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IN THE

SUPREME COURT OF THE UNITED STATES

WASHINGTON, DC.

DOROTA PETERSON - PETITIONER

VS.

"STAPLES Inc. HR ". - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

Title VII of the Civil Rights Act of 1964 makes it unlawful for an employer "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to" the person's "compensation, terms, conditions, or privileges of employment" on the basis of race, color, religion, sex, or national origin and age.

The question presented is:

1.Do Title VII and Section 1981 prohibit discrimination as to all "terms," "conditions," or "privileges" of employment, or are they limited to "significant" discriminatory employer actions only?

LIST OF PARTIES

All parties appear in the caption of case on the cover page: Dorota Peterson - Petitioner, Staples Inc. HR -Respondent, Tenth Circuit U.S. Court.

All Parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is subject of this petition is as follows:

UNITED STATES DISTRICT COURT DISTRICT OF WYOMING.

RELATED CASES

Peterson v Staples Inc. HR No.1: 23-cv-00059, Wyoming District Court.

Peterson v Staples Inc Human Resources No.0:24-cv-08041, Tenth Circuit U. S. Court.

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IN THE SUPREME COURT OF THE UNITED STATED

PETITION FOR A WRIT OF CERTIORARI

Petitioner Dorota Peterson respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit U.S. Court and judgment of District Court of Wyoming.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Tenth Circuit, App. 1a. published.

The opinion of the United States District Court for the District of Wyoming App. 2a.

JURISDICTION

The Tenth Circuit entered judgment on January 17,2025. App.1a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

The District Court of Wyoming entered judgment on May 20,2024 App. 2a.

CONSTITUTIONAL AND STATUTORY PROVISSIONS INVOLVED

Section 703 of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2, provides in relevant part:
(a) Employer practices
It shall be an unlawful employment practice for an employer—
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(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin [.]
42 U.S.C. § 1981 provides in relevant part:
(a) Statement of equal rights
All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

INTRODUCTION

Federal anti-discrimination law forbids employers from discriminating with respect to employees' "compensation, terms, conditions, or privileges of employment." 42 U.S.C. § 2000e-2(a)(1); see also 42 U.S.C. §1981(a)-(b). On its face, this standard "tolerates no national discrimination, age discrimination an employer who suspends an employee because her nationality is liable only if the suspension results in a loss of pay or is "similarly significant."
The decision below implicates a longstanding, deepening circuit conflict over, subtle or
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otherwise." McDonnell Douglas Corp. v. Green, 411 U.S. 792, 801 (1973). But rather than applying the statutory text, the Eleventh Circuit held here that which discriminatory employment practices are actionable under Title VII of the Civil Rights Act of 1964. The Eleventh Circuit and eight other courts of appeals require a Plaintiff to prove an "adverse employment action," a judicially created prerequisite that conflicts with this Court's precedent and unjustifiably limits the scope of federal employment-discrimination law. By contrast, three courts of appeals interpret the statutory language consistent with its plain meaning and Congress's intent to "eliminate" those

discriminatory employment practices that have "fostered stratified job environments to the disadvantage of minority citizens." McDonnell Douglas Corp., 411 U.S. at 800. Clarity in this area of the law is years overdue. Peterson v. Linear Controls, Inc., No. 18-1401, presented this Court with question nearly identical to the question presented here. This Court called for the views of the United States, 140 S. Ct. 387 (2019) (Mem.), and the Solicitor General recommended a grant of certiorari, Br. for United States as Amicus Curiae at 6, Peterson v. Linear Controls, Inc., No. 18- 1401, 2020 WL 1433451 (Mar. 20, 2020). He explained that interpreting Title VII to cover only "'significant and material' employment actions" is "a textual and mistaken." Id. But shortly thereafter, the parties apparently settled, see Jt. Mot. to Defer Consideration

of Pet. for a Writ of Cert., No. 18-1401 (May 28, 2020), preventing the Court from resolving the important question presented, Peterson v. Linear Controls, Inc., 140 S. Ct. 2841 (2020) (Mem.).

The Court should do now what it did not have the opportunity to do in Peterson: grant review, resolve the circuit split, and reject the circuits' many a textual formulation of their adverse-employment-action doctrine. In doing so, it should reverse the Tenth Circuit's application of that doctrine and hold that "[o]once it has been established that an employer has discriminated against an employee with respect to that employee's 'terms, conditions, or privileges of employment' because of a *protected characteristic*, the analysis is complete." Chambers v. District of Columbia, 35 F.4th 870, 874-75 (D.C. Cir. 2022) (a banc).

STATEMENT OF THE CASE

Petitioner Pro Se, Dorota Peterson age 57, I'm duo citizen I'm Polish Citizen born and race in Poland move to a USA in 2003 and married Thomas Peterson for 22 years and I'm US Citizen. We are happy couple love and protecte each other. On October ,2018 I started working for Canadian company "Staples "at store in Jackson, Wyoming address: 520 Broadway, Teton County, 83001.

I was hired in October,2018 by Store Manager Ian Mclever and he hired me as Sales Associate because of many of years of sales experience. I got from Store Manager employee recognized and I got employee of the Month. He had me work on the floor most of the time selling products and helping

customers find products. When Ian moved on and the new Store Manager Chris Sabatka was hired I was put on register "non- stop" for my whole shift. I felt like I was treated less favorably than other Sales Associates in this store. He did not rotate people even new hires on register like previous Manager had. I was told by other employees that after I finished my shift Sales Associates would rotate through the register every 2 hours. After the new Store Manager Chris Sabatka was hired the entire atmosphere of the store changed. He hired new employees and created a "hostile work environment "by pitting employees against me especially due to my nationality. We have another example nationality pattern due my employment few months before my termination one employee was terminated by Chris Sabatka because of speaking Spanish. Store Manager Chris Sabatka let new hire employees harasse me at work: on May16, 2019 Lucinda Thompson another Sales Associate harassed me about my job performance at work "yelling" at me and telling me that" I was not doing good job, and I need grow up and act like adult". I spoke with Store Manager Chris Sabatka about this harassment, and I gave to him my written statement. This should be in my employee file according to Chris Sabatka, but Staples never gave to me my hard copy files located at files Manager in Store. I asked Store Manager why she defamation my character and slander me and talking about me bad to other employees in store. On same day Assistant Manager Amanda Riviera texted me when I was in home and said we don't threaten people with corporate at work. I have a copy of this SMS, and I gave all Exhibits to District Court of Wyoming. The next morning when I was ready to be driving with my husband to work over the Teton Pass, I received more text messages from Amanda telling me that I was suspended from work and that was Store Manager Chris Sabatka's decision to suspend me. I called to HR Staples, and I spoke with Agent, and he told me that Chris Sabatka can't suspend me from work because he did not follow the proper policies company, and I would be paid for my day I was suspended. I feel like he was mad at me because I was calling to HR and telling them about my harassment by Lucinda Thompson in workplace. On May 20, 2019, around 9:00 am Store Manager Chris talked with me in office about harassment by Lucinda Thompson and he told me that he suspends me because I supposedly pushed her. I told him it's defamation of my character and its false accusation and somebody fabricated and harassed me. Store Manager Chris Sabatka asked me "why people don't like you". This made me feel very uncomfortable and intimidated at this moment I told him I felt like Lucinda and Jay don't like me because I'm from Europe. On October ,2019 around 5:00 pm when I was leaving work, I was in employees room Lucinda

Thompson was taking with another employee Ryan Caldwell about how she don't like people from Eastern Europe and she look at me why she come to my land she was talking about another European girl where she was part time working at Motel 6 and Lucinda said:" I made her cry." She was directly looking at me and make me feel very uncomfortable and intimidated. On October,2019 Jay Townbrige came to me and complained about the fact that he not gotten a raise, or he don't have from the company any benefits after working for the Staples for 7 months and 32 h per week. Somehow Jay knew I had benefits from the company he told me that only few positions are full time in this store, and he got mad at me and told me that all people from Eastern Europe come and take the best jobs. He intimidated, harassed me about my benefits and harassed me about my nationality. On December 2019 Chris Sabatka posted on timesheets when and how many PTO days has each employees got it was post on front register for everyone can see.

Store Manager Chris Sabatka created a hostile environment at work example is posting benefits employees. It started with more questions from other employees like Lisa, she told me that she worked 40 hours a week for over a year without health insurance and she don't have PTO time. On January 20, 2020, the new employee Christian Hernandez, Hispanic man who Store Manager Chris Sabatka hired, came to work for second shift at 2:00 pm and immediately started telling me what I had to do and acting like he was my boss. He had only worked with me for 2 months at this point, and I had been there over 2 years. I was in fact training him on the register. On January 23, 2020, Chris Sabatka interrupted me when I was talking with customers at register and tell me go faster because there was line instead of following the company policy and helping at the register.

On February 19, 2020, HR Staples Agent Laurene Tompkins Relation Specialist with Chris Sabatka brought me into office, it was phone interview, Laurene HR asked me "do you wink at other employees?". I was not sure exactly what the point was. I told her I don't remember winking at anyone. She then proceeded to falsely accuse me of cornering Christian Hernandez, Hispanic man at the register and rubbing my breast on him. I told her I'm 52 years old and mature woman who is happily married and would never do anything like this. She told me that since I'm an older mature woman that I should know better because he is only 19 years old. At this point I felt like she was accusing and harassing me without listening to me so I told her that my husband would not be happier with this accusation, and we would be

getting a lawyer. I also told HR during phone call about illegal activity in store that people show me ID with different name on, specific Hispanic. I was treated less favorably than others in store examples is HR never even investigated Lucinda Thompson about my harassment even that I gave written statement about my harassment to Store Manager Chris Sabatka and spoke with HR about it, Store Manager Chris Sabatka would hug Lucinda Thompson even after she harassed me, and I gave him my complaint statement about harassment by Lucinda Thompson . Jose Hernandez was the Manager on duty I would ask him if I could take a 5 min break after working 5 hr strait on register and I needed to use the bathroom he told me that I needed to find someone to cover my position before I could go and use bathroom, when I page him, he said he don't understand my accent. HR Staples never investigated or call ICE and checked on Christian Hernandez - who is this man and why he accused another employee of sexual harassment and harassing me at workplace. I believe that I was truly discriminated based on my nationality. I believe that my ultimate termination from this store was due to the discrimination and harassment I received over past year from new Store Manager Chris Sabatka , HR and new hired employees who harassed and discriminated me based on my nationality and age. Chris Sabatka cultivated this atmosphere with other employees by playing favorites, harassment and accepting their lies about me. The hostile work environment and harassment that was created in this store created a lack of morale, culture, ethics and professionalism at workplace.

I lost my job, my family benefits and most importantly my reputation in the small town where I live.

My life is full of stress and worry about my future about my new jobs. It was very hard time find job for me: I applied to TJ Max across from Staples the-Store Manager Janell told me that she can't hire me because what happened in Staples (Jay Townbrige was part -time employee in TJ Max also and part time in Staples this time).

Jay Townbrige Sales Associate slander and deformation my character around small town of Jackson, Wyoming. I was discriminated, suspended, terminated by Canadian Company Staples and falsely accused of sexual harassment Hispanic man Christian Hernandez. I know why Christian Hernandez falsely accused me of sexual harassment and he been brought my attention by another Hispanic person in our community. He wants to apply for his

Immigration status to be changed if he fills out an I- 918 Immigration form. I was told by this member of our community that he had been thinking about doing this. I'm a victim of this fraudulent act that Christian Hernandez has committed, discriminated, harassed and accused me of rubbing my breast on him. I called and spoke with ICE officer when I got from Staples his I-9 form I gave officer Christian Hernandez date of birth and name, she texts me back that this individual commit fraud in USA and all is documented DHS, Exhibits of those text massages was sent to District Court of Wyoming and Defendant.

Next day of my termination I send email to HR Staples about criminal activity what Christian Hernandez plan was, but they never responded to me and never investigated my concern.

Christian Hernandez used me, my gender to harasse me, used part of my body my breast to try and commit the fraud and lies serval time for 2 months working with me that I was rubbing my breast on him. Jay Townbrige and Lucinda Thompson hate me don't like me because I'm from Eastern Europe and I had full time job with benefits which Ian McIver switched after 3 months from part -time employee status to full -time employee. It was agreed during hire interview, and I was only looking for job with health insurance and full benefits. I spoke with a fellow coworker Maribel Ocasio after the Appeal Case for my Unemployment and she send me a text massage saying "Jay always told me that "he does not like you and working with you and he was looking for the moment to catch you and take a picture ".Townbrige and Christian Hernandez have both fabricated lies about me to fire me and harass me. HR Staple Agent Specialist Laurene Tompkins brought me to office with Store Manager Chris Sabatka on February19, 2020 at 2 pm and I was given 24 hours to self-defend and called on February 20 ,2020 and I was fired for sexual harassment Hispanic man Christian Hernandez. Chris Sabatka Store Manager Staples sends me email and termination form and accused me of sexual harassment of this man. I was never told of any wrongdoing or asked about anything regarding this situation even though it had been reported to Store Manager on January 20, 2020. Store Manager Chris Sabatka allowed me to work with and train Christian Hernandez on the register for over a month even though he was accusing me of sexual harassment how Chris Sabatka explained to Unemployment Hearing on the tape Exhibit sent to District Court in Wyoming, serval time Christian Hernandez complained about harassment to him. Why would Store Manager Chris Sabatka keep me

working and training Christian Hernandez on register considering this situation? It's allowed in the company policy.

Staples employees and Management Staples suspended, discriminated, harassed me based on my national origin to the end of my wrongful, falsely and fabricated termination. Staples HR, Management and employees put me for mental, psychological and emotional distress. The counseling's termination form Staples is defamatory of my character it's slander of deformation of my character. I'm not harasser and I never was. The Canadian company Staples harm my professional reputation in my lively hood in small town, making it more difficult to find new employment like example TJ Max don't want to hire me because "what happen in Staples" and I'm consistently worry about my present job I m a teacher at daycare for District School No. 1 in Jackson, Wyoming.

Staples is also known to lower the cost of operations by systematically removing older with full benefits employees through discriminatory and disciplinary actions. I was maybe one of the few employees who has health insurance and full benefits in store at Jackson. A group of Managers participated in the final decision to terminate me after 2 years successful employee without any warnings. Canadian company Staples made me jobless and was hard for me find new job. Staples employees tarnished my professional reputation in my lively hood. Staples wrongfully terminated me and falsely accused me of sexual harassment Hispanic man who committed fraud in USA regarding ICE officer, who sent me texts massages about this individual. I alleged that defendant's actions constituted wrongful termination, harassment base on national origin discrimination on the basis of Nationality Origin in Violation of the Fair Employment and Housing Act. I was undergoing a series of false accusations and increasing levels of harassment from coworkers and Managers including the fact I was suspended from work not only once but twice. Defendant Staples targeted me before termination he treated me less favorably than others example is it was never investigated my harassment by Lucinda Thompson even, I gave Chris Sabatka my written complaints about my harassment in work. I lost my job and being by Staples branded a harasser, they harm me emotional well-being and had followed a series of discriminatory and harassing events. I'm victim of nationality, age discrimination and wrongful termination by Staples management and coworkers. Jay Townbrige written false and defamatory my character statement. They hate me Jay, Lucinda, Christian because I'm from Europe and

have better job with benefits then Chris Sabatka offered them. I need to clean my family name and overturn my wrongful termination. I was discriminated in store Staples by coworkers and Management. I was harassed and discriminated by fraudulent Hispanic man Christian Hernandez in store at Jackson, Wyoming.

Staples HR and Store Manager Chris Sabatka replaced me by 19 years old Christian Hernandez without any long term experience work history and he was continued work after my termination for about 1 year.

I, Dorota Peterson Pro Se sued Staples alleged, as relevant here, national discrimination, age discrimination, deformation character, gender discrimination and hostile workplace under Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1981. Pet. App. 4a.1

1 I, Dorota Peterson brought claims under both Section 703(a)(1) of the Civil Rights Act of 1964 and 42 U.S.C. § 1981. The courts of appeals apply the same standards of liability to both provisions, see, e.g., Chapter 7 Tr. v. Gate Gourmet, Inc., 683 F.3d 1249, 1256-57 (11th Cir. 2012), so the discussion in this petition of Section 703(a)(1) applies as well to Section 1981.
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The District Court of Wyoming granted summary judgment to the Defendant on nationality origin, age discrimination, harassment claims, fired, denied a promotion, reassigned to significantly different responsibilities, or suffered a significant change in benefits, the court concluded, neither Title VII nor Section 1981 prohibited the discrimination.

The Tenth Circuit affirmed.

REASONS FOR GRANTING THE PETITION

I. The question presented has deeply divided the circuits.
In Section 703(a)(1) of the Civil Rights Act of 1964, Title VII makes it unlawful for an employer to "*discriminate against*" an employee "with respect to" the "terms, conditions, or privileges" of the person's "employment" because of *various characteristics,*
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including nationality 42 U.S.C. § 2000e-2(a)(1). That prohibition consists of everyday words with straightforward definitions. And yet Tenth Circuit have

abandoned its plain meaning, splitting from the three circuits that honor Section 703(a)(1)'s text.

The Fifth and Third Circuits read the statute very narrowly and without any consideration of its text. In these courts, Section 703(a)(1) applies to only what the Fifth Circuit calls "ultimate employment decisions," like firings, refusals to hire, and demotions, but not to all terms, conditions, or privileges of employment. The First, Second, Fourth, Seventh, Eighth, Tenth and Eleventh Circuits view Section 703(a)(1) more expansively, but still fail to take its language at face value. They have recognized that some discriminatory practices aside from ultimate employment decisions can give rise to liability under Title VII. But they apply various a textual gloss of their own, requiring an employee to show not only that she suffered discrimination but that the discrimination was "significant," "serious," or "substantial."

The Sixth and D.C. Circuits, by contrast, apply the statute as written. They recognize that Section 703(a)(1)'s text contemplates neither an ultimate-employment-decision requirement nor a showing of harm beyond the fact of discrimination. These courts thus join the Ninth Circuit in condemning as unlawful more discriminatory employer conduct than the other courts of appeals.

A. Two circuits require an ultimate employment decision. The Fifth and Third Circuits apply Section 703(a)(1) in a particularly restrictive and particularly a textual manner. These circuits

police only employment actions that result in tangible, pocketbook harms. The Fifth Circuit has adopted a "strict interpretation" of Title VII. Pegram v. Honeywell, Inc., 361 F.3d 272, 282 (5th Cir. 2004). It refuses to recognize a Section 703(a)(1) claim unless the challenged employment action "affect[s] job duties, compensation, or benefits." Id. (citation omitted). That restrictive reading leaves a Louisiana employer free to demand that black employees work outdoors in the summer without access to water while white employees remain in an air-conditioned building and receive water breaks. Peterson v. Linear Controls, Inc., 757 F. App'x 370, 372-73 (5th Cir. 2019), petition for cert. dismissed, 140 S. Ct. 2841 (2020) (Mem.). It authorizes an employer in Texas to administer drug tests to Black job applicants and not white applicants. Johnson v. Manpower Pro. Servs., Inc., 442 F. App'x 977, 983 (5th Cir. 2011). It insulates an employer's decision to grant white employees work-from-home privileges while denying Black employees the same benefit. Stone v. La. Dep't of Revenue, 590 F. App'x 332, 339-40 (5th Cir. 2014).

And it would permit an employer to give white employees weekends off while scheduling Black employees to work weekends. See Hamilton v. Dallas County, 42 F.4th 550, 552-53, 555- 56 (5th Cir. 2022), petition for reh'g en banc filed (Aug. 16, 2022).2

2 In Hamilton, female detention officers alleged that their employer had subjected them to an expressly sex-based scheduling policy, which permitted male officers to take weekend days off but required female officers to invariably work weekends.

The Third Circuit adheres to a similarly a textual and restrictive rule. Like the Fifth Circuit, it has held that an employment practice is actionable only when it includes "a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits." Stewart v. Union Cnty. Bd. of Educ., 655 F. App'x 151, 155 (3d Cir. 2016) (citation omitted). That preset list excludes a school district's decision to post a security guard outdoors in the winter. Id. It excludes a hospital's decision to regularly assign a nurse to a unit where she must "do the work of five people." Betts v. Summit Oaks Hosp., 687 F. App'x 206, 207-08 (3d Cir. 2017). And it excludes an organization's decision to assign an employee to a "noisy, moldy office without windows" and "confiscate [] a space heater from his office." Ugorji v. N.J. Env't Infrastructure Tr., 529 F. App'x 145, 151 n.4 (3d Cir. 2013). Accordingly, in the Third Circuit, employers can make all these decisions on the basis of race, or any other protected characteristic, without running afoul of Title VII.

B. Seven circuits require a heightened showing of harm. The First, Second, Fourth, Seventh, Eighth,

42 F.4th at 552. The Fifth Circuit explained that "[t]he conduct complained of ... fits squarely within the ambit of Title VII's proscribed conduct." Id. at 555. The panel felt constrained to affirm the district court's grant of the employer's motion to dismiss under the circuit's "ultimate employment decision" precedent but noted that the case was a strong candidate for an banc review. Id. at 555, 557. Even if an banc Fifth Circuit were to apply the text as written, see infra at 17-19 (discussing views of Sixth and D.C. Circuits), that would only slightly reconfigure, not eliminate, the circuit split.

Tenth, and Eleventh Circuits have recognized (or at least stated) that Title VII extends beyond "ultimate employment decisions," but still fail to read the statute according to its text. In this intermediate category, a court will dismiss

a claim that an employer has discriminated against an employee with respect to terms, conditions, or privileges of employment unless the employee can show that the discrimination was, in the court's view, serious enough. This causes confusion over what degree of discrimination qualifies. And it regularly leads courts to dismiss claims unless the Plaintiff can allege a pocketbook injury—a requirement that lacks an anchor in Section 703(a)(1)'s words.

First Circuit. The First Circuit "typically" requires an ultimate employment decision before it will find that an employment practice is serious enough to be actionable under Title VII. Cham v. Station Operators, Inc., 685 F.3d 87, 94 (1st Cir. 2012) (citation omitted). Accordingly, it has held that refusing to assign an employee to holiday shifts because of his race "simply does not rise to the level of an adverse employment action." Id. at 94-95. The court has applied similar reasoning to an employee's job duties. In Morales-Vallellanes v. Potter, 605 F.3d 27 (1st Cir. 2010), the court noted that, under circuit precedent, a "permanent, lateral reassignment" to work in the same role for a new boss did not qualify as an adverse employment action if the job description and salary remained the same, even if the transfer required the employee to "do more work," be "subject to extreme supervision," and "undergo a period of probation." Id. at 38 (quoting Marrero v. Goya of P.R., 304 F.3d 7, 23 (1st Cir. 2002)). And it held that

imposing "inconvenience[s]" on an employee, like assigning him to less-desirable tasks because of his sex, is not "materially adverse" to him and thus does not violate Title VII in the First Circuit. Id. at 35, 37- 39.

Second Circuit. The Second Circuit recognizes that discriminatory employment practices that are not ultimate employment decisions can support a Title VII claim. See, e.g., de la Cruz v. N.Y.C. Hum. Res. Admin. Dep't of Soc. Servs., 82 F.3d 16, 21 (2d Cir. 1996); Vega v. Hempstead Union Free Sch. Dist., 801 F.3d 72, 88 (2d Cir. 2015). But the court still requires a Plaintiff to show, under the facts of the case, that the "challenged employment action is sufficiently significant." Davis v. N.Y.C. Dep't of Educ., 804 F.3d 231, 235 (2d Cir. 2015). It has thus dismissed a complaint alleging that a school district assigned a teacher to an "excessively noisy media center" and barred him from accessing tools to do his job because of his race. Vega, 801 F.3d at 89. And it has similarly found an employee who alleged she was involuntarily transferred from her preferred division based on her race could not pursue a Title VII claim because the transfer did not "result [] in a setback to her career." De Jesus-Hall v. N.Y. Unified Ct. Sys., 856 F. App'x 328, 330 (2d Cir. 2021).

Fourth Circuit. The Fourth Circuit occupies the same middle lane. It too rejects an ultimate- employment-decision approach to Section 703(a)(1). James v. Booz-Allen & Hamilton, Inc., 368 F.3d 371, 375-76 (4th Cir. 2004). But it requires more than Title VII's text allows, demanding a showing that an employer's practices "had some significant detrimental effect" on the employee. Cole v. Wake
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Cnty. Bd. of Educ., 834 F. App'x 820, 821 (4th Cir. 2021) (citation omitted). Applying that heightened standard, the Fourth Circuit has held that forced reassignment to a more stressful position does not give rise to a Title VII claim, at least without "evidence that [the] new position is significantly more stressful than the last." Boone v. Goldin, 178 F.3d 253, 256 (4th Cir. 1999) (emphasis added). And it rejected a school principal's claim that she was transferred out of her principal's role to a position with less supervisory responsibility because it concluded this change had no "significant detrimental effect." Cole, 834 F. App'x at 821 (citation omitted). Outside the reassignment context, the same pattern holds. The Fourth Circuit has overlooked allegations of discriminatory scheduling changes and placement on a performance improvement plan, Melendez v. Bd. of Educ. for Montgomery Cnty., 711 F. App'x 685, 688 (4th Cir. 2017), race-based disciplinary reprimands, Prince-Garrison v. Md. Dep't of Health & Mental Hygiene, 317 F. App'x 351, 353 (4th Cir. 2009), and discriminatory refusals to nominate an employee for an award, Cottman v. Rubin, 35 F. App'x 53, 55 (4th Cir. 2002), to name a few, all because the court has concluded that Title VII countenances discrimination so long as it is not, in the court's view, too detrimental.
Seventh Circuit. The Seventh Circuit professes to understand the problem running through the decisions discussed above—that interpreting Section 703(a)(1) "so narrowly" gives employers "license to discriminate." Lewis v. City of Chicago, 496 F.3d 645, 654 (7th Cir. 2007) (citation omitted). Some of its decisions endeavor to close this "loophole for discriminatory actions by employers." Id.; see
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Herrnreiter v. Chi. Hous. Auth., 315 F.3d 742, 744 (7th Cir. 2002) (interpreting Section 703(a)(1) to encompass employer conduct that subjects an employee to "humiliating, degrading, unsafe," or "unhealthful" conditions, even if the employee's salary and benefits remain constant).
But like many of its sister circuits, the Seventh Circuit has deviated from that commitment. Before the court will recognize a disparate-treatment claim, the

change an employee suffers "needs to be significant." Ellis v. CCA of Tenn. LLC, 650 F.3d 640, 649 (7th Cir. 2011). The court has thus held nonactionable an employer's issuance of discriminatory reprimands under a progressive discipline policy, each of which brought the employee closer to termination. Oest v. Ill. Dep't of Corr., 240 F.3d 605, 613 (7th Cir. 2001), overruled on other grounds by Ortiz v. Werner Enters., 834 F.3d 760 (7th Cir. 2016). It has dismissed a claim against an employer who discriminatorily limited an employee's duties because "she was not terminated, demoted, or disciplined" and her salary, title, and official job description remained unchanged. Traylor v. Brown, 295 F.3d 783, 789 (7th Cir. 2002). And it held that an employer who "told the male night custodians not to help the female custodians" and gave a female custodian "additional responsibilities above what was expected of the male custodians and above that which she should have reasonably ... been given" did not carry out an adverse employment action because these actions were not "materially adverse" to the female employee. Haugerud v. Amery Sch. Dist., 259 F.3d 678, 691-92 (7th Cir. 2001). In other words, if the Seventh Circuit concludes that the impact on the

employee is not material enough, the "loophole for discriminatory actions by employers," Lewis, 496 F.3d at 654, remains open.

Eighth Circuit. So too in the Eighth Circuit. A Section 703(a)(1) claim requires an employee to show a "material employment disadvantage." Muldrow v. City of St. Louis, 30 F.4th 680, 688 (8th Cir. 2022) (citation omitted), petition for cert. filed, No. 22-193 (Aug. 29, 2022). "[T]termination, cuts in pay or benefits, and changes that affect an employee's future career prospects" count as material disadvantages. Jackman v. Fifth Jud. Dist. Dep't of Corr. Servs., 728 F.3d 800, 804 (8th Cir. 2013). But forcing an employee to deplete her sick leave, id. at 805, giving an employee a poor performance evaluation that requires her to complete additional training, Clegg v. Ark. Dep't of Corr., 496 F.3d 922, 927-28 (8th Cir. 2007), and transferring or denying a request to transfer, Muldrow, 30 F.4th at 689-90, do not.

Tenth Circuit. The Tenth Circuit's attempts to define just how "significant" discrimination must be for Section 703(a)(1) to cover it have been inconsistent. The court has held that assigning employees to particular shifts based on sex is not actionable but assigning employees to particular facilities based on sex is actionable. Piercy v. Maketa, 480 F.3d 1192, 1203-05 (10th Cir. 2007). Requiring an employee to report to work at certain times based on her sex did not discriminate with respect to the terms, conditions, or

privileges of her employment, the court explained, because it was a "mere inconvenience." Id. at 1204. But requiring an employee to report to a certain facility based on her sex did discriminate with respect to the terms, conditions, or privileges of her employment

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because the differences in stress and job difficulty and flexibility were "sufficiently substantial." Id. at 1205. This attempt to draw a line between significant and insignificant discriminatory employment practices illustrates just how far the courts have strayed from Section 703(a)(1)'s text. After all, when an employee works is just as much a "term" or "condition" of employment as is where an employee works. See Threat v. City of Cleveland, 6 F.4th 672, 677 (6th Cir. 2021).

Eleventh Circuit. The decision below demonstrates that the Eleventh Circuit has also strayed from Section 703(a)(1)'s text. The panel relied on circuit precedent holding that "adverse employment actions" are those that "affect continued employment or pay" or are "similarly significant standing alone." That court requires an employee to "show a serious and material change," Webb-Edwards v. Orange Cnty. Sheriff's Off., 525 F.3d 1013, 1031 (11th Cir. 2008) (citation omitted), which does not encompass discriminatory conduct like reassigning an associate from working a desk job to being a delivery driver, McCone v. Pitney Bowes, Inc., 582 F. App'x 798, 799- 801 (11th Cir. 2014), increasing an employee's workload, Grimsley v. Marshalls of MA, Inc., 284 F. App'x 604, 606, 609 (11th Cir. 2008), or, as in Peterson case, suspending an employee with pay pending an investigation in a humiliating, public, professionally harmful manner. In short, in the Eleventh Circuit, what the court terms "unfair treatment does not ... support a disparate treatment claim." Grimsley, 284 F. App'x at 609 (citation omitted).

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Thus, the Eleventh Circuit tracks the path taken by the First, Second, Fourth, Seventh, Eighth, and Tenth Circuits. These courts insist that a Section 703(a)(1) claim does not strictly require "evidence of 'direct economic consequences.'" Grimsley, 284 F. App'x at 608 (quoting Davis v. Town of Lake Park, 245 F.3d 1232, 1239 (11th Cir. 2001)). And yet, across the board, an ultimate employment decision remains the primary means by which an employee can show that an employer's discriminatory conduct meets the necessary "threshold level of substantiality." Id. (citation omitted). True, these courts purport to apply less stingy standards than the ultimate-employment-decision test, but they nevertheless authorize countless discriminatory employment practices that Section 703(a)(1)'s text prohibits.

C. Three circuits interpret the statute according to its text. The D.C. Circuit and the Sixth Circuit hew to Section 703(a)(1)'s language. Earlier this year, an banc D.C. Circuit held that after an employee has "established that an employer has discriminated against [her or him] with respect to that employee's 'terms, conditions, or privileges of employment' because of a *protected characteristic*, the analysis is complete." Chambers v. District of Columbia, 35 F.4th 870, 874-45 (D.C. Cir. 2022). The court thus rejected "[a]ny additional requirement" that demands "objectively tangible harm" as "a judicial gloss that lacks any textual support." Id. at 875. The court therefore found that the discriminatory denial of a request to transfer violates Title VII, id. at 872, even when the denial does not affect an employee's "pay, hours, advancement opportunity,

prestige, or other benefits," id. at 889 (Katsas, J., dissenting).

The D.C. Circuit thus joined the Sixth Circuit, which rejects the notion that an adverse employment action requires harm greater than that inherent in the statutory term "discriminate." Threat, 6 F.4th at 678- 79. In Threat, the City of Cleveland admittedly reassigned a captain of the Emergency Medical Service division from his preferred shift to a different timeslot because he is Black. Id. at 675-76. The Sixth Circuit held that the city "discriminated against [the captain] based on race with respect to his terms and privileges of employment" when it "decided when [he] had to work based on his race." Id. at 678. And because Section 703(a)(1) "means what it says," that was enough for the Sixth Circuit. Id. at 680.

The panel in Threat did observe a measure of tension between its own textualist approach and circuit precedent construing Section 703(a)(1) to cover "only a materially adverse employment action." 6 F.4th at 678 (citation omitted).

But Chief Judge Sutton explained that, taking "the words of Title VII as our compass," as courts must, the so-called adverse- employment-action requirement fulfills a pedestrian purpose: ensuring that an employee suffers differential treatment that "involves an Article III injury," rather than, "for example, differential treatment that helps the employee or perhaps even was requested by the employee." Id. at 677-78. Sixth Circuit case law today cannot be read to require a showing of harm that exceeds that minimal threshold. In any event, even if the circuit's decisions admit a degree of confusion, that does not soften the divisions

among the other courts of appeals. It only heightens the need for this Court's intervention.

The Ninth Circuit, while less focused on the statutory text than the Sixth and D.C. Circuits, ends up in a similar place. It describes Section 703(a)(1) as requiring an "adverse employment action," but defines that term "broadly." Fonseca v. Sysco Food Servs. of Ariz., 374 F.3d 840, 847 (9th Cir. 2004). Accordingly, the court has explained that "a wide array of disadvantageous changes in the workplace constitute adverse employment actions." Dimitrovv. Seattle Times Co., No. 98-36156, 2000 WL 1228995, at *2 (9th Cir. 2000) (citation omitted). And its case law reflects that principle, finding that an employer discriminates with respect to the terms, conditions, or privileges of a person's employment by assigning the employee to more-strenuous tasks, giving the employee less varied assignments, banning her from important areas of the workplace, Davis v. Team Elec. Co., 520 F.3d 1080, 1090 (9th Cir. 2008), passing him over for overtime, or issuing him a warning letter that is publicized to all employees, Fonseca, 374 F.3d at 847-48. And, especially salient here, Ninth Circuit precedent "suggests that involuntary leave with pay" qualifies as an adverse employment action. See Campbell v. Dep't of Hum. Servs., 384 F. Supp. 3d 1209, 1222 (D. Haw. 2019) (citing Campbell v. Haw. Dep't of Educ., 892 F.3d 1005, 1014 (9th Cir. 2018)).

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In sum, the regional courts of appeals have all addressed the question presented, and they divide into three camps. The majority of courts have departed markedly from Section 703(a)(1)'s plain meaning. "Title VII's core antidiscrimination provision,"

Burlington N. & Santa Fe Ry. v. White, 548 U.S. 53, 61 (2006), deserves better. This Court should grant review and apply the statute's text.

II. The question presented is important and recurring.

A. The courts of appeals' various a textual adverse-employment-action rules have far-reaching consequences. The discussion above shows that, consistent with circuit precedent, employers may dictate when employees work, where they work, how much they work, and the arduousness of their work, on the basis of race, color, religion, sex, or national origin, without fear of liability under Section 703(a)(1). This disparate treatment does not immediately affect pay, title, or benefits. But it surely qualifies as imposing "terms, conditions, or privileges of employment." See, e.g., Threat v. City of Cleveland, 6 F.4th 672, 677 (6th Cir. 2021); Hamilton v. Dallas County, 42 F.4th 550, 555 (5th Cir. 2022), petition for reh'g en banc filed (Aug. 16, 2022). Nonenforcement of

Section 703(a)(1) in this large category of circumstances thwarts Congress's intent "to strike at the entire spectrum of disparate treatment" in employment. Meritor Sav. Bank v. Vinson, 477 U.S. 57, 64 (1986) (citation omitted). These erroneous circuit precedents do more than prevent employees from recovering damages when they suffer from idiosyncratic discriminatory acts. The case law also effectively blesses prospective discriminatory policies. Under the Fifth Circuit's approach, for instance, an employer may lawfully adopt the following prospective policy: "Pay, titles, and job descriptions are based on merit without regard to

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race, but we require Black employees to work outside in the heat because they are Black while white employees may work inside with air conditioning." See Peterson v. Linear Controls, Inc., 757 F. App'x 370, 373 (5th Cir. 2019), petition for cert. dismissed, 140 S. Ct. 2841 (2020) (Mem.). And we know from the precedential decision below that, in the Eleventh Circuit, a district court would be powerless to enjoin a company policy stating that it suspends Black employees with pay while they are under investigation but allows white employees to continue to work. See Pet. App. 9a-10a.

B. The question presented concerns the breadth of the workplace-discrimination bans in Title VII and Section 1981. But it implicates the interests of employers and employees under other statutes as well. The Americans with Disabilities Act, the Age Discrimination in Employment Act, and the Genetic Information Nondiscrimination Act, like Title VII and Section 1981, prohibit discrimination with respect to "terms," "conditions," or "privileges" of employment. See 42 U.S.C. § 12112(a); 29 U.S.C. § 623(a)(1); 42 U.S.C. § 2000ff-1(a)(1). And these other statutes likewise do not use the phrase "adverse employment action" (nor various circuit-court offshoots, such as "ultimate employment decision" or "significant detrimental effect"). Yet, current doctrine requires a Plaintiff alleging disparate treatment under these statutes to plead and prove one.3

3 See, e.g., EEOC v. LHC Grp., 773 F.3d 688, 695, 700 (5th Cir. 2014) (requiring a Plaintiff alleging ADA discrimination to prove she suffered an adverse employment action); Kessler v.

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C. The United States has acknowledged the significance of the question presented. It has stressed that the scope of Section 703(a)(1) is "undeniably important" and urged the Court to grant review. Br. for United States as

Amicus Curiae at 20, Peterson v. Linear Controls, Inc., No. 18-1401, petition for cert. dismissed, 140 S. Ct. 2841 (2020) (Mem.), 2020 WL 1433451 (Mar. 20, 2020). Taking aim at the Fifth Circuit's rule, the United States explained that the ultimate-employment-decision doctrine has "no foundation" in Title VII's language and conflicts with this Court's precedent. Id. at 6, 13. And in arguing elsewhere against a textual heightened-harm approach taken by seven courts of appeals, the United States described the "significant-detrimental-effect" formulation employed by the Fourth Circuit as "misguided" and "irreconcilable with the statutory text." Br. in Opp'n at 13-15, Forgus v. Shanahan, No. 18-942, 2019 WL 2006239 (May 6, 2019).

The United States is a frequent defendant in employment-discrimination litigation infected by a textual adverse-employment-action gloss, see 42 U.S.C. § 2000e-16, and the Equal Employment Opportunity Commission rules on thousands of employment discrimination charges annually.4 So the United States' contention that the requirements to prove an ultimate employment decision or show harm

4 See EEOC, All Statutes (Charges filed with EEOC) FY 1997-FY 2021, https://www.eeoc.gov/statistics/all-statutes- charges-filed-eeoc-fy-1997-fy-2021.

Westchester Cnty. Dep't of Soc. Servs., 461 F.3d 199, 204 (2d Cir. 2006) (analyzing whether a plaintiff pursuing Title VII and ADEA claims had suffered an "adverse employment action").

beyond being subjected to discrimination are mistaken judicial innovations carries extra weight. For these reasons as well, the question presented is important and ripe for this Court's resolution.

III. This case provides an ideal vehicle for deciding the question presented. This case involves one issue, and one issue alone: whether the courts below properly rejected Dorota Peterson discrimination claims. Staples moved for summary judgment on those claims on the ground that Peterson did not suffer an adverse employment action. The district court agreed, granting summary judgment to the respondents for that reason." Peterson v. Staples (10th Cir. 2025) (No.24-8041). Peterson also stressed that her suspension and termination carried a stigma and "inevitably" led to public "suspicion of misconduct." Id. The Tenth Circuit affirmed the District Court, again

addressing only the (purportedly essential) adverse-employment-action element of his claims.

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Peterson case concerns an alleged discriminatory suspension and discriminatory adverse -employment -action, which directly poses the question whether the circuits' varying "adverse employment action" doctrines run afoul of Section 703(a)(1)'s simple, unadorned text. If considering a broader swath of employer conduct would aid this Court's review, it could grant certiorari here and in Muldrow v. City of Saint Louis, No. 22-193 (filed Aug. 29, 2022). Muldrow concerns a discriminatory transfer of an employee and a later refusal to grant that employee a transfer. Muldrow v. City of Saint Louis, 30 F.4th 680, 688-89 (8th Cir. 2022). Together the cases present an even fuller picture of the workplace "discriminatory practices and devices" that circuit precedent blesses. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 800 (1973).

IV. The Tenth Circuit's decision is wrong.

Title VII makes it unlawful for an employer to "discriminate against" an employee "with respect to" the "terms, conditions, or privileges" of his "employment." 42 U.S.C. § 2000e-2(a)(1); see 42 U.S.C. § 1981(a)-(b). That proscription does not contain the phrase "adverse employment action." Not is it limited to discrimination that rises to a "substantial," "significant," or "serious" level. By reading extraneous terms into a statute where they do not appear, the Tenth Circuit has imposed a judge-made, threshold requirement that keeps meritorious claims out of court at odds with Congress's will.
A. A suspension alters the terms and conditions of a person's employment. In fact, it alters the most fundamental of work requirements: that a person perform her job duties. A suspended employee goes
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from active to idle. Without anything more, benching an employee unequivocally changes the terms and conditions that govern the employer-employee relationship.
To the extent that common sense does not settle the point, dictionary definitions do. See Threat, 6 F.4th at 677. "Terms" are "propositions, limitations, or provisions stated or offered for the acceptance of another and determining (as in a contract) the nature and scope of the agreement." Terms, Webster's Third New Int'l Dictionary 2358 (1961) (Webster's Third). A

"condition" is "something established or agreed upon as a requisite to the doing or taking effect of something else." Condition, Webster's Third 473. And a "privilege" is the enjoyment of "a peculiar right, immunity, prerogative, or other benefit." Privilege, Webster's Third 1805. Together these words refer to "the entire spectrum of disparate treatment," covering the gamut of workplace requirements, obligations, customs, and benefits that an employer imposes on, or grants to, an employee. L.A. Dep't of Water & Power v. Manhart, 435 U.S. 702, 707 n.13 (1978) (citation omitted).

Peterson suspension and termination easily falls under that mantle. Her suspension and termination rewrote the terms, conditions, and privileges of her employment. When the workday began in October 2018, she was working on floor and selling computer and copy machines with success. Her job required her to perform certain tasks. She had a voice in personnel decisions, strategy of selling products work with customers on floor and after on register only on stop. She was permitted to enter the store and terminated next day by Staples.

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Despite this inescapable logic, many courts of appeals have held otherwise. Decisions from the Tenth Circuit and its fellow travelers are sparse on reasoning, largely drawing their doctrine from a common, flawed, starting point. The most thorough opinion of the bunch noted that "the terms and conditions of employment ordinarily include the possibility that an employee will be subject to an employer's disciplinary policies in appropriate circumstances." Joseph v. Leavitt, 465 F.3d 87, 91 (2d Cir. 2006). In enforcing a policy that comprises a term of employment, the court explained, an employer does not alter the terms of employment. See id. at 92 n.1. That view is untenable. True, both before and after an employee is suspended, one term of her employment is the possibility that she may have to endure a period of suspension. But, as just shown, the fact of the suspension still drastically alters the day- to-day terms, conditions, and privileges of the job.

Further, taken at its word, this slippery logic eviscerates Section 703(a)(1). The statute cannot permit national discrimination whenever some internal policy contemplates the employer's actions. If it did, a company could issue a policy providing that a supervisor may increase an employee's workload for

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any reason. If the supervisor gave employees twice as much work, they would be unable to object that the change altered the terms, conditions, or privileges of their employment. That cannot be right. Congress did not pass

Section 703(a)(1), "Title VII's core antidiscrimination provision," Burlington N. & Santa Fe Ry. v. White, 548 U.S. 53, 61 (2006), for employers to promptly contract it out of existence.

The ultimate-employment-decision test is no better reasoned. The test is an invasive species— developed for a different environment and imported without regard for its knock-on effects. The Fifth Circuit originally took its list of ultimate employment decisions from the catalogue of "tangible employment action[s]" enumerated by this Court in Burlington Industries, Inc. v. Ellerth, 524 U.S. 742, 761 (1998). See Stewart v. Mo. Pac. R.R., 121 F. App'x 558, 561-62 (5th Cir. 2005). Ellerth was also a Title VII case, but it "did not discuss the scope of" Section 703(a)(1). Burlington N., 548 U.S. at 65.

Instead, Ellerth concerned when a supervisor's workplace harassment of an employee can be attributed to the employer in a Title VII hostile-work-environment case. In some circumstances, this Court held, the employer has an affirmative defense to vicarious liability if it exercised reasonable care to prevent and promptly correct the harassment. Ellerth, 524 U.S. at 765. The employer loses the affirmative defense, however, if the harassing supervisor took a "tangible employment action" against the subordinate. Id. at 765. The Court elaborated that a "tangible employment action" is one that causes "a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly

different responsibilities, or a decision causing a significant change in benefits." Id. at 761.

Thus, courts that demand an ultimate employment decision to find liability under Section 703(a)(1) not only stray from the statute's text, but they also invoke an off-topic case (Ellerth) for help in creating this a textual, additional requirement. Far better to let the statutory phrase "terms, conditions, or privileges of employment" be our "compass." See Threat, 6 F.4th at 677.

B. To state what should be clear, a suspension and termination based on national is also discriminatory. To discriminate under Title VII is to make "distinctions or differences in treatment that injure protected individuals." Bostock v. Clayton County, 140 S. Ct. 1731, 1753 (2020) (citation omitted). An employer who suspends different characteristic of employees and does not suspend other employees treats these employees differently and harms the employees in the process. There is "little room for debate" that this qualifies as discrimination. Threat, 6 F.4th at 677.

Section 703(a)(1)'s text establishes no minimum level of actionable harm. "The emphasis of both the language and the legislative history of the statute is on eliminating discrimination in employment." Trans World Airlines, Inc. v. Hardison, 432 U.S. 63, 71 (1977). Section 703(a)(1) does not tolerate racial discrimination as long as it is not too significant or too serious—the statute "tolerates no racial discrimination." McDonnell Douglas Corp. v. Green, 411 U.S. 792, 801 (1973) (emphasis added).

Peterson suspension and termination easily exceeds the minimally unfavorable treatment inherent in the word

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"Discriminate." Her situation was intrinsically undesirable. It is hard to imagine any employee would react positively to the news that she has been suspended pending an investigation. Whether or not the discipline leads to termination, it heightens the risk of termination or some additional discipline (not to mention the employee's stress levels). Barring an employee from work also prevents him from participating in projects, exerting influence, meeting deadlines, and advancing his career. And reputational harms almost invariably accompany a suspension. Indeed, whether it is an officer who is suspended while the police department looks into an officer-involved shooting,5 a football player suspended after the National Football League begins a domestic-violence investigation,6 or a professor suspended while the university opens an inquiry into his "eccentric" teaching methods,7 doing one's job is superior to being sidelined pending an investigation.

5 Nashville Disciplines Police Officer Who Fired Last in Fatal Highway Standoff, The Guardian (Jan. 29, 2022, 07:23 AM) https://www.theguardian.com/us-news/2022/jan/29/nashville- disciplines-police-officer-highway-standoff-landon-eastep-box- cutter.

6 Josh Brown Placed on Commissioner Exempt List, NFL.com (Oct. 21, 2016, 08:20 AM), https://www.nfl.com/news/josh-brown-placed-on-commissioner-exempt-list-0ap3000000725116.

7 Eduardo Medina, Professor Who Called Students 'Vectors of Disease' in Video Is Suspended, N.Y. Times (Jan. 16, 2022) https://www.nytimes.com/2022/01/16/us/barry-mehler- coronavirus.html.

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That Staples paid Peterson does not change matters. The police officer, football player, and professor just described were paid while on leave. Simply put, being suspended, even with pay, imposed discriminatory disparate treatment on Peterson because Staples prevented her from continuing to

serve under circumstances in which it allowed other employees to work. That meets the standard imposed by Section 703(a)(1). That Staples could have harmed Peterson even more does not erase the damage the organization inflicted.

Finally, the panel's observation that a "paid suspension can be a useful tool for an employer," fundamentally misunderstands Title VII's purpose. The statute does not insulate discriminatory discipline simply because employers' benefit from it. A paid suspension can be useful to the employer, but the point remains that the same suspension harms the employee. Employers retain the ability to suspend employees accused of wrongdoing, so long as they do so for nondiscriminatory reasons. What employers cannot do is apply a disciplinary rule to a different characteristic employee while ignoring similar allegations of misconduct against a others employee. A suspension on the basis of nationality alters the terms, conditions, or privileges of employment and therefore violates Section 703(a)(1). In requiring that employees show more, the Tenth Circuit erred.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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