No.

In the Supreme Court of the United States

MANUEL ADAMS, JR., PETITIONER,

v.

CITY OF HARAHAN

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

For centuries this Court has recognized that the Constitution's liberty protection includes "the right . . . to follow a chosen profession free from unreasonable governmental interference." *Greene v. McElroy*, 360 U.S. 474, 492 (1959) (collecting cases). In *Greene*, the Court held that the revocation of an aeronautical engineer's security clearance, severely limiting his opportunities in the field of aeronautical engineering, impinged on his occupational liberty interest. *See id.* at 507-08.

The Circuits are intractably divided over the standard a person must meet to show that her right to pursue her chosen occupation has been infringed. The Court has not revisited the standard since *Greene*. Numerous Circuits have weighed in. Some require only a modest showing; some require more. But no Circuit has ever required a showing as stringent as the standard the Fifth Circuit announced below. The Fifth Circuit, after first issuing (then withdrawing) an opinion holding that there is no such thing as an occupational liberty interest protected by the Constitution, issued a substitute opinion holding that "a plaintiff's liberty interest in pursuing a specific profession is violated only if he has been completely prevented from working in that field." App. 14a. The panel held that to meet that standard, petitioner was required to show that the government "effected the prohibition—temporary, permanent, or otherwise—of his career as a police officer"; anything less, even action making his continued advancement "nearly impossible," was not enough. App. 15a.

The question presented is:

Whether a plaintiff must plead that the government "effected [a] prohibition" of his ability to pursue his career to state a claim for a violation of his occupational liberty interest under the Fourteenth Amendment, or whether a less significant showing is sufficient to state a claim.

RELATED PROCEEDINGS

United States District Court (E.D. La.):

Adams v. Walker, No. 2:20-cv-02794 (E.D. La. Dec. 09, 2021) (order granting in part and denying in part motion to dismiss, denying motion to dismiss occupational liberty claim against the City of Harahan)

Adams v. Walker, No. 2:20-cv-02794 (E.D. La. Feb. 15, 2022) (order certifying interlocutory appeal of denial of motion to dismiss occupational liberty claim against the City of Harahan)

United States Court of Appeals (5th Cir.):

Adams v. City of Harahan, No. 22-90008 (5th Cir. Apr. 19, 2022) (order granting permission to take interlocutory appeal of denial of motion to dismiss occupational liberty claim against the City of Harahan).

Adams v. City of Harahan, No. 22-30218 (5th Cir. April 14, 2023) (opinion reversing district court's denial of motion to dismiss occupational liberty claim against the City of Harahan).

Adams v. City of Harahan, No. 22-30218 (5th Cir. June 02, 2023) (withdrawing April 14, 2023 opinion).

Adams v. City of Harahan, No. 22-30218 (5th Cir. Feb. 16, 2024) (opinion reversing district court's denial of motion to dismiss occupational liberty claim against the City of Harahan).

Adams v. City of Harahan, No. 22-30218 (5th Cir. March 29, 2024) (denying petition for rehearing en banc).

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OPINIONS BELOW

The amended opinion of the Fifth Circuit (App. 1a-17a) is published at 95 F.4th 908. The withdrawn opinion of the Fifth Circuit (App. 44a-54a) is published at 65 F.4th 267. The order of the Court of Appeals denying rehearing of the amended opinion (App. 39a-40a) is unreported. The decision of the District Court for the Eastern District of Louisiana denying the defendants' motion to dismiss (App. 26a-38a) is unpublished but available at 2021 WL 5833965. The decision of the District Court for the Eastern District of Louisiana granting a § 1292(b) certificate to defendants (App. 19a-25a) is unpublished but available at 2022 WL 457821. The order of the Fifth Circuit granting permission to appeal (App. 18a) is unpublished.

JURISDICTION

The judgment of the court of appeals was entered on February 16, 2024. The court of appeals denied a timely petition for rehearing en banc on March 29, 2024. Justice Alito extended the time to file the petition for certiorari to July 29, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant constitutional and statutory provisions are reproduced in the petition appendix, at App. 41a-43a.

STATEMENT OF THE CASE

This case is an ideal vehicle to resolve longstanding uncertainty and an intractable circuit conflict over the appropriate standard to determine whether government action has impinged on an individual's occupational liberty interest.

In this case, petitioner alleges that his eighteen-year career in law enforcement with the Harahan Police Department ("HPD") abruptly ended when the HPD Chief of Police made false and defamatory charges designed to cause petitioner's inclusion on the local prosecutor's *Giglio* list. App. 102a-106a. For all practical purposes, petitioner's inclusion on that list ended his career in both the HPD and in law enforcement writ large.[1] App. 102a-106a. But incredibly, the Fifth Circuit *twice* held that these allegations are insufficient to state a claim for a violation of petitioner's protected occupational liberty interest.

In an initial withdrawn opinion, the Fifth Circuit held that no such liberty interest exists *at all*. App. 50a-54a. In a substitute opinion, it held that petitioner had failed to plead a deprivation of his protected occupational liberty interest because in the Fifth Circuit "a plaintiff's liberty interest in pursuing a specific profession is only violated if he has been *completely prevented* from working in that field." App. 14a (emphasis added). And here, inclusion on a *Giglio* list "never effected the prohibition—temporary,

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[1] Under this Court's decisions in *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972), prosecutors' offices are required to turn over any evidence favorable to the defendant. This includes evidence that the accused can use to impeach police officers whom the prosecution relies on in building its case. Lists of officers whose misconduct must be disclosed to defendants pursuant to *Giglio* are commonly referred to as "*Giglio* lists," "Liars Lists," or "Do Not Call Lists." There is no universal standard governing the conduct that may result in an officer's *Giglio* List placement. *See* Jonathan Abel, Brady*'s Blind Spot: Impeachment Evidence in Police Personnel Files and the Battle Splitting the Prosecution Team*, 67 Stan. L. Rev. 743, 780 (2015) (quoting a police officer as saying "there appears to be no set standard for placing an officer on the list, removing an officer from the list, or … defining [who] makes those decisions").

permanent, or otherwise—of his career as a police officer." App. 15a.

This case warrants the Court's review. The Fifth Circuit's decision stakes out the most extreme position ever adopted by a circuit court of appeals. For decades the courts of appeals have struggled to determine the correct standard for determining whether a plaintiff has pleaded a deprivation of his occupational liberty interest. The conflict is obvious and entrenched.

Four circuits hold that the state infringes on a person's occupational liberty interest whenever it places an unreasonable obstacle in the path of a person's pursuit of her chosen occupation. Only one, the Fifth Circuit, holds that government action must "effect[]" a "prohibition" on the pursuit of one's chosen occupation to constitute a violation.

Further percolation would be pointless: this issue has percolated in the lower courts for over sixty years since this Court's decision in *Greene v. McElroy*, 360 U.S. 474 (1959). The arguments have been exhaustively ventilated. Numerous circuits have weighed in, and there is no prospect that this split will heal itself. Review is especially warranted in this case given the obvious direct conflict between the Fifth Circuit's standard and this Court's decision in *Greene* and the decisions of every other court to have addressed this question since.

The question presented is exceptionally important, both legally and practically. Numerous professions—lawyers, doctors, accountants, engineers, teachers, law enforcement officers—cannot be pursued where the state has so hobbled one's ability to engage in its pursuit that the state has made advancement therein practically impossible. Especially for government employees like law enforcement officers, teachers, and others, numerous government actions, from denying her a credential to making it difficult for her to testify in a criminal trial or

impossible for her to carry a firearm, can effectively terminate her ability to continue in her life's work.

This Court has recognized for centuries that the State cannot unreasonably interfere with the pursuit of one's chosen occupation without employing at least *some* process. *See, e.g.*, *Dent v. State of W.Va.*, 129 U.S. 114, 121 (1889) ("It is undoubtedly the right of every citizen of the United States to follow any lawful calling, business, or profession he may choose."); *Allgeyer v. State of La.*, 165 U.S. 578, 589 (1897) ("The 'liberty' mentioned in [the Fourteenth] amendment … is deemed to embrace the right of the citizen to [be] free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation.").

The Fifth Circuit's rule, that only a flat-out prohibition on working in one's field can impinge on an occupational liberty interest, guts this right for every person living in the Fifth Circuit. This case is the ideal vehicle to resolve this surpassingly important question of constitutional law. The petition should be granted.

1. This Court has long recognized that individuals have a liberty interest in pursuing their chosen occupation. In *Greene v. McElroy*, 360 U.S. 474 (1959), the Court held that "the right to hold specific private employment and to follow a chosen profession free from unreasonable governmental interference comes within the 'liberty' and 'property' concepts of the Fifth Amendment." *Id.* at 492. *Greene* involved the revocation of a security clearance granted to an aeronautical engineer employed by a private manufacturer which produced goods for the armed services. *Id.* at 475. He was discharged from his employment solely as a consequence of the revocation because his access to classified information was required by the nature of his job. *Id.* After his discharge, he was unable to

secure employment as an aeronautical engineer and for all practical purposes that field of endeavor was closed to him as a result of the revocation of his clearance. *Id.* at 475-76. This Court held that the severe limitation on his work opportunities effected by the revocation, on the basis of "a fact determination rendered after a hearing which failed to comport with our traditional ideas of fair procedure," violated due process. *Id.* at 508.

Greene carried forward a line of cases stretching back centuries that have recognized that one of the foundational liberties enshrined by the Constitution is the freedom to pursue one's occupation. *See Truax v. Raich*, 239 U.S. 33, 38 (1915); *see also Greene*, 360 U.S. at 492 (collecting cases). But in the decades since *Greene* this Court has not revisited this question.[2] Instead, following the formalization of the "stigma-plus" standard in *Paul v. Davis*, 424 U.S. 693 (1976), what would traditionally have been occupational liberty claims have often been litigated as stigma-plus claims. Nonetheless, cases alleging claims of both kinds still arise in the lower courts on a regular basis. *See, e.g.*, *Mead v. Indep. Ass'n*, 684 F.3d 226, 232-33 (1st Cir. 2012).

2.a. Petitioner, Manuel J. Adams, Jr. ("Adams"), is a distinguished veteran of the Harahan Police Department ("HPD"). App. 55a. For nearly two decades, Adams had a perfect disciplinary record as a classified employee of the HPD. App. 56a. Ultimately, Adams was promoted to

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[2] In *Conn v. Gabbert*, the Court recognized the proposition that the Fourteenth Amendment protects a "generalized due process right to choose one's field of private employment" and acknowledged "the Fourteenth Amendment's liberty right to choose and follow one's calling" but held that "[n]o case of this Court has held" that "a brief interruption" in one's career "as a result of legal process" had, by itself, impinged a liberty interest guaranteed by the Fourteenth Amendment. 526 U.S. 286, 292 (1999).

"Captain," the highest-ranking civil service employee position in the HPD. *Id.*

Despite Adams' exemplary service, HPD Police Chief Robert Walker ("Walker") and Assistant Chief Keith Moody ("Moody") inexplicably put Adams on a *Giglio* list in October 2019, essentially ending his career in law enforcement. App. 77a. Walker and Moody were motivated to push Adams, among other classified employees, out of the HPD because they wanted to "clean house" and purge officers they did not want from the Department and who had been critical of their leadership. App. 70a. However, an employer cannot deprive a classified employee of a property interest or interfere with an employee's liberty interest without providing procedural due process under the Fourteenth Amendment. App. 102a. The employee is entitled to procedural due process prior to any adverse action. *Id.* Additionally, adverse actions must be made in good faith and with cause. App. 68a. Civil service protections exist to ensure that disciplinary or adverse actions are not taken arbitrarily or without sufficient evidentiary basis. *Id.*

To circumvent these civil service protections, Walker sent "*Giglio* violation" notices to the Jefferson Parish District Attorney's Office ("JPDA"), App. 69a, to have Adams placed on a *Giglio* list for "conduct unbecoming an officer" and allegedly making a "false statement." App. 77a. Walker did this immediately after taking disciplinary action against Adams and before Adams's statutory appeals process commenced. App. 69a. Once an officer is placed on a *Giglio* list with the JPDA, there exists no procedure by which the officer can remove his name, even if the officer ultimately wins his case. App. 70a-73a. As Walker's own attorney wrote in relation to officers being placed on a *Giglio* list, it is "a death knell

to a career in law enforcement." App. 76a. In other words, it is a career killer. App. 78a.[3]

Walker took this drastic action only four days after rendering the underlying discipline and within the fifteen-day appeal period granted to Adams under La. R.S. 33:2561. *Id.*; App. 103a. A few months later, Walker and Moody constructively terminated Adams. App. 91a. Though Adams eventually won his appeal before the Harahan Fire and Police Civil Service Board, App. 78a, he is still on the JPDA's *Giglio* list.

b. Adams filed a complaint against Walker, Moody, and the City of Harahan ("the City") on October 13, 2020. App. 55a. Among other claims in the complaint, Adams sued the defendants under 42 U.S.C. § 1983, alleging that his Fourteenth Amendment procedural due process right was violated. App. 102a. The complaint alleges that the City is responsible for the unlawful actions of its employees and is liable under § 1983 "for all the damages associated with the deprivations including without limitations the loss of future employment." App. 107a. The City later moved to dismiss petitioner's § 1983 claims. App. 26a.

The district court recognized that Adams had a "liberty interest in his occupation as a law enforcement officer," relying on this Court's opinions in *Kerry v. Din*, 576 U.S. 86 (2015) and *Meyer v. Nebraska*, 262 U.S. 390

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[3] *See* Jeffrey Steven McConnell Warren, *The Scarlet Letter: North Carolina,* Giglio*, and the Injury in Search of a Remedy*, 12 Wake Forest L. Rev. Online 24, 27 (2022) ("*Giglio* letters are colloquially referred to as 'death letters' or 'scarlet letters' by prosecutors and law enforcement officers because they are career killers. Being 'Giglioed' is an official finding that an officer is too untrustworthy to testify.") (footnote omitted); Abel, *supra* note 1, at 780 ("Prosecutors, too, have acknowledged the gravity of the *Brady* designation, ominously referring to a *Brady*-list placement as 'the kiss of death.'").

(1923). App. 32a. The court explained that, "[w]hen the disciplinary process is conducted by a biased decision-maker and there is no adequate appeal process, bias on behalf of the decision-maker results in a denial of procedural due process," and Adams had pled facts sufficient for it to infer Walker's bias. App. 33a. Thus, it concluded that Adams' "pre-disciplinary hearing … was conducted by a biased decision maker." *Id.* Consequently, based on the facts alleged by Adams, the "appeal process was inadequate." *Id.* The district court ultimately found that Adams "pled sufficient facts to support a violation of procedural due process claim based on a deprivation of liberty." App. 34a.

The City then moved to certify an interlocutory appeal under 28 U.S.C. § 1292(b). App. 19a. To certify an interlocutory appeal pursuant to 28 U.S.C. § 1292(b), the trial judge must certify that an order presents "a controlling question of law," that a "substantial ground for difference of opinion" exists, and that an immediate appeal may "materially advance the ultimate termination of [the] litigation." App. 22a. The district court found that the City satisfied its burden on each prong, App. 22a-23a, and granted the City's motion. App. 25a. First, the court noted that "whether [Adams] alleged facts sufficient to state a claim for deprivation of liberty without due process of law against the City of Harahan" was an appropriate legal question for an immediate appeal. App. 23a. Second, the trial judge determined that Adams' due process claim presented a "novel" question as it found that there was no Supreme Court or Fifth Circuit precedent on point. App. 24a. Moreover, the court stated that the "*Giglio* dynamic of this case" in relation to "reporting obligations" broaches an area with "difference[s] of opinion." *Id.* Third, the court explained that a potential "reversal and dismissal of [Adams'] due process claim against the City

of Harahan would simplify the issues," and thus, the third prong was satisfied. App. 24a-25a.

c. The Fifth Circuit granted the City permission to appeal and reversed the district court's order denying the City's motion to dismiss.

In its original opinion, the Fifth Circuit held that Adams did not have a liberty interest in his "future employment as a law enforcement officer." App. 50a. The court first reasoned that Supreme Court precedent does not recognize such an interest. App. 51a-53a. Specifically, the panel explained that neither *Kerry* nor *Meyer* provide support for the proposition that a person has an occupational liberty interest. *Id.* The Fifth Circuit held that these cases "hardly establish" Adams' liberty interest. App. 53a (quoting *Kerry*, 576 U.S. at 94). Consequently, the Fifth Circuit found that the district court erroneously relied on these cases. *Id.* The Fifth Circuit further explained that it had "never held that an individual has a liberty interest in his right to engage in a specific field of employment that is protected by procedural due process." *Id.* The court thus reversed the district court's judgment and dismissed Adams' claim on its view that he failed to plead a due process violation. App. 54a.

The Fifth Circuit later withdrew that opinion.

Several months later, the Fifth Circuit issued a substitute opinion. App. 1a. That opinion again reversed the district court's order denying the City's motion to dismiss, but this time on different grounds.

In its new opinion, the Fifth Circuit partially reversed course and held that a liberty interest in pursuing a career in law enforcement existed. App. 13a. The panel determined that Adams' liberty interest is "deep-rooted in the Fifth Circuit's jurisprudence." *Id.*

But the Fifth Circuit held that petitioner nonetheless failed to plead that the City violated his liberty interest. App. 13a. After surveying the Fifth Circuit's precedents, the court stated that, in the Fifth Circuit "a plaintiff's liberty interest in pursuing a specific profession is only violated if he has been *completely prevented* from working in that field." App. 14a (emphasis added). Government action that makes the pursuit of a particular career "more difficult or even 'nearly impossible'" does not constitute deprivation of a liberty interest. App. 13a (quoting *Ghedi v. Mayorkas*, 16 F.4th 456, 467 (5th Cir. 2021)).

According to the Court, the City "never effected the prohibition … of [petitioner's] career as a police officer." App. 15a. Thus, the Fifth Circuit held that Adams failed to plead a deprivation of his liberty by failing to state that the City "foreclosed" his law enforcement career. App. 16a.

The Fifth Circuit denied a timely petition for a rehearing en banc. App. 39a-40a.

REASONS FOR GRANTING THE PETITION

I. THERE IS A CLEAR AND INTRACTABLE CONFLICT OVER THE STANDARD FOR ASSESSING OCCUPATIONAL LIBERTY CLAIMS

The decision below marks an unprecedented break with this Court's precedents and with the decisions of every other court to resolve occupational liberty claims since this Court's seminal decision in *Greene*. The court below took the unprecedented step of holding that the state does not impinge on a person's occupational liberty interest unless the state effects a prohibition on the pursuit of her chosen occupation. In so holding, the Fifth Circuit opens a split among the federal courts of appeals over the degree to which the state may interfere with an individual's professional trajectory before it works a deprivation of liberty.

A. The Fifth Circuit held below that "a plaintiff's liberty interest in pursuing a specific profession is only violated if he has been completely prevented from working in that field." App. 14a. The complaint alleged that Chief Walker "had already irreparably damaged and destroyed [petitioner's] career in law enforcement" by placing petitioner on the *Giglio* list prior to his civil service appeal. App. 103a. Petitioner alleged that by placing petitioner on the *Giglio* list without prior process, "[Chief Walker] effectively ended [petitioner's] career in law enforcement." App. 105a. The complaint additionally alleged that "[t]he *Giglio* impairment—especially for someone of [petitioner's] rank—is a career killer and as such [petitioner] has suffered damages in not being able to obtain employment in law enforcement due to [Chief Walker's] unconstitutional action." App. 78a.

Notwithstanding those allegations, the panel held that the complaint failed to state a claim for an impingement of an occupational liberty interest. The panel reasoned that to state a claim, a plaintiff must show that the government "effected the prohibition—temporary, permanent, or otherwise—of his career as a police officer." App. 15a. The panel found that "the City … may have made Adams's career 'nearly impossible to' advance in, but it never effected the prohibition—temporary, permanent, or otherwise—of his career as a police officer," and thus the petitioner failed to state a claim. *Id.*

B. That decision directly conflicts with settled law in the First, Third, Ninth, and D.C. Circuits. In all of those circuits, the standard for establishing an impingement of an occupational liberty interest is merely whether there has been some kind of interference with one's ability to pursue her occupation, typically phrased as "unreasonable interference" in accordance with this Court's decision in *Greene*. Those circuits do not require

the government to impose a formal legal prohibition for a plaintiff to state a claim.

1. The decision below directly conflicts with settled law in the D.C. Circuit. The D.C. Circuit has long recognized that if state action "has the *broad* effect of largely precluding [an individual] from pursuing her chosen career," that is "adequate to implicate a liberty interest." *Kartseva v. Dep't of State*, 37 F.3d 1524, 1528 (D.C. Cir. 1994).

In *Kartseva*, the plaintiff worked as a Russian translator for a private employer under contract by the State Department. She was fired after the State Department denied her a necessary security clearance on the basis of "several significant counterintelligence concerns" that arose during her background check. *Id.* at 1527. The State Department "declined to provide [the plaintiff] with an explanation of these concerns or opportunity to respond to the underlying charges." *Id.* at 1525.

The plaintiff sued the State Department alleging, among other things, that the Department's denial of the necessary security clearance "broadly preclude[ed] her from continuing in her chosen career of a Russian translator" in violation of the Fifth Amendment's due process guarantees. *Id.* at 1527. While the record before the D.C. Circuit was "cloudy," *id.* at 1528, the matter was remanded to the district court with explicit instructions that it should "consider whether State's disqualification interferes with [the plaintiff's] constitutionally protected right to follow a chosen trade or profession." *Id.* at 1529 (internal quotation omitted). While it would be insufficient for the plaintiff to show she had "merely lost one position in her profession," if she could "show that State's action precludes her from pursuing her profession as a Russian language translator, she will have identified a cognizable liberty interest." *Id.*

The D.C. Circuit has since reaffirmed that "[t]he Constitution protects an individual's right to follow a chosen trade or profession without governmental interference." *O'Donnell v. Barry*, 148 F.3d 1126, 1141 (D.C. Cir. 1998) (cleaned up). Thus, "Government action that has the effect of seriously affecting, if not destroying a plaintiff's ability to pursue his chosen profession . . . or substantially reduc[ing] the value of his human capital . . . thus infringes a liberty interest." *Id.* (cleaned up).

2. The First Circuit has held that "[t]he right to hold private employment and to pursue one's chosen profession free from unreasonable government interference is encapsulated in the liberty concept of the Due Process Clause." *Mead v. Indep. Ass'n*, 684 F.3d 226, 232 (1st Cir. 2012). "Courts have typically held that this right is implicated only by government interference that is direct and unambiguous, as when a city official demands that a restaurant fire its bartender … or a state agency explicitly threatens to prosecute a private company's clients if they continue to contract with the company." *Id.* (citing *Helvey v. City of Maplewood*, 154 F.3d 841, 843-44 (8th Cir. 1998) and *Stidham v. Tex. Comm'n on Private Sec.*, 418 F.3d 486, 491-92 (5th Cir. 2005)).

In *Mead*, the plaintiff was fired from her job as an administrator of several assisted living facilities after a state public health agency directed her employer to replace her in the administrator position. Mead alleged that the agency's directive constituted an unreasonable government interference with her private employment. However, the First Circuit held that Mead failed to plead such an interference, as the agency directive did not "prohibit[] or even discourage [the employer] from continuing to employ Mead," only that she be removed from the administrator position. *Id.* at 232.

3. The Ninth Circuit has held that "the right to pursue an occupation" is a constitutional right for which

due process protections must obtain. *Benigni v. City of Hemet*, 879 F.2d 473, 478 (9th Cir. 1988). State interference with that right—even when that interference falls shy of an outright prohibition—implicates due process concerns.

The plaintiff in *Benigni* was a bar owner who alleged that Hemet police "constantly harassed his business and customers by: (1) performing bar checks on a daily basis; (2) following customers leaving the [bar] and occasionally arresting them for drunk driving and other violations; (3) issuing parking tickets to staff and customers; (4) parking across the street and 'staking out' his customers, employees and family members; (5) stopping cars for traffic violations in the vicinity of the Silver Fox after 'herding' or 'red lighting' them into that area; and (6) investigating an alleged bomb threat on December 8, 1984, the day after Benigni filed suit." *Id.* at 475. The plaintiff alleged that this harassment, which eventually forced him to sell the bar at a loss, amounted to a deprivation of due process under the Fourteenth Amendment. At trial, the jury found for plaintiff, awarding him over $300,000 in damages.

On appeal, the City of Hemet contended that to state a due process claim, a plaintiff must "assert[] infringement of a constitutional right or of a property right created by state law." *Id.* at 478. Rejecting this argument, the Ninth Circuit held that "the constitutional right infringed in this case is the right to pursue an occupation." *Id.* The police officers' nightly harassment, though not working a *de jure* prohibition of the plaintiff's ability to operate his bar, "was intentionally directed toward [the plaintiff's] bar to force him out of business." *Id.*

4. The Third Circuit has held that a deprivation of liberty claim must involve allegations that the plaintiff was "*effectively banned* from all work in his occupation,"

not just precluded from holding a specific job within that occupation. *Latessa v. New Jersey Racing Comm'n*, 113 F.3d 1313, 1318 (3d Cir. 1997) (emphasis added). In rejecting the plaintiff's liberty claim in *Latessa*, the Third Circuit observed that the plaintiff, who was not reappointed to his position as a horse racing judge at the Meadowlands Race Track, had not shown that "employment at other venues was not reasonably available to him." *Id.* By failing to provide evidence that he was precluded from pursuing work as a racing judge at venues other than Meadowlands, plaintiff "offer[ed] no support for the proposition that he was unreasonably restricted in his ability to pursue his chosen occupation." *Id.*

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The Fifth Circuit's decision is at odds with the decisions of four other circuits, none of which require a showing that the government affirmatively "prohibit[ed]" a person from pursuing her occupation to state an occupational liberty claim.

II. THE QUESTION PRESENTED IS IMPORTANT AND WARRANTS REVIEW IN THIS CASE

The question presented is of exceptional legal and practical importance. The case presents a clear, entrenched conflict over a significant question of constitutional law with substantial real-world stakes. The courts of appeals are divided over how to apply one of the Due Process Clause's most fundamental protections. Only this Court can determine what the Constitution requires in these cases. The issue arises repeatedly nationwide, and the practical stakes are considerable: it determines whether individuals can assert their interest in pursuing their chosen occupations in every field of endeavor in every state and territory in the United States. The issue could hardly be more important.

Nor is there any expectation that this issue will resolve itself. Five courts of appeals, with jurisdiction over tens of millions of people, are divided on both sides. The circuit conflict is too entrenched to expect that all the courts will align without this Court's intervention. The stakes are immense. In jurisdictions that require mere interference, countless cases proceed to discovery and trial that would be dismissed under the Fifth Circuit's standard requiring an affirmative prohibition. The Fifth Circuit's standard nearly eradicates the Due Process Clause's protections for occupational liberty in that circuit. This issue will continue to sow uncertainty and confusion among the courts of appeals until this Court steps in, and this case is the prime opportunity for resolving the question. Certiorari is imperative.

1.a. The sheer number of individuals affected by this issue confirms its importance, and there is no genuine dispute that the issue arises constantly nationwide. The constitutional protections for occupational liberty impact not only law enforcement officers, but also state employees throughout the country.

The impacts on government employees alone are staggering. As of May 2024, the Bureau of Labor Statistics ("BLS") identified approximately 20.3 million employees of state and local governments, constituting about 13% of the nation's workforce. *See* Nat'l Ass'n State Ret. Adm'rs, *Employment* (June 2024), https://bit.ly/3Y8wBZh (data compiled from the BLS). There are also at least 2.2 million federal civil servants with civil service protections and more state officials who have protections as well.[4] Without the backstop of due process protections to safeguard the interest in pursuing

[4] Upholding Civil Service Protections and Merit System Principles, 89 Fed. Reg. 24982-01 (Apr. 9, 2024) (to be codified at 5 C.F.R. pts. 210, 212, 213, 302, 432, 451, and 752).

their occupations, these federal and state employees are vulnerable to pretextual terminations without due process of law orchestrated by government officials to avoid civil service protections. The level of protection for occupational liberty thus extends, at least, to all employees who have civil service protections for their positions, if not *all* employed Americans.

This is an especially important recurrent issue impacting law enforcement officers. In countless jurisdictions, law enforcement officers are afforded protection from termination to permit them to carry out their duties without fear that they might suffer adverse employment consequences for making difficult split-second decisions in carrying out their duties. But those robust protections create equally significant incentives for departments to circumvent those protections by manufacturing reasons for termination (as in this case). Indeed, the abuse of *Giglio* lists to fabricate a basis to terminate police officers is a nationwide issue. Given the almost complete lack of regulation of *Brady*/*Giglio* lists,[5] officers have almost no protections from wrongful termination carried out by bad actors circumventing civil service protections.

This issue continues to arise in cases nationwide. Since 2019, there have been at least 70 reported court of appeals decisions addressing due process violations regarding employment termination, and there are likely more situations that do not reach litigation. Permitting government officials to interfere arbitrarily and maliciously with someone's right to pursue a chosen occupation, so long as an individual is not "completely prevented" from continuing in their occupation, opens the door wide to inexcusable infringements on liberties meriting due process protections.

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[5] Rachel Moran, *Brady Lists*, 107 Minn. L. Rev. 657, 659 (2022).

b. The legal importance of this constitutional question cannot be overstated. The constitutional interests protected by due process trace their origins to the Magna Carta. *See Hurtado v. California*, 110 U.S. 516, 531 (1884). Before the Founding, English courts enforcing the tenets of that charter protected the right to pursue one's occupation against arbitrary government restraint. *See, e.g.*, 1 William Blackstone, Commentaries on the Laws of England 415 ("At common law every man might use what trade he pleased."); *Allen v. Tooley* (1614) 80 Eng. Rep. 1055 (K.B.); *The Case of the Tailors of Ipswich* (1610) 77 Eng. Rep. 1218 (K.B.); *The Case of the Monopolies* (1602) 77 Eng. Rep. 1260 (K.B.); *Davenant v. Hurdis* (1599) 72 Eng. Rep. 769 (K.B.).[6] And "when the Colonies separated from the mother country no privilege was more fully recognized or more completely incorporated into the fundamental law of the country than that every free subject in the British empire was entitled to pursue his happiness by following any of the known established trades and occupations of the country." *Slaughter-House Cases*, 83 U.S. (16 Wall.) 36, 105 (1873) (Field, J., dissenting).

This Court's cases have long recognized that history and enforced it. This Court has held for over a century that "[t]he right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the [Fourteenth] Amendment to secure." *Truax* 239 U.S. at 41; *see also Schware v. Bd. Of Bar Exam. of N.M.*, 353 U.S. 232, 238–39 (1957) (collecting cases); *Meyer*, 262 U.S. at 399 (recognizing the right "to engage in any of the common occupations of life"); *Dent v. State of W.Va.*, 129 U.S. 114, 121 (1889) (Field, J.) (same).

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[6] *Cf.* Magna Carta, ch. 29 (1225); *id.* ch. 20 (1215) (preserving to free men the tools of their livelihood against fines).

The Founding generation would be shocked to learn that perhaps one of the most fundamental liberties enshrined in the Constitution is now little more than an afterthought; that lives and careers can be destroyed without so much as a glimmer of due process.

2. This case is an optimal vehicle for deciding this important question. The dispute turns on a pure question of law. The question presented was squarely raised and resolved below and the court treated it as dispositive. Nor is there any doubt that this issue was outcome-determinative. The Fifth Circuit held that petitioner's pleading was inadequate because it failed to plead that he had been "prohibited" from pursuing his occupation, even though in other circuits a lesser showing (which his complaint amply pleaded) would be enough to state a claim.

Petitioner dedicated decades to learning his trade, becoming a leader in his field, and earning civil service protections. The City of Harahan ripped that away, and made it impossible for him to continue in his chosen occupation, all in an effort to circumvent the civil service protections he was entitled to by law. The Court should intervene to decide this important legal question and protect one of our country's most basic, foundational constitutional rights.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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