move her seat. He also stated that Petitioner had yelled at an Licensed Practical Nurse so much that she left crying. Dr. Constantino provided a list of providers who did not want to work with Petitioner anymore. Dr. Constantino also stated that he had serious concerns about Petitioner's interventional clinical skills and ability to provide adequate care for patients. Dr. Constantino also stated that he thought Petitioner was deliberately jeopardizing patients. (PA-165 – 166).

- Edith Warrender reported that she got along well with Petitioner but that he "like[d] things his way" and sometimes clashed with the Cath Lab technicians. (PA-167 – 168).

In conducting the investigation, Human Resources team members also considered information obtained during interviews of staff from a June 2019 investigation that was unrelated to the Compliance Complaint and did not specifically involve Petitioner. (PA-149, 170 – 171). Even though the investigation did not involve Petitioner, the individuals interviewed during the June 2019 investigation expressed concerns about Petitioner. *Id.* The individuals

interviewed included Cala Pellerin (a Registered Nurse), Bruce Coyne (a Cardiovascular Technician), Robert Rivera (a Cardiovascular Technician), and Mardine Perrins (a Cardiovascular Technician). *Id.* A review of the June 2019 interviews revealed the following:

- Robert Rivera stated that Petitioner discriminated against females and requested other staff members come in. He also stated that Petitioner recently "flipped," yelling "don't touch me" to a traveling Registered Nurse. Mr. Rivera also stated that he had several conflicts with Petitioner and that Petitioner was not competent in his skills as a clinician. (PA170).

- Bruce Coyne stated that Petitioner didn't like scrubbing with females and would kick people out of the room while he was performing procedures. (PA-170).

- Mardine Perrins stated that Petitioner is "really awful, not a good operator and degrading to female staff. Not good with his practice." (PA-171).

Though Petitioner is critical of the fact that he was not interviewed during the investigation, nothing in the Compliance Line Policy required Human Resources to interview Petitioner. (PA-149, 158 – 162). In fact, the Compliance Line Policy affords Human Resources the discretion to interview those witnesses it deems relevant. (PA-161). In this situation, Human Resources determined that interviewing Petitioner was not necessary. *Id.*

Ms. Bauer provided a summary of the interviews to Mr. Baier and incoming SPHPMA President, Kellie

Valenti ("Ms. Valenti"). (PA-99, 150). The investigation revealed that several of the Compliance Complaint allegations were substantiated, including that Petitioner invaded personal space. (PA-148 – 149, 153 – 156). Reports from the witnesses interviewed during the investigation suggested that Petitioner was often rude and abrasive, and difficult to work with. (PA-164 – 168).

4. The SPHPMA Executive Committee Decides to Terminate Petitioner's Agreement, Without Cause, Pursuant to the Agreement's Termination for Convenience Provision

As the Compliance Complaint investigation was wrapping up, it was Mr. Baier's understanding that the JOC wanted to terminate Petitioner's Physician Employment Agreement based on several ongoing concerns, including: (i) recurrent questions and concerns about Petitioner's interventional abilities which had recently been reiterated by Dr. Constantino; (ii) Petitioner's lack of board certification in Interventional Cardiology; and (iii) the general consensus that Petitioner was unpleasant and difficult to work with. (PA-99).

On July 22, 2019, Mr. Baier presented his understanding of the JOC's recommendation to the SPHPMA Executive Committee. *Id*. He expressed that there were several ongoing concerns relating to Petitioner, including issues with quality, board certification, and interpersonal conflict. (PA-99, 175 – 176). Mr. Baier also notified the Executive Committee that an anonymous complaint had been made about Petitioner regarding inappropriate behavior and invading personal space. *Id*. He explained that an investigation had been conducted, which confirmed issues with Petitioner's conduct. The July 22, 2019, Executive

Committee meeting minutes reflect these discussions. (PA136 – 137). These meeting minutes do not indicate that there was any concern regarding Petitioner's treatment of women specifically. Rather, the concern was that Petitioner invaded personal space (which was a complaint made by Mr. Knack, a male employee). *Id.*

During its July 22, 2019, meeting, the Executive Committee voted to terminate Petitioner's employment without cause pursuant to the Termination for Convenience provision in the Physician Employment Agreement. (PA-100, 109, 144, 176). The impact of the decision to terminate Petitioner's employment pursuant to the Termination for Convenience provision was that Petitioner would receive 180 days' notice of his termination, and his compensation and benefits would continue for the duration of the 180-day period. (PA-100).

5. Petitioner is Notified of the Decision to Terminate His Agreement, Without Cause, Pursuant to the Termination for Convenience Provision

On July 31, 2019, Petitioner was called to a meeting with Ms. Valenti (the newly appointed Chief Operating Officer of SPHPMA) and Dr. Kowal. (SA-39, 401; PA-176). During the meeting, Petitioner was informed that his employment with SPHPMA was being terminated without cause pursuant to the Termination for Convenience provision set forth in Section IX of the Physician Employment Agreement. (SA-39 – 43, 389, 401; PA-176).

In accordance with that provision, Petitioner was given a termination letter indicating that his employment with SPHPMA would terminate effective January 27,

2020, 180 days after July 31, 2019. (PA-173; SA-394). The letter explicitly states that "[t]his letter serves as notice that St. Peter's Health Partners Medical Associates, P.C. ('SPHPMA') is terminating its employment agreement with you, dated April 30, 2019, in accordance with the terms of Section IX.B.1 [Termination for Convenience]. Your last day of employment will be January 27, 2020." (PA-173). Pursuant to the Termination for Convenience provision, and the letter Petitioner was provided, he continued to receive full pay and benefits for 180 days. (SA-112 – 113).

C. Procedural History

Petitioner commenced the present lawsuit against SPHPMA and SPHP (collectively, "Respondents") on December 20, 2019. (PA-31). On April 13, 2021, Petitioner filed an Amended Complaint, which became the operative pleading (the "Amended Complaint"). (PA-58). Based upon the facts alleged in the Amended Complaint, Petitioner asserted two causes of action – one for gender discrimination under Title VII and one for breach of contract under New York common law. (PA-70 – 72).

At the conclusion of discovery, Respondents moved for summary judgment and sought dismissal of all claims asserted in the Amended Complaint. (PA-85). Petitioner responded to Respondents' motion and fully briefed his arguments relating to Respondents' alleged discrimination and breach of contract. (PA-207 – 452).

On September 22, 2022, the United States District Court for the Northern District of New York, District Judge Norman A. Mordue, issued a Decision and Order granting Respondents' Rule 56 Motion for Summary

Judgment and dismissing Petitioner's Title VII claim in its entirety. (PA-27). The District Court declined to exercise supplemental jurisdiction over Petitioner's state law breach of contract claim and therefore dismissed that claim. *Id*.

The District Court analyzed Petitioner's Title VII gender discrimination claim utilizing the burden-shifting analysis found in *McDonnell Douglas Corp. v. Green*. (PA-18 – 27). *First*, the District Court held that Petitioner failed to establish a *prima facie* case because he was not qualified for his position. (PA18 – 21). The District Court reasoned that the Agreement required Petitioner to be board certified in Interventional Cardiology, which he was not. *Id*. *Second*, the District Court held that Petitioner also failed to meet his *prima facie* burden because he could not establish that his termination occurred under circumstances giving rise to an inference of discrimination. (PA-21 – 23). *Third*, the District Court held that even if Petitioner could state a *prima facie* case of gender discrimination, SPHPMA articulated legitimate, non-discriminatory reasons for its decision to terminate Petitioner's Agreement, and Petitioner failed to establish that SPHPMA's stated reasons were pretextual. (PA-23 – 27). The District Court correctly reasoned that SPHPMA's decision to terminate Petitioner's Agreement without cause was wholly unrelated to his sex or gender but was instead the culmination of many ongoing issues related to Petitioner's skills, lack of board certification, and combative personality. *Id*.[4]

4. Petitioner blatantly mischaracterizes the District Court's decision and findings in his Petition. Petitioner claims that if the District Court had properly applied the Second Circuit's decision in *Menaker*, it would have denied Respondents' motion. (*see, e.g.,* Petitioner's Brief, p. 18). Even a cursory reading of the District

Petitioner appealed the District Court decision to the Second Circuit Court of Appeals. After the issues were fully briefed and argument was heard, the Second Circuit affirmed the District Court decision by Summary Order dated November 7, 2023. *See Ali-Hasan v. St. Peter's Health Partners Medical Associates, P.C.*, No. 22-2669, 2023 WL 7320860 (2d Cir. Nov. 7, 2023). In its Summary Order, the Second Circuit also analyzed Petitioner's claim using the *McDonnell Douglas* burden-shifting analysis and held that Petitioner failed to establish a *prima facie* claim for the same reasons articulated by the District Court.

Among other things, the Second Circuit noted that Petitioner's attempt to rely on its earlier decisions in *Menaker v. Hofstra Univ.*, 935 F.3d 20 (2d Cir. 2019), and *Vengalattore v. Cornell University*, 36 F.4th 87 (2d Cir. 2022), was improper. Importantly, the Second Circuit stated, "[w]hile a plaintiff asserting a claim of sex discrimination may be able to raise an inference of discriminatory intent by pointing to evidence closely tied to the adverse employment action that could reasonably be interpreted as indicating that discrimination drove the decision . . . [Petitioner] has not provided *any* such evidence here." *Ali-Hasan*, 2023 WL 7320860, at *2 (internal alterations, quotation marks, and citation omitted).

Because the Second Circuit affirmed the District Court decision based upon its finding that Petitioner

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Court's decision reveals that this is not the case. The District Court articulated three separate and independent reasons for granting Respondents' motion.

failed to satisfy his *prima facie* burden, it declined to consider whether Appellees offered legitimate, non-discriminatory reasons for Petitioner's termination and, if so, whether Petitioner demonstrated that such reasons were pretextual. *Id.*, at *3, n. 1.

REASONS FOR DENYING THE PETITION

The Second Circuit's decision below does not conflict with any decision of this Court or the Circuit Courts of Appeals. Accordingly, Petitioner has not carried his burden of demonstrating any "compelling reasons" for *certiorari* to be granted and the Petition should be denied. *See* Sup. Ct. R. 10.

I. THE SECOND CIRCUIT PROPERLY APPLIED SETTLED LAW AND AFFIRMED THE DISMISSAL OF PETITIONER'S COMPLAINT

The Second Circuit analyzed Petitioner's gender discrimination claim utilizing the well-established burden-shifting framework set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1972). Under that framework, a plaintiff asserting gender discrimination bears the initial burden of demonstrating that: (1) he is a member of a protected class; (2) he was qualified for his position; (3) he suffered an adverse employment action; and (4) the adverse employment action occurred under circumstances giving rise to an inference of discrimination. *Kimball v. Vill. Of Painted Post*, 737 Fed. App'x 564, 570 (2d Cir. 2018).

Upon establishing a *prima facie* claim, the burden shifts to the employer to proffer a legitimate, non-

discriminatory reason for the employment action. *Id.* Where an employer does so, the burden shifts back to the plaintiff to show that the employer's proffered, non-discriminatory reason is mere pretext for actual discrimination. *Id.*[5]

The Second Circuit properly applied this framework and held that Petitioner failed to establish a *prima facie* case because he was not qualified for his position, and because Petitioner's termination did not occur under circumstances giving rise to an inference of discrimination.

A. The Second Circuit Correctly Held that Petitioner was Not Qualified for His Position

Initially, the Second Circuit held that Petitioner's claim failed because he was not qualified for the position of Interventional Cardiologist based upon the clear and unequivocal criteria set forth by his employer.

The Second Circuit referenced its prior precedent, which stated that "being 'qualified' refers to the criteria the employer has specified for the position." *Williams v. R.H. Donnelley, Corp.*, 368 F.3d 123, 127 (2d Cir. 2004) (quoting *Thornley v. Penton Publ'g, Inc.*, 104 F.3d 26, 29 (2d Cir. 1997)). "Therefore, in order to establish a prima facie case of discrimination, [Petitioner] must show that [he] met the Respondent's criteria for the position." *Id.*

5. This Court has repeatedly held that utilizing the *McDonell Douglas* burden-shifting framework to analyze gender discrimination claims under Title VII is proper and appropriate. *See, e.g., Comcast Corp. v. National Association of African American-Owned Media*, 140 S.Ct. 1009, 1019 (Mar. 23, 2020); *St. Mary's Honor Center v. Hicks*, 113 S.Ct. 2742, 7246-47 (June 25, 1993).

It cannot be disputed that board certification in Interventional Cardiology was a contractually established condition of Petitioner's employment. (PA-106). The Physician Employment Agreement expressly identifies board certification as one of the required "Physician's Qualifications." *Id*. By signing the Agreement, Petitioner acknowledged this required qualification. (PA-115).

Petitioner admits that he was not board certified at any time while employed by SPHPMA. (PA-275). As such, Petitioner admits that that he lacked the qualification required by his employer and the Agreement. In light of his admissions, it is indisputable that Petitioner was not qualified for his position and therefore cannot establish a prima facie gender discrimination claim.

In the court below, as he does here, Petitioner argued that even though he was not board certified, he possessed the skills necessary to be an Interventional Cardiologist based upon his training and experience. (PA-275). However, Petitioner's "assertion that he has relevant training [and] experience does not establish that he has the qualification Respondents-Appellees set" for him. *Scé v. City of New York*, No. 20-3954, 2022 WL 598974, at *1 (2d Cir. Mar. 1, 2022) (affirming summary judgment for employer where the plaintiff did not meet the qualifications established by the employer).

Further, Petitioner could point to no evidence that Respondents relaxed or otherwise loosened the qualifications for other Interventional Cardiologists. (SA-287 – 288). It is therefore clear that Petitioner was not qualified for his position, and the Second Circuit correctly held that his discrimination claim failed on this basis alone. (PA-18 - 21).

B. The Second Circuit Correctly Held that Petitioner was Not Terminated Under Circumstances Giving Rise to An Inference of Discrimination

Under Second Circuit precedent, a plaintiff may demonstrate that they were terminated under circumstances giving rise to an inference of discrimination in many ways, including through, *inter alia*, actions or remarks made by decisionmakers that could be viewed as reflecting a discriminatory animus, or preferential treatment given to employees outside the protected class. *See, e.g., Chertkova v. Connecticut General Life Ins. Co.*, 92 F.3d 81, 91 (Aug. 9, 1996) (citations omitted).

Faced with the fact that he had no such evidence, Petitioner argued that his termination arose under circumstances giving rise to an inference of discrimination because the investigation into the anonymous, gender-neutral, Compliance Line complaint was flawed. Petitioner attempted to establish this inference by relying entirely on the Second Circuit's decision in *Menaker v. Hofstra Univ.*, 935 F.3d 20 (2d Cir. 2019). However, as discussed in the Second Circuit decision below, whether he attempted to rely on *Menaker* or any other case, Petitioner failed to point to any facts that would support an inference of discrimination.

In *Menaker*, a male tennis coach at a private university was accused of sexual harassment by a female student. *Menaker*, 935 F.3d at 27-28. The allegations of sexual harassment were investigated, found to be substantiated, and the male employee was ultimately terminated. *Id.* at 29. Following his termination, the tennis coach filed a lawsuit

alleging that he was discriminated against based upon his gender. *Id*. The coach claimed that sex played a role in his termination as evidenced by the public pressure on his employer to "react more forcefully to allegations of male sexual misconduct," as well as procedural irregularities in the University's investigation. *Id*. at 34-35.

Under these particular facts, and relying on its prior decision in *Doe v. Columbia*, 831 F.3d 46 (2d Cir. 2016), the Second Circuit held:

> that where a university (1) takes an adverse action against a student or employee, (2) in response to allegations of sexual misconduct, (3) following a clearly irregular investigative or adjudicative process, (4) amid criticism for reacting inadequately to allegations of sexual misconduct by members of one sex, these circumstances provide the requisite support for a *prima facie* case of sex discrimination.

Id. at 33.

Because Petitioner could only point to an allegedly defective investigation as evidence of discriminatory motivation, he attempted to rely on the specific analysis set forth in *Menaker* to establish an inference of discrimination. However, Petitioner's attempt to rely on *Menaker* was expressly rejected by the Second Circuit because Petitioner failed to establish that SPHPMA was subject to criticism for reacting inadequately to allegations of sexual misconduct by members of one sex. *Ali-Hasan*, 2023 WL 7320860, at *2. The Second Circuit noted that, without more, a clearly irregular investigation was not

sufficient to establish an inference of discriminatory motive. *Id.*

The Second Circuit's analysis was consistent with well-settled precedent. Indeed, an allegedly defective workplace investigation, standing alone, cannot demonstrate an inference of discrimination because an allegedly defective investigation does not indicate that sex was a motivating factor in the decision-making process. *See*, *e.g.*, *Crowley v. Billboard Mag.*, 576 F. Supp. 3d 132, 146 (S.D.N.Y. 2021) ("whatever the shortcomings of the investigation, they do not support an inference of discrimination in this case"); *Setelius v. Nat'l Grid Elec. Servs. LLC*, No. 11-CV-5528 MKB, 2014 WL 4773975, at *11 (E.D.N.Y. Sept. 24, 2014) ("Absent any evidence that [Respondent]'s decision to terminate Plaintiff was motivated by her gender, the minor inconsistencies in the investigation are insufficient to establish that Plaintiff's termination took place under circumstances giving rise to an inference of discrimination."); *see also Mendez-Nouel v. Gucci Am., Inc.*, No. 10 CIV. 3388 PAE, 2012 WL 5451189, at *16 (S.D.N.Y. Nov. 8, 2012), *aff'd*, 542 F. App'x 12 (2d Cir. 2013) (holding plaintiff's criticisms of Respondent's investigation were "clearly irrelevant to the discrete question of whether his [] termination was motivated by retaliatory animus). An employer certainly could conduct a defective workplace investigation, take an adverse employment based upon that investigation, and not be motivated by discrimination. This is why the Second Circuit has indicated that more than a defective investigation is required.

Importantly, however, the Second Circuit did not limit its analysis of discriminatory motive to the

Menaker factors and also analyzed whether Petitioner had submitted *any* evidence that "could reasonably be interpreted as indicating that discrimination drove the decision." *Ali-Hasan*, 2023 WL 7320860, at *2. After conducting this analysis, the Second Circuit held that Petitioner failed to do so. *Id.*

The Second Circuit's conclusion that Petitioner failed to provide any evidence of discriminatory motive was sound. Indeed, the anonymous complaint about Petitioner that triggered SPHPMA's investigation was that he demeaned and demoralized employees. It was plainly *not* a complaint about sexual harassment or gender discrimination and did not contain *any* gender component. (PA-155 – 156). In fact, it is not known if the caller was male or female and the caller did not state whether Petitioner was treating men or women differently. *Id.* As a result, the ensuing investigation was not an investigation into a sexual harassment or gender discrimination claim. Rather, it was an investigation into a gender-neutral complaint that a physician was abusive toward staff and colleagues.

Petitioner argues that because several employees stated their belief that Petitioner did not like to work with, and was degrading to, female staff (during an unrelated investigation conducted before the Compliance Complaint was made), that the Compliance Complaint was somehow converted into a gender discrimination claim that would make the *Menaker* decision applicable. (PA-170 – 171). Strangely, Petitioner is actively trying to argue that he was accused of and investigated for gender discrimination. In spite of Petitioner's efforts, the Second Circuit did not infer something that was not there.

SPHPMA's investigation revealed that Petitioner treated both men *and* women poorly. Mr. Knack, for example, stated to the SPHPMA investigator that Petitioner had acted inappropriately toward him and invaded his personal space, and that Petitioner would become extremely intimidating when he did not get his way.[6] (PA164 – 168, 170 – 171). Similarly, Dr. Constantino stated that Petitioner tended to yell at, and become impatient with, non-physician staff members. (PA165 – 166). Mr. Rivera also described personal conflict he had with Petitioner. (PA-170). Moreover, the July 22, 2019, SPHPMA Executive Meeting Minutes, which discuss the termination of Petitioner's contract, state, "Follow up regarding Ali Hasan, MD and presentation of a 120-day notice – Anonymous complaint from an employee at SPH regarding inappropriate behavior and invading personal space." (PA-136 – 137). The minutes do not state, or even imply, that the Compliance Complaint against Petitioner was gender-based or that gender was implicated in the investigation. *Id.* In fact, the only specific conduct referenced in the minutes is "invading personal space," which is the allegation made by Mr. Knack, a male employee.

Based upon these facts, Petitioner could not point to *any* evidence other than the allegedly defective investigation that would provide support for his claim that gender played a role in SPHPMA's decision to

6. Interestingly, Petitioner claims that Mr. Knack held a personal vendetta against him and orchestrated Petitioner's termination. (Petitioner's Brief, P. 18, n. 5). Respondents deny this was the case. In any event, even if true, Mr. Knack's alleged personal animosity does not constitute gender-based animus and, in fact, refutes Petitioner's gender discrimination claim.

terminate the Agreement. Consistent with *Menaker* and the cases cited above, without more, Petitioner's reference to an allegedly defective investigation was insufficient to create an inference of discrimination. Stated differently, Petitioner could not point to any evidence that would indicate SPHPMA was motivated by his gender in conducting its investigation, or that it treated him differently than it treated employees of a different sex.

Accordingly, whether couched in terms of *Menaker* or otherwise, the Second Circuit correctly applied established precedent and held that Petitioner failed to provide any evidence to support his claim that gender played a role in the decision to terminate his employment.

II. THERE IS NO CONFLICT BETWEEN THE SECOND CIRCUIT DECISION BELOW AND THIS COURT'S DECISION IN *BOSTOCK V. CLAYTON COUNTY*

In *Bostock v. Clayton County*, 590 U.S. 644 (2020), this Court considered whether Title VII's protections extended to homosexual and transgender persons. *Id.* at 654. In concluding that Title VII does protect these individuals, the Court re-stated the rule that "An employer violates Title VII when it intentionally fires an individual employee based in part on sex." *Id.* at 559. The Court explained that "an employer who intentionally treats a person worse because of sex – such as by firing the person for actions or attributes it would tolerate in an individual of another sex – discriminates against that person in violation of Title VII." *Id.* at 658. Importantly, *Bostock* did not address a plaintiff's burden to establish that an adverse employment action was "because of" sex or whether the *McDonnell Douglas* burden-shifting framework is appropriate.

Here, Petitioner is asking this Court to find the Second Circuit decision below is in conflict with *Bostock*. Petitioner argues that the *Bostock* decision established a new standard for evaluating gender discrimination claims under Title VII and that the Second Circuit's decision failed to follow this new standard. Petitioner's claims are flawed and must be rejected.

Initially, *Bostock* did not establish a new standard for evaluating gender discrimination claims, but rather reiterated the general rule that where an employer intentionally discriminates against an employee based upon that employee's sex, that the employer discriminates against the employee in violation of Title VII. *Id.* What Petitioner fails to recognize is that *Bostock* did not eliminate the requirement that a plaintiff claiming gender discrimination in violation of Title VII must still produce evidence that the employer took an adverse action "because of' sex." *Id.* at 656.

In addition, the Second Circuit's decision below did not run afoul of *Bostock*, and in fact, was entirely consistent with its holding. The Second Circuit considered and analyzed whether Petitioner had submitted any evidence that would establish SPHPMA's termination of his employment was based upon gender. *Ali-Hasan*, 2023 WL 7320860, at *2. Applying the *McDonnell Douglas* burden-shifting framework, the Second Circuit correctly held that Petitioner did not satisfy his *prima facie* burden because he failed to demonstrate that he was qualified for his position or that his termination occurred under circumstances giving rise to an inference of discrimination. *Id.* As discussed above, these findings were appropriate based upon the record evidence.

In effect, Petitioner is asking this Court to adopt a new, bright line rule that if a workplace investigation into an allegation of gender discrimination is flawed, a plaintiff will necessarily be able to establish a claim of gender discrimination.[7] That is not what this Court stated in *Bostock* and cannot be the law. There are many circumstances where an investigation could be flawed, but the flaw is not based upon any discriminatory animus. For example, an investigation could be flawed because of investigator incompetence or oversight, neither of which implies gender animus. This is why the Second Circuit ruled in the *Menaker* court that there must be some other indicia of gender bias in addition to a flawed investigation to establish an inference of discriminatory motivation.

As noted in *Bostock*, to state a gender discrimination claim, there must be evidence that the employer is treating the employee worse *because* of their gender, "such as by firing the person for actions or attributes it would tolerate in an individual of another sex." *Bostock v. Clayton County*, 590 U.S. at 658. A flawed investigation alone does not, as a matter of law, provide this evidence. *See Crowley*, 576 F. Supp. 3d at146; *Setelius*, 2014 WL 4773975, at *11; *Mendez-Nouel*, 2012 WL 5451189, at *16 .

Finally, it is important to note that the Second Circuit's decision below is unaffected by the *Bostock* decision or Petitioner's arguments here. Petitioner failed to establish a *prima facie* gender discrimination claim because he

7. It is important to note that Respondents reject Petitioner's argument that its investigation was flawed. As discussed above and in the court below, the investigation and conclusions therefrom were entirely appropriate.

lacked the requisite credentials – *i.e.*, board certification – and therefore was not qualified for his position. *Ali-Hasan*, 2023 WL 7320860, at *2. Given this indisputable fact, Petitioner's allegation that he was terminated under circumstances giving rise to an inference of gender-based discrimination is legally irrelevant. This Court should deny *certiorari* on this basis alone.

In sum, Petitioner cannot demonstrate that the Second Circuit's analysis was inappropriate. Instead, it is clear that Petitioner's true objective in the Petition is to have this Court review and scrutinize the Second Circuit's application of settled law. Petitioner clearly believes that the evidence he submitted in opposition to Respondents' motion was sufficient to demonstrate that his termination was based on sex. However, the Supreme Court's rules make it clear that a Petitioner's disagreement with a lower court's application of settled law is not an appropriate ground for *certiorari*. Sup. Ct. R. 10.

III. THERE IS NO CONFLICT AMONG THE CIRCUITS REGARDING HOW TO PROPERLY ANALYZE GENDER DISCRIMINATION CLAIMS UNDER TITLE VII

Petitioner's brief also erroneously claims that there is a conflict among the Circuit Courts regarding how to analyze gender discrimination claims under Title VII. Initially, Petitioner argues that the Sixth Circuit decision in *Doe v. Oberlin College*, 963 F.3d 580 (6th Cir. 2020), conflicts with the Second Circuit's decision below. Petitioner claims that *Oberlin College* stands for the proposition that an improper investigation into an allegation of sexual misconduct, on its own, can support

an inference of gender discrimination. (Petitioner's Brief, p. 26).

Petitioner's claim is simply wrong. The court in *Oberlin College* considered whether a student who had been expelled based upon an allegation of sexual misconduct had stated a gender discrimination claim under Title IX of the Higher Education Act of 1965 ("Title IX") sufficient to withstand a Rule 11 motion to dismiss. *Oberlin College*, 963 F.3d at 586. After considering the facts tending to show that the plaintiff was treated differently based upon his gender, including that Oberlin College was under significant pressure to respond more forcefully to allegations of sexual misconduct against males, the fact that Oberlin College had implemented investigatory policies that disfavored males, and the fact that Oberlin's investigation was significantly flawed, the Sixth Circuit found that the plaintiff had presented enough evidence to state a claim under Title IX sufficient to withstand a motion to dismiss. *Id.* at 586-88. Accordingly, in *Oberlin College*, there was certainly evidence *in addition to* the flawed investigation that would indicate gender bias played a role in the decision-making process. *See id.*

The *Oberlin College* decision is entirely consistent with the Second Circuit's decision in *Menaker* and the factors identified in *Menaker* for establishing an inference of discrimination in the higher education context. In fact, the *Oberlin College* decision cites the Second Circuit's decision in *Menaker* as support for its conclusion. *Id.* at 580. The *Oberlin College* decision is also consistent with the Second Circuit's decision below, which also follows *Menaker*. *Ali-Hasan*, 2023 WL 7320860, at *2. Accordingly, Petitioner has failed to identify a split among the Circuits based on *Oberlin College*.

Within his argument related to *Oberlin College*, Petitioner argues that he was treated differently than "similarly situated cardiologists." (Petitioner's Brief, p. 27). This is a consistent refrain within the Petition. However, Petitioner fails to point out that the cardiologists to whom he is referring are also male, so it is unclear how he was treated differently than these cardiologists based upon his gender. Petitioner also fails to acknowledge that he argued he was "similarly situated" to these male cardiologists before the courts below, and that his argument was rejected because he failed to demonstrate that they were similarly situated in all material respects. (PA-26 ("while Plaintiff claims that other cardiologists had behavioral issues but were not terminated, there is no evidence that these doctors were similarly situated, *i.e.*, that Respondents also had concerns about their clinical skills or board certifications.")).

Next, Petitioner also erroneously claims that there is a split amongst the Circuit Courts related to how evidence should be analyzed in cases involving Title VII gender discrimination claims. Again, Petitioner misstates law. The cases Petitioner cites, including *Tynes v. Fla. Dep't of Juvenile Justice*, refer to a "mosaic of circumstantial evidence" that would allow a jury to infer intentional discrimination by an employer. 88 F.4th 939, 946 (11th Cir. 2023). However, this "mosaic" approach is consistent with the approach utilized by the Second Circuit in this case. Indeed, as stated in the Second Circuit decision, the lower court considered whether Petitioner had presented "*any*" evidence that "could reasonably be interpreted as indicating that discrimination drove the decision," and held the Petitioner failed to point to any such evidence. *Ali-Hasan*, 2023 WL 7320860, at *2 (emphasis in original) (citations omitted). As such, whether considered utilizing

the "mosaic" approach or any other approach, Petitioner's claim fails.

Moreover, the "mosaic" approach is, in practical application, no different than the approach utilized by the Second Circuit. Although different terminology is used, both approaches seek the same thing – evidence that gender discrimination played a role in the adverse employment decision. Petitioner does not have any such evidence, and his claim was properly dismissed.

Finally, Petitioner seems to argue that the Second Circuit improperly interpreted its own precedent in *Menaker*. As discussed in detail above, this is not the case. However, this argument certainly does not establish a split among the Circuits and does not warrant granting *certiorari*.

CONCLUSION

Based upon the foregoing, the Petition for a Writ of *Certiorari* should be denied.

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Respectfully submitted,

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