

No. 25-

IN THE
Supreme Court of the United States

LAITH SAUD,

Petitioner,

v.

DEPAUL UNIVERSITY,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

CHRISTINA ABRAHAM
Counsel of Record
ABRAHAM LAW & CONSULTING, LLC
33 North Dearborn
Suite 1000
Chicago, IL 60602
(312) 588-7150
christina.w.abraham@gmail.com

389668



COUNSEL PRESS

(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

1. Whether a discriminatory Title IX investigation—whose findings are relied upon by a decisionmaker to impose concrete employment consequences—can constitute an adverse employment action under 42 U.S.C. § 1981.
2. Whether a court of appeals may affirm summary judgment in a race-discrimination case by crediting an employer’s asserted “honest belief” and resolving disputed facts and witness credibility in the employer’s favor, notwithstanding evidence of contradictory sworn testimony, shifting explanations, and unsubstantiated justifications, in conflict with *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133 (2000), and *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986).
3. Whether an employer’s reliance on new or expanded justifications for an adverse employment action—raised only after litigation begins—may be deemed non-pretextual on the ground that those reasons are merely “additional” to earlier explanations, contrary to *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133 (2000), and decisions of other circuits holding that shifting or post hoc explanations permit an inference of discrimination.
4. Whether a court misapplies the “but-for” causation standard clarified in *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), by treating the employer’s articulation of multiple asserted reasons for an adverse employment action as defeating causation, rather than asking whether race was a determinative cause of the decision.

5. Whether a court may reject comparator evidence and discount biased or procedurally irregular internal investigations at summary judgment by accepting the employer's disputed factual narrative and imposing a near-identity requirement, contrary to *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), and *Staub v. Proctor Hospital*, 562 U.S. 411 (2011).

PARTIES TO THE PROCEEDING

Petitioner.

Petitioner is Laith Saud, the plaintiff-appellant below.

Respondents.

Respondent is DePaul University, who was defendant-appellee in the United States Court of Appeals for the Seventh Circuit.

Related Cases.

Saud v. DePaul University, No. 1:19-cv-3945, U.S. District Court for the Northern District of Illinois. Judgment entered December 6, 2024.

Saud v. DePaul University, No. 25-1034, U.S. Court of Appeals Seventh Circuit. Judgment entered October 8, 2025.

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PETITION FOR WRIT CERTIORARI

Petitioner Laith Saud respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit affirming the judgment below is unpublished. It is reproduced in the Appendix at App. 1a.

The opinion of the United States District Court for the Northern District of Illinois granting summary judgment to respondents is unpublished and is reproduced in the Appendix at App. 18a.

JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on October 8, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 1981(a) provides:

“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 white citizens,

and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.”

42 U.S.C. § 1981(b) further provides:

“For purposes of this section, the term ‘make and enforce contracts’ includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

42 U.S.C. § 1981(c) further provides:

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

Appendix at App. 62a.

STATEMENT OF THE CASE

A. Saud’s Employment, Qualifications, and the Adverse Actions at Issue

For years prior to 2017, petitioner Laith Saud was an instructor at DePaul University. He taught multiple courses across academic terms and remained eligible for reappointment throughout that period. There were no concerns regarding his teaching performance, professionalism, or conduct, and he had no disciplinary history of any kind. D.Ct.Dkt. 248 ¶¶ 4–5.

Saud was an exceptionally popular instructor. His courses were consistently fully enrolled and frequently carried waitlists, a fact acknowledged by department chair Keshk in sworn testimony. *Id.* ¶ 5.

In July 2017, Keshk communicated to Saud that he would not teach in the fall citing only “low projected enrollment” and Saud’s “salary demands.” D.Ct.Dkt. 224-54. DePaul did not claim that Saud was unqualified to teach and did not identify any violation of university policy as a basis for not retaining him. David Lysik, a similarly situated white colleague, asked for more money, but was retained. D.Ct.Dkt. 248 ¶¶ 32, 57.

Saud presented evidence department chair Keshk manufactured that rationale. Keshk removed Saud’s name from his courses and listed them as “STAFF” earlier—in May of 2017—preventing students from enrolling under his name, even as Keshk told Saud that his courses were “on the books.” D.Ct.Dkt. 248 ¶¶ 26–30. By contrast, DePaul did not list Lysik’s courses as ‘STAFF.’ *Id.* Keshk lied to Saud and informed him that both he and Lysik’s courses were being listed in a similar manner; it was untrue, Keshk only did so to Saud.

Nearly two months after Saud was told he was not being retained for “budget” reasons, DePaul imposed another, more severe adverse action. It reopened a previously closed Title IX investigation, reversed its prior finding of no policy violation, and relied on that investigation’s findings to permanently bar Saud from future employment and from participation in DePaul-sponsored academic activities. D.Ct.Dkts. 223-27; 224-57; 248 ¶ 39, 49. Saud alleged that the reopened investigation

itself was conducted in a discriminatory manner and directly supplied the justification for the permanent ban.

During the Spring and Summer of 2017, Keshk himself was under institutional review and was reappointed by DePaul in the same academic year in which he controlled Saud's course assignments and reappointment process. *Id.* ¶ 34. Keshk expressed concern that Saud would "throw [him] under the bus," reflecting apprehension that Saud might raise concerns about departmental practices or decision-making. *Id.* ¶ 41. This statement was made while Keshk exercised direct control over whether Saud's courses were assigned and whether he would continue teaching at DePaul.

Saud also presented evidence that, within his department, Keshk dismissed or ignored specific concerns raised by Saud and other faculty of color regarding racially charged treatment. On one occasion, a peer assumed Saud's "allegiance" to Saudi Arabia—a country from which Saud does not originate—and Keshk dismissed the incident as a joke rather than addressing the stereotyping or its impact. D.Ct.Dkt. 253 Pl. Add. SMF ¶ 34. Saud further presented evidence that Keshk ignored reports that Professor McCloud, an African American faculty member in the department, had received racist death threats. D.Ct.Dkt. 248 ¶ 72. Keshk repeatedly suppressed concerns or complaints by faculty of color. *Id.*

Saud sued under 42 U.S.C. § 1981, alleging that DePaul's employment decision and the discriminatory Title IX investigation that followed constituted adverse employment actions, and that the courts below improperly resolved disputed factual and credibility questions at summary judgment.

B. The Title IX Process, Saud's Denial of Procedural Protections, and the First Investigation

At all relevant times, DePaul policy did not prohibit consensual relationships between faculty and students, including relationships that began during a course. The policy did not treat the existence of such a relationship, standing alone, as misconduct or a violation of University rules. D.Ct.Dkt. 224-16, pp.1-2; 248 ¶¶ 2-3.

The former student never filed a Title IX complaint, never contacted DePaul's Office of Institutional Diversity and Equity (OIDE), and never sought to initiate any disciplinary process against Saud. D.Ct.Dkts. 223-16; 223-27; 248 ¶¶ 14, 16. Instead, the student's attorney sent a lien letter addressed to Saud and copied to DePaul's General Counsel. D.Ct.Dkt. 253, ¶¶ 21, 24. Only after receiving that attorney correspondence did DePaul invoke its Title IX procedures and open an investigation through OIDE. *Id.* ¶¶ 27-28.

The first Title IX investigation was initiated by the University itself, not by a complainant and not in response to conduct prohibited by policy. The former student did not participate in the investigation at any point: she was not interviewed, provided no statement, and offered no testimony. D.Ct.Dkt. 248 ¶ 16.

Saud cooperated fully with the investigation and disclosed the relationship at issue. *Id.* ¶¶ 21. OIDE also interviewed Aly Ryder, not because Ryder complained, but because a third party reported Saud with no basis. *Id.* ¶¶ 18-19. Ryder later submitted an affidavit describing investigator Tamburro's accusatory tone and witnessing they were "trying to build a case" against Saud. *Id.*

At the conclusion of that investigation, OIDE determined that Saud had not violated any DePaul policy. *Id.* ¶ 22; App. 60–61.

In May 2017, Saud told Tamburro he felt he was the victim of misconduct and asked what additional steps were available to him. D.Ct.Dkt. 248 ¶ 45. Tamburro never responded. *Id.* ¶ 58. As a result, Saud was foreclosed from pursuing that procedural protection. Tamburro’s handling of Saud’s request contrasts sharply with her treatment of Joseph Suglia, a white faculty member accused in a separate Title IX investigation. In Suglia’s case, Tamburro—without prompting or a request by Suglia—informed him that he had the right to file a counter-complaint and explained how to do so. *Id.* ¶ 58. Tamburro also provided Suglia with greater notice of the allegations and referred the matter only to his department chair, rather than escalating it to the Dean, as she did with Saud. *Id.* ¶¶ 54, 58.

The court of appeals did not address Tamburro’s failure to respond to Saud’s request or the disparate treatment between Saud and Suglia. The lower court acknowledged that Saud was treated differently but concluded it was not enough, insulating the Title IX investigation from being considered an adverse action. App. 50.

C. The Civil Litigation and Contradictory Sworn Explanations

After DePaul closed the first investigation, the former student filed an unverified civil complaint in Illinois state court. D.Ct.Dkt. 248 ¶ 37.

The Illinois trial court concluded entirely in Saud's favor, dismissing the former student's claims and granting Saud's defamation claim. The trial court awarded damages to Saud, concluding that the allegations made by the former student were unsubstantiated and false. App. 79.

At that trial, which occurred two years after the employment actions at issue, Keshk testified under oath that Saud was not rehired for budgetary reasons and that the former student's allegations and lawsuit played no role in the decision. D.Ct.Dkt. 224-58, 60:17–61:7. He further testified that he was unaware of any other complaints against Saud. *Id.* 62:2–17.

In later depositions taken in this case, Keshk offered a materially different account, testifying that the lawsuit was the "biggest issue" at the time of the decision and that additional reports influenced the decision. D.Ct. Dkt. 253 ¶¶ 51–54. The district court acknowledged these inconsistencies but resolved them in DePaul's favor at summary judgment. App. 47a-50a.

D. The Second Investigation, Reliance on Unverified Allegations, and Permanent Ban

Only after letting Saud go did DePaul reopen the Title IX investigation. D.Ct.Dkt. 248 ¶ 39. The reopening did not follow a new complaint, and the former student again did not participate. *Id.* ¶ 40.

Instead, investigator Tamburro relied on the former student's civil complaint, even though it was not accompanied by the signed verification required under Illinois civil procedure. *Id.* ¶ 49. The second investigation

uncovered no new evidence and rested on the same underlying facts previously deemed non-violative. *Id.* ¶¶ 47–50.

During the investigation, Tamburro solicited the assistance of department chair Kesh to find more on Saud. Keshk fabricated purported “additional reports” in an effort to justify adverse action. *Id.* ¶¶ 41–42. No student approached Keshk to report that Saud violated DePaul policy, no student filed any complaints against Saud, and Keshk could not articulate what Saud purportedly did to violate policy. *Id.* Department chairs were not similarly involved in other Title IX investigations. *Id.* ¶¶ 57–58. After failing to find new complaints against Saud, Tamburro reopened the original Title IX investigation and found Saud had violated the policy based on information provided to her by Keshk. At trial, Keshk testified that he learned of Saud’s alleged violation from Tamburro. D.Ct. Dkt. 224-58, 70:14–18, 100–103. The court of appeals did not address this circular inconsistency.

Tamburro’s second finding also rested on inferences drawn from Saud’s verified Answer in the civil litigation. D.Ct.Dkt. 248 ¶ 49. That Answer was prepared by attorneys appointed by DePaul to represent Saud in the civil case, and those attorneys also advised Saud not to submit to a second interview with Tamburro. *Id.* ¶ 45. Tamburro concluded that Saud’s failure in the Answer to specify the precise date on which the relationship began meant that he had lied to her about that timing. *Id.* ¶ 49.

However, when Saud provided Tamburro with his verified Answer, he expressly invited her to follow up with any questions. Tamburro never did. *Id.* ¶¶ 45–46.

Tamburro's findings also failed to explain how, even assuming *arguendo* that the relationship began during the course and not after, that fact constituted a policy violation when DePaul policy did not prohibit consensual relationships between faculty and students, including relationships that began during a course. *Id.* ¶ 50. Tamburro did not explain how the inferred timing transformed conduct previously deemed permissible into a violation. D.Ct.Dkt. 223-27. Tamburro has also made public statements acknowledging that DePaul's policy does not prohibit relationships between faculty and staff, even during a course. D.Ct.Dkt. 224-17. The district and circuit courts nevertheless accepted the assertion that Tamburro honestly interpreted the policy as to Saud, notwithstanding this contrary evidence. App. 13a-17a, 57a-61a.

Tamburro reported her findings directly to the Dean. D.Ct.Dkt. 223-27; 248 ¶ 53. Tamburro makes the decision at the end of her investigations whether to report her findings to a faculty member's department chair, or to escalate to the Dean. D.Ct.Dkt. 248 ¶ 58. Based on Tamburro's findings alone, DePaul permanently barred Saud from employment and from participation in DePaul-sponsored academic activities. D.Ct.Dkt. 224-57.

E. Comparator Evidence and Differential Treatment

Saud presented evidence that similarly situated white faculty members were treated more favorably.

David Lysik, a white faculty member in the same department reporting to the same chair, was accused of rape via an anonymous social-media post. D.Ct.Dkt.

223-20; 248 ¶ 57. OIDE did not identify or interview the accuser, did not involve the department chair, did not search for additional reports, and accepted Lysik's denials. *Id.* The investigation was closed without findings or discipline, and Lysik continued teaching. App. 70–71.

Both Saud and Lysik sought adjunct reappointment through the same departmental process overseen by Keshk. Lysik sought enhanced pay at a higher level than Saud; his request was forwarded to the Dean, denied, and he was nonetheless offered and accepted the base adjunct rate and continued teaching. D.Ct.Dkt. 248 ¶¶ 32, 57. Saud's request was not forwarded, and he was not offered the base rate, but his salary request was used as a justification for his non-retention. *Id.* ¶¶ 32, 35, 57.

Lysik's courses were assigned to him and were not listed as "STAFF" in the manner DePaul used for Saud's courses. *Id.* ¶¶ 26–30.

Joseph Suglia, another white faculty member, was afforded procedural protections denied to Saud. Tamburro affirmatively informed Suglia of his right to file a counter-complaint and explained how to do so. App. 57a; D.Ct.Dkt. 248 ¶ 58. She did not inform Saud of this right, even when he told Tamburro he was the victim of misconduct. D.Ct. Dkt 224-15, 145:25–146:-25. Tamburro also reported her findings only to Suglia's department chair, rather than escalating the matter to the Dean. D.Ct.Dkts. 223-32; 248 ¶ 58.

Saud also presented testimony from a former Title IX investigator, Cheryl Wayne, describing departures from DePaul's ordinary investigative practice in his case

and differential treatment of minority faculty in the Title IX process by the university. D.Ct. Dkt.248 ¶¶ 13, 25, 76.

The court of appeals did not address these disparities in procedural treatment.

REASONS FOR GRANTING THE PETITION

This petition presents recurring questions about the proper application of § 1981 at summary judgment, including whether discriminatory internal investigations culminating in concrete employment consequences are actionable, and whether the Seventh Circuit's causation, pretext, "honest belief," and comparator rules conflict with this Court's precedent and deepen circuit court splits.

I. The Seventh Circuit Improperly Insulated Biased and Irregular Investigations Contrary to *Staub* and *Muldrow*.

This Court should grant review because the Seventh Circuit's decision conflicts with *Staub v. Proctor Hospital*, 562 U.S. 411 (2011), and *Muldrow v. City of St. Louis*, 144 S. Ct. 967 (2024), by insulating biased and irregular internal investigations from scrutiny and by minimizing the legal significance of the harms those investigations inflicted. The court of appeals treated DePaul's investigative process as a neutral intervening cause and discounted the adverse consequences flowing from it, even though the record would permit a jury to find that the investigations were tainted, outcome-driven, and causally connected to Saud's non-retention and permanent exclusion.

A. This Court’s Precedent Does Not Immunize Discriminatory Investigations From Scrutiny

This Court has repeatedly rejected rigid or formalistic limits on what constitutes an adverse employment action under federal anti-discrimination law. Most recently, in *Muldrow v. City of St. Louis*, the Court emphasized that an employment action is adverse if it materially alters the terms, conditions, or privileges of employment, and it rejected approaches that improperly narrow actionable harm. 144 S. Ct. 967, 974–76 (2024).

Likewise, in *Staub v. Proctor Hospital*, the Court held that biased inputs into an employment decision may give rise to liability where those inputs are relied upon by a decisionmaker, even if the ultimate decisionmaker harbors no discriminatory animus. 562 U.S. 411, 421–22 (2011). Under *Staub*, courts may not treat internal processes as neutral simply because they are labeled “investigations” or because they precede a formal employment decision.

B. The Seventh Circuit Treated the Investigation as Per Se Non-Actionable

In this case, DePaul’s reopened Title IX investigation itself constituted an adverse employment action because it was conducted in a discriminatory manner, resulted in a formal adverse finding, and was relied upon by the Dean to impose a permanent ban on employment and participation in university-sponsored academic activities.

The district court rejected that argument, and the Seventh Circuit did not meaningfully engage it. Instead, the court treated the investigation as categorically non-

actionable and analyzed only the ultimate employment decision in isolation. In doing so, the court effectively insulated the investigative process from scrutiny—even though the investigation was reopened after the non-retention decision, produced no new evidence, reversed a prior finding of no policy violation, and directly supplied the justification for the permanent ban.

That categorical approach conflicts with *Staub* and *Muldrow* by insulating discriminatory processes that directly drive employment consequences.

C. Other Circuits Recognize That Discriminatory Investigations Can Constitute Adverse Employment Actions

The Seventh Circuit’s categorical approach conflicts with decisions of other courts of appeals that take a functional view of adverse employment actions and recognize that formal investigations and findings—when they carry concrete consequences—may themselves be actionable.

The Sixth Circuit’s decision in *Deleon v. Kalamazoo County Road Commission* is directly on point. There, the court held that employer actions that “significantly affect an employee’s job status or future employment prospects” qualify as adverse employment actions even if they take the form of internal processes rather than immediate termination. 739 F.3d 914, 918–19 (6th Cir. 2014). *Deleon* rejected formalistic distinctions between investigations and outcomes, focusing instead on whether the challenged action materially altered the plaintiff’s employment prospects—precisely what occurred here

when DePaul relied on a reopened investigation to impose a permanent ban.

Other circuits apply the same functional analysis. The Second Circuit has held that formal disciplinary investigations and findings may constitute adverse actions where they materially affect employment status or opportunities. *Vega v. Hempstead Union Free Sch. Dist.*, 801 F.3d 72, 85–87 (2d Cir. 2015). The D.C. Circuit likewise recognizes that stigmatizing investigative findings that alter an employee’s standing or future employment prospects are actionable under federal anti-discrimination law. *Rattigan v. Holder*, 689 F.3d 764, 769–71 (D.C. Cir. 2012).

These decisions reflect a consistent principle aligned with this Court’s precedent: when a discriminatory investigation produces a formal adverse finding and is relied upon to impose concrete consequences, the investigation itself is part of the actionable harm. The Seventh Circuit’s refusal to recognize that principle deepens an acknowledged circuit split and warrants this Court’s review.

D. Title IX Investigations Present a Recurring and Particularly Important Context for This Question

The question presented here arises with increasing frequency in cases involving Title IX and similar institutional investigative regimes. Universities and other employers routinely rely on internal investigations to justify employment decisions, including non-renewal, suspension, and permanent exclusion from employment and academic participation.

If courts may categorically treat such investigations as non-actionable—regardless of how they are conducted or how directly they supply the basis for concrete consequences—then discriminatory processes are effectively insulated from judicial review. That result is incompatible with *Staub* and *Muldrow*, which make clear that antidiscrimination law reaches discriminatory mechanisms that alter employment conditions, not merely the final employment decision viewed in isolation.

E. The record would permit a jury to find that DePaul’s investigations were biased, irregular, and outcome-driven.

The first Title IX investigation—initiated by the University rather than a complainant—concluded that Saud had not violated DePaul policy, notwithstanding full disclosure of a consensual relationship. That determination was consistent with the policy text and with investigator Tamburro’s contemporaneous understanding that DePaul policy did not prohibit such relationships, even during an ongoing course.

After DePaul decided not to rehire Saud, it reopened the investigation. The second investigation relied on an unverified civil pleading, drew adverse inferences from “silence” in a verified Answer prepared by DePaul-appointed counsel, and failed to disclose purported “additional reports” to Saud, or provide him an opportunity to respond. The investigation did not explain how the same conduct previously deemed permissible now constituted a policy violation.

The record also reflects disparate escalation. In Saud’s case, Tamburro reported her findings directly to the

Dean, while in a comparable investigation involving Suglia, she reported only to his department chair. Comparator investigations further showed selective rigor: allegations against white faculty were handled with limited scope, minimal escalation, and closure without findings, while Saud faced reopened proceedings, non-retention, and permanent exclusion.

The record also includes testimony from Cheryl Wayne, a former Title IX investigator at DePaul involved in the first iteration of the Title IX process affecting Saud. Wayne testified that OIDE ordinarily did not pursue investigations when an accuser declined to participate, that white faculty were treated more favorably than minority faculty in OIDE investigations, and that investigator Tamburro exhibited racial bias. Wayne received one of the earliest reports concerning Saud shortly after the Campus Watch publication, and described departures from ordinary OIDE practice in his case. A jury could credit this testimony as corroborating Saud's evidence of selective enforcement and biased process.

A reasonable jury could conclude that these features—timing after the employment decision, reliance on unreliable inputs, inference-based reasoning, nondisclosure, and disparate escalation—demonstrate an investigation designed to justify an outcome already reached. Under *Staub*, such an investigation does not sever causation; it confirms it.

II. The Seventh Circuit Misapplied Bostock's "But-For" Causation Standard.

The Seventh Circuit's causation analysis cannot be reconciled with this Court's decision in *Bostock v. Clayton*

County, 590 U.S. 644 (2020). *Bostock* reaffirmed that “because of” language incorporates traditional but-for causation, but it rejected the notion that discrimination must be the sole reason for an adverse action. *Id.* at 656–58. An employment decision can have multiple but-for causes; it is enough that the protected characteristic made a difference in the outcome. *Id.* at 656–57. The Seventh Circuit applied a stricter test, holding that DePaul’s evolving rationales defeated causation as a matter of law, even though a jury could find that Saud’s race made a difference in the outcome.

A. Bostock holds that liability attaches when a protected trait is one but-for cause, even if other factors also contributed.

Bostock addressed whether an employer violates antidiscrimination laws by firing employees for being gay or transgender. The employers argued that they acted for reasons other than sex and that sex therefore was not the cause of the terminations. This Court rejected that framing. It explained that Title VII asks whether, holding all else equal, the outcome would have been different if the employee were of a different sex. 590 U.S. at 656–58.

Crucially, the Court emphasized that but-for causation does not require that sex be the only cause. “Often, events have multiple but-for causes.” *Id.* at 656. So long as the protected characteristic is one of them, the law is violated. *Id.* at 656–57. Employers thus cannot defeat race discrimination claims by pointing to additional reasons for an adverse action if the protected trait still made a difference in the decision. *Id.* at 656–58. The “multiple causes” principle is not a rhetorical flourish; it is a

doctrinal command that prevents courts from converting a race discrimination claim into a sole-cause regime through post hoc rationales and summary-judgment gatekeeping.

B. The record permits a jury to find that Saud’s race was a but-for cause of DePaul’s actions, notwithstanding DePaul’s accumulation of other rationales.

Viewed in the light most favorable to Saud, the record would permit a jury to conclude that his race was one but-for cause of DePaul’s refusal to rehire him and its escalation of disciplinary action, even if other factors were also asserted. See *Bostock v. Clayton Cnty.*, 590 U.S. 644, 656–58 (2020).

Saud presented evidence that DePaul manufactured its stated justifications for non-retention. His courses were consistently full and carried waitlists, yet Keshk removed his name from scheduled courses or listed them as “STAFF,” preventing enrollment, while telling him his courses were “on the books.” Dkt. 248 ¶¶ 7–14; Dkt. 253 ¶¶ 18–20. Keshk was aware that Saud was a popular instructor. Keshk then cited “low projected enrollment” as a reason for non-retention. Dkt. 248 ¶¶ 45–46. A jury could reasonably reject that explanation as pretextual and infer discriminatory causation.

Saud also presented comparator evidence showing that similarly situated white faculty were treated more favorably. David Lysik, who taught in the same department under the same chair, sought enhanced pay at a higher level than Saud; his request was forwarded to the Dean, denied, and followed by an offer of the base adjunct rate,

which he accepted, allowing him to continue teaching. Dkt. 248 ¶¶ 32–34. Saud’s request was not forwarded, he was not offered the base rate, and his courses were removed from the schedule. *Id.* Joseph Suglia, investigated by the same Title IX investigator, was affirmatively advised of his right to file a counter-complaint and afforded procedural protections and limited escalation not provided to Saud. *Id.* 248 ¶¶ 54–55, 58. A jury could reasonably conclude that these disparities reflect race-based differential treatment.

The record further reflects heightened scrutiny following a Campus Watch publication targeting Saud as an Arab-American professor, after which OIDE initiated investigative activity without a complainant and relied on third-party reports. *Id.* 248 ¶¶ 21–31; D.Ct.Dkt. 223-9 ¶¶ 7–12. DePaul’s explanations also evolved over time. It initially cited only enrollment and salary for the non-retention decision. Only later did it invoke the civil litigation, investigatory findings, and alleged “additional reports,” notwithstanding sworn testimony denying that those factors played any role at the time. D.Ct.Dkts. 224-58, 60:17–71:7; 248 ¶¶ 35–41, 45–46; 253 ¶¶ 51–54.

Finally, DePaul reopened a closed Title IX investigation after the non-retention decision and relied on that investigation to impose a permanent ban. The reopened investigation identified no new evidence, relied on an unverified pleading, drew adverse inferences from Saud’s litigation Answer without providing him an opportunity to respond, and failed to explain how the alleged conduct violated policy. D.Ct.Dkt. 248 ¶¶ 33–34, 35–44. A jury could reasonably conclude that the investigation served to legitimize a result already reached. Taken together, this evidence would permit a jury to find that, had Saud been of

a different race, the outcome would have been different—satisfying *Bostock*'s but-for causation standard.

Under *Bostock*, the question is not whether DePaul can recite some non-discriminatory rationale after the fact. The question is whether the adverse outcomes would have been the same if Saud were white. 590 U.S. at 656–58. The comparator evidence, the manufactured enrollment rationale, the heightened scrutiny following Campus Watch, the procedural disparities, and the shifting explanations together would permit a jury to answer that question in Saud's favor.

C. The Seventh Circuit's Approach Conflicts with Other Circuits That Apply *Bostock*'s But-For Standard Consistently with *Reeves*.

The Seventh Circuit's causation analysis places it in direct conflict with other courts of appeals that apply the but-for standard as this Court articulated it in *Bostock* and *Reeves*. Those courts recognize that when an employer's reasons for an adverse action are additive, evolving, or internally inconsistent, a jury may reasonably find that discrimination was one but-for cause—even if other explanations are also asserted. The Seventh Circuit instead treated the accumulation of rationales as defeating causation as a matter of law.

The D.C. Circuit's *en banc* decision in *Aka v. Washington Hospital Center* illustrates the proper approach. There, the employer asserted multiple reasons for not hiring the plaintiff, including qualifications and experience. 156 F.3d 1284, 1290–92 (D.C. Cir. 1998) (*en banc*). The court rejected the notion that the presence of

multiple asserted reasons defeated causation. Instead, it held that once a plaintiff casts doubt on the employer's explanations, a jury may infer that discrimination was a but-for cause of the decision. *Id.* at 1292–95. Critically, the court emphasized that discrimination need not be the sole or dominant reason; it is enough that it made a difference in the outcome. *Id.* That principle mirrors *Bostock's* recognition that events may have multiple but-for causes.

The Ninth Circuit applies the same reasoning. In *Noyes v. Kelly Services*, the employer offered several explanations for terminating the plaintiff, including alleged misconduct and performance issues. 488 F.3d 1163, 1169–71 (9th Cir. 2007). The Ninth Circuit held that evidence undermining those explanations—including shifting accounts and contradictions—permitted a jury to find that discrimination was a but-for cause. *Id.* at 1170–71. The court expressly rejected the idea that an employer can defeat causation by layering additional justifications once litigation begins. *Id.*

The Sixth Circuit's decision in *Seeger v. Cincinnati Bell Telephone Co.* is particularly instructive because it squarely addresses the relationship between but-for causation and employer "honest belief." 681 F.3d 274, 285–87 (6th Cir. 2012). While recognizing that employers may assert multiple reasons for an action, *Seeger* holds that a plaintiff may satisfy but-for causation by showing that those reasons are unworthy of credence or selectively applied. *Id.* at 285–86. The court emphasized that the question is not whether the employer can articulate a non-discriminatory rationale, but whether a jury could find that discrimination tipped the scales. *Id.* That approach aligns with *Bostock* and *Reeves* and stands in contrast

to the Seventh Circuit's rule, which treats additional rationales as severing causation altogether.

Finally, this Court's own decision in *Reeves v. Sanderson Plumbing Products* forecloses the Seventh Circuit's approach. *Reeves* makes clear that when a plaintiff produces evidence that an employer's explanation is false or inconsistent, a jury may infer discriminatory intent without additional proof. 530 U.S. 133, 147–49 (2000). Importantly, *Reeves* does not require plaintiffs to disprove every asserted reason or to show that discrimination was the sole cause. *Id.* at 147. To the contrary, it recognizes that disbelief of the employer's explanation, combined with the prima facie case, may suffice to establish but-for causation. *Id.* at 148–49.

The Seventh Circuit's decision departs from these authorities by treating DePaul's multiple explanations—salary, enrollment, litigation, and investigation—as cumulatively defeating causation. That approach effectively resurrects a sole-cause requirement that *Bostock* rejected and that *Reeves*, *Aka*, *Noyes*, and *Seeger* all forbid. Under the Seventh Circuit's rule, an employer may insulate itself from liability simply by adding new rationales as litigation unfolds, even where a jury could reasonably conclude that discrimination was one but-for cause of the adverse action.

III. The Seventh Circuit Misapplied Supreme Court Precedent on Shifting Explanations.

This Court should grant review because the Seventh Circuit's treatment of DePaul's evolving justifications for its actions conflicts with this Court's decisions in *Reeves*

v. Sanderson Plumbing Products, Inc., 530 U.S. 133 (2000), and related precedent. Under *Reeves*, shifting or inconsistent explanations are not a sideshow; they are probative evidence of pretext and discriminatory intent that ordinarily must be weighed by a jury. The decision below instead insulated DePaul’s changing rationales from scrutiny by recharacterizing them as “additional” reasons that could coexist without evidentiary consequence. It reached this conclusion despite the fact that Saud presented evidence that undermines each asserted rationale. That approach departs from *Reeves*, invites post hoc rationalization, and entrenches a circuit split.

A. Reeves makes clear that inconsistent explanations permit an inference of pretext and discriminatory intent.

In *Reeves*, this Court held that once a plaintiff establishes a prima facie case and produces evidence that the employer’s proffered reason is false or unworthy of credence, “a trier of fact may infer the ultimate fact of intentional discrimination.” 530 U.S. at 147. The Court emphasized that proof of pretext is not limited to direct contradictions; it includes “weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions” in the employer’s explanations. *Id.* at 147–49. When an employer’s reasons change over time or conflict with sworn testimony, those inconsistencies are classic jury questions. *Id.* at 150–51.

Reeves also makes clear that courts may not uphold summary judgment by isolating or crediting individual employer explanations; when the record contains inconsistencies or implausibilities, the credibility of the

employer's reasons must be assessed by a jury. 530 U.S. at 147–51.

B. DePaul's explanations shifted materially over time, and the record would permit a jury to find pretext.

The record reflects a pattern of evolving and inconsistent explanations that fits squarely within *Reeves*. When DePaul first informed Saud that he would not be rehired, it cited only “low projected enrollment” and Saud’s “salary demands.” D.Ct.Dkt. 248 ¶¶ 45–46. At that time, DePaul did not invoke the former student’s lawsuit, any investigatory findings, or any “additional reports.” *Id.*

Those justifications emerged later. As discovery progressed, DePaul relied on the existence of the civil litigation and the reopened Title IX investigation to justify both the non-retention decision and Saud’s permanent exclusion from employment. D.Ct.Dkt. 248 ¶¶ 35–41, 45. Sworn testimony conflicted on whether those factors played any role at the relevant time. At the CM trial, nearly two years after the employment decision, Keshk testified Saud was not rehired for budgetary reasons and the allegations and lawsuit played no role. D.Ct.Dkt. 224-58, 60:17–61:7. Only in his deposition in this case did Keshk testify the lawsuit was the “biggest issue” and influenced the decision. *Id.* ¶¶ 51–54.

The investigation itself exhibited similar inconsistency. As detailed in Section I-E, DePaul reopened a closed investigation after the non-retention decision, reversed a prior no-violation finding without new evidence or evidence of a policy violation, relied on an unverified pleading and

disputed “additional reports,” and produced contradictory testimony regarding the source of those allegations. *See supra* § I-E.

A reasonable jury could view this progression as classic evidence of post hoc rationalization. Under *Reeves*, such shifting and additive explanations are probative of pretext and ordinarily must be evaluated by a jury. 530 U.S. at 147–51. The Seventh Circuit’s refusal to treat this record as presenting a triable issue conflicts with that rule.

C. The Seventh Circuit’s Treatment of “Additional” Reasons Conflicts with Other Circuits’ Applications of Reeves.

The Seventh Circuit’s conclusion that DePaul’s evolving explanations were not “shifting” because later reasons were merely “in addition to” earlier ones places it at odds with multiple circuits that treat additive or sequential justifications as classic evidence of pretext under *Reeves*. Those courts recognize that employers often supplement initial explanations as litigation unfolds and that such evolution is probative, not exculpatory.

The Fifth Circuit’s decision in *Gee v. Principi* squarely rejects the Seventh Circuit’s approach. There, the employer initially cited performance concerns and later emphasized additional deficiencies. 289 F.3d 342, 347–49 (5th Cir. 2002). The court held that even where later explanations are framed as additive rather than contradictory, a jury may reasonably view the evolution of reasons as evidence of pretext. *Id.* at 349.

The Tenth Circuit adopted a similar rule in *Jaramillo v. Colorado Judicial Department*. There, the employer

offered multiple justifications at different stages, some facially compatible. 427 F.3d 1303, 1309–11 (10th Cir. 2005). While affirming on its facts, the court held that when reasons are elaborated or embellished over time, a jury may infer an attempt to mask the true motive. *Id.* at 1310.

The Sixth Circuit’s decision in *Pelcha v. MW Bancorp, Inc.* reinforces this understanding. While affirming summary judgment on its facts, the court reaffirmed that explanations developed over time may support an inference of pretext where a reasonable jury could doubt their sincerity. 988 F.3d 318, 328–30 (6th Cir. 2021).

Reeves itself confirms that pretext is not limited to direct contradiction; it encompasses inconsistencies, implausibilities, and evolving explanations that undermine credibility. 530 U.S. at 147.

Here, the record reflects just such evolution. DePaul initially cited enrollment and salary, later invoked litigation and investigatory findings, and relied on explanations contradicted by sworn testimony. Dkt. 248 ¶¶ 35–46; Dkt. 253 ¶¶ 51–54. Under *Gee*, *Jaramillo*, *Pelcha*, and *Reeves*, whether that progression reflects pretext is a question for the jury—not one to be resolved at summary judgment.

IV. The Seventh Circuit’s “Honest Belief” Rule Conflicts with Reeves and Liberty Lobby.

This Court should grant review because the Seventh Circuit’s reliance on an expansive “honest belief” rule conflicts with this Court’s summary-judgment jurisprudence and, in particular, with *Reeves v. Sanderson*

Plumbing Products, Inc., 530 U.S. 133 (2000), and *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). By accepting DePaul's asserted beliefs as dispositive—despite substantial evidence of inconsistency, fabrication, and procedural irregularity—the court of appeals effectively resolved credibility disputes and drew inferences in the employer's favor. That approach contravenes the core principle that, at summary judgment, courts must credit the nonmovant's evidence and reserve credibility determinations for the jury.

A. Reeves and Liberty Lobby prohibit courts from crediting employer beliefs and resolving credibility disputes at summary judgment.

This Court has made clear that summary judgment is appropriate only where there is no genuine dispute of material fact, and that courts must view the evidence in the light most favorable to the nonmovant without weighing evidence or assessing credibility. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–55 (1986). Judges may not choose among competing inferences or credit one party's version of events where the record would permit a reasonable jury to draw a different conclusion. *Id.*

Applying those principles in the discrimination context, *Reeves v. Sanderson Plumbing Products, Inc.* holds that when a plaintiff produces evidence undermining the employer's explanation, credibility and belief are jury questions, and courts may not credit asserted good faith or sincerity at summary judgment. 530 U.S. 133, 147–51 (2000).

B. The Seventh Circuit improperly deferred to Tamburro’s asserted “honest belief” that she correctly applied DePaul policy, despite contradictory evidence.

The Seventh Circuit did not merely credit DePaul’s asserted belief in the factual conclusions of its investigation; it also deferred to investigator Tamburro’s purported “honest belief” that she correctly applied DePaul’s ADAH policy. That deference is irreconcilable with the record.

Tamburro’s own actions and statements contradicted DePaul’s claim that she honestly believed the policy prohibited Saud’s conduct. In the first Title IX investigation, Tamburro cleared Saud of any policy violation while knowing that he had engaged in a consensual relationship with the former student. D.Ct.Dkt. 248 ¶¶ 31–34. Her conclusion necessarily reflected an understanding that DePaul policy did not prohibit such relationships.

That understanding was not isolated or ambiguous. Tamburro later acknowledged publicly, in an interview with DePaul’s student newspaper, that DePaul policy does not prohibit consensual relationships between faculty and students, even where a course is ongoing. App. 28a FN6; D.Ct.Dkts. 224-16, p. 3; 224-17. That admission aligns with the policy text, testimony from OIDE’s Vice President, and with Tamburro’s original no-violation determination.

Nevertheless, in the second investigation—reopened after DePaul decided not to retain Saud—Tamburro reached the opposite conclusion without identifying any change in the policy or any new evidence. Instead, she inferred a violation from the timing of the relationship, while

failing to explain how that timing transformed conduct she previously deemed permissible into misconduct. D.Ct.Dkt. 248 ¶¶ 49–50.

Despite this record, the Seventh Circuit accepted DePaul’s assertion that Tamburro honestly believed she was correctly applying the policy and treated that belief as dispositive. In doing so, the court resolved a central factual dispute—whether Tamburro’s claimed belief was sincere or pretextual—against Saud at summary judgment. That approach directly conflicts with *Reeves* and *Liberty Lobby*, which forbid courts from crediting an employer’s asserted belief where the record contains evidence calling that belief into question.

C. The Seventh Circuit’s approach deepens a circuit split over the role of “honest belief” at summary judgment.

The Seventh Circuit’s treatment of “honest belief” places it at odds with multiple circuits that apply *Reeves* and *Liberty Lobby* to hold that professed belief does not defeat a discrimination claim where the record supports an inference of pretext.

The D.C. Circuit has held that even where an employer asserts a good faith rationale, summary judgment is inappropriate if the plaintiff presents evidence that the explanation is implausible or inconsistent. *Aka v. Washington Hospital Center*, 156 F.3d 1284, 1293–95 (D.C. Cir. 1998) (en banc). There, the court emphasized that credibility and belief are for the jury, not the judge.

Similarly, the Second Circuit has rejected reliance on an honest-belief rationale where an employer's investigation or reasoning is selective or unevenly applied. *Graham v. Long Island R.R.*, 230 F.3d 34, 44–45 (2d Cir. 2000). The court explained that differential treatment and irregular process permit a jury to doubt the employer's claimed belief.

The Ninth Circuit likewise holds that an employer's asserted belief does not shield it from liability when a plaintiff produces evidence of shifting explanations or flawed investigations. *Noyes v. Kelly Services*, 488 F.3d 1163, 1170–71 (9th Cir. 2007). There, the court stressed that the question is not whether the employer can articulate a belief, but whether a reasonable jury could find that belief unworthy of credence.

The Fifth Circuit has taken a similar approach, holding that inconsistencies and procedural irregularities undermine claims of honest belief and require jury resolution. *Gee v. Principi*, 289 F.3d 342, 347–49 (5th Cir. 2002).

By contrast, the Seventh Circuit treats an employer's asserted belief as effectively dispositive, even where the belief concerns policy interpretation and is contradicted by the employer's own prior actions and admissions. That divergence creates a clear and consequential split over whether "honest belief" is a jury issue governed by *Reeves* or a judicial shortcut that permits courts to resolve credibility disputes at summary judgment.

V. The Seventh Circuit’s Comparator Analysis Conflicts with McDonnell Douglas and Other Circuits.

This Court should grant review because the Seventh Circuit’s treatment of comparator evidence departs from *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), and conflicts with how other circuits apply that framework at summary judgment. Rather than asking whether Saud identified similarly situated employees who were treated more favorably in material respects—a jury question under *McDonnell Douglas*—the court of appeals imposed an unduly rigid comparator standard and resolved factual disputes in DePaul’s favor. That approach deepens a circuit split and undermines § 1981’s evidentiary structure.

A. McDonnell Douglas requires a flexible, common-sense comparator inquiry reserved for the jury when facts are disputed.

Under *McDonnell Douglas*, a plaintiff may raise an inference of discrimination by showing that similarly situated employees outside the protected class were treated more favorably. 411 U.S. at 804. This Court has never required plaintiffs to identify “nearly identical” comparators or to negate every conceivable difference between employees at summary judgment. To the contrary, the framework is intentionally flexible, focusing on whether employees are comparable in material respects relevant to the challenged decision. *Id.*; see also *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 147–49 (2000).

Comparator similarity ordinarily presents a jury question, and courts may not reject it at summary judgment by demanding exact congruence or resolving competing inferences in the employer's favor.

B. Saud presented strong comparator evidence that the Seventh Circuit discounted by resolving factual disputes against him.

Saud identified two white faculty members—David Lysik and Joseph Suglia—who were similarly situated in the respects that mattered and who were treated materially more favorably.

Lysik and Saud taught in the same department, reported to the same chair (Keshk), and transitioned from VAP contracts to adjunct appointments following budget-related cancellations. Both sought enhanced pay; Lysik's request was higher, was forwarded to the Dean, denied, and followed by an offer of the base adjunct rate, which he accepted. Saud's request was not forwarded, he was not offered the base rate, his courses were removed or listed as "STAFF," and he was not rehired. Lysik's courses remained assigned to him, and he continued teaching. D.Ct.Dkt. 248 ¶¶ 32–34.

Lysik was also accused of serious misconduct—rape—via an anonymous social-media post. OIDE accepted his denials, did not involve his department chair, did not search for additional reports, did not attempt to identify the accuser, and closed the investigation without findings or discipline. By contrast, Saud—without a complainant and after an initial no-violation finding—was subjected to a reopened investigation, escalated reporting to the Dean, non-retention, and a permanent ban.

The Seventh Circuit concluded that Saud and Lysik were not “apples to apples” comparators. That misapplies both the metaphor and the law. “Apples to oranges” refers to fundamentally different categories—such as employees disciplined for unrelated types of misconduct. Here, both Saud and Lysik were investigated by the same office under the same sexual-misconduct policy and subjected to the same institutional standards governing investigation, escalation, and resolution. Differences in how allegations surfaced do not defeat comparability where the same policy, office, and decisionmaking framework applied.

Suglia provides a second, independent comparator. Investigated by the same Title IX investigator (Tamburro), Suglia was afforded procedural protections Saud was denied: his accuser was interviewed; material evidence was gathered; he received notice and an opportunity to respond; and Tamburro affirmatively advised him of his right to file a counter-complaint. Tamburro reported Suglia’s findings only to the department chair, whereas she escalated Saud’s findings to the Dean. D.Ct.Dkt. 248 ¶¶ 54–55, 58.

As discussed in Sections I-E and VI-B, Cheryl Wayne’s testimony further supports the comparability of these cases and the inference of selective enforcement. Taken together, the shared supervisors, investigator, policy framework, and starkly different outcomes present classic comparator evidence that should have been evaluated by a jury.

The Seventh Circuit rejected this evidence by emphasizing differences it deemed dispositive and by crediting DePaul’s distinctions. In doing so, the court

resolved contested facts against Saud at summary judgment.

C. Other circuits apply *McDonnell Douglas* to permit juries to weigh comparator similarities and differences.

Other circuits reject the Seventh Circuit's rigid comparator approach and apply *McDonnell Douglas* flexibly, recognizing that whether employees are similarly situated is ordinarily a fact question when the record permits competing inferences.

The Eleventh Circuit, sitting en banc, has emphasized that comparators need only be "similarly situated in all material respects," not identical, and that minor distinctions do not defeat comparator evidence at summary judgment. *Lewis v. City of Union City*, 918 F.3d 1213, 1227–28 (11th Cir. 2019) (en banc). The Second Circuit likewise holds that comparator similarity is generally a jury question when employees share supervisors, standards, and decisionmakers. *Graham v. Long Island R.R.*, 230 F.3d 34, 39–40 (2d Cir. 2000).

The Fifth and Ninth Circuits apply the same principle. In *Gee v. Principi*, the Fifth Circuit held that comparator evidence may support an inference of discrimination even where the employer asserts differing circumstances, so long as a reasonable jury could view the employees as comparable in relevant respects. 289 F.3d 342, 347–49 (5th Cir. 2002).

The Ninth Circuit similarly recognizes that comparator analysis is fact-intensive and should reach the jury when

evidence of similarity and disparity exists. *Noyes v. Kelly Services*, 488 F.3d 1163, 1170–71 (9th Cir. 2007).

By contrast, the Seventh Circuit demanded near identity and resolved comparator disputes in DePaul’s favor, effectively collapsing *McDonnell Douglas* into a rigid threshold inquiry. That approach conflicts with the flexible, jury-oriented framework applied by other circuits and warrants this Court’s review.

VI. Saud Has Shown a Genuine Issue of Material Fact as to Race Discrimination.

This Court should grant review because, even apart from the specific doctrinal errors addressed above, the Seventh Circuit’s decision reflects a broader and recurring mistake: it treated a record replete with disputed facts, credibility conflicts, and competing inferences as insufficient to reach a jury. Under this Court’s precedents, Saud more than satisfied his burden to show a genuine issue of material fact as to race discrimination.

A. The governing standard requires only that a reasonable jury could find discrimination.

At summary judgment, the sole question is whether the evidence, viewed as a whole and in the light most favorable to the nonmovant, would permit a reasonable jury to find discrimination. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150–51 (2000). In discrimination cases, this Court has repeatedly rejected rigid evidentiary silos and instructed courts to consider the totality of the evidence, including comparator

proof, circumstantial evidence of pretext, procedural irregularities, and background context. *Reeves*, 530 U.S. at 147–49; *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 804 (1973). Courts may not parse each piece of evidence in isolation or resolve disputes over motive, credibility, or intent at summary judgment.

B. The record contains multiple, mutually reinforcing strands of evidence supporting an inference of race discrimination.

The summary-judgment record contains ample evidence from which a reasonable jury could infer race discrimination.

First, Saud established that he met—and exceeded—DePaul’s legitimate employment expectations. He was a popular instructor whose courses were consistently full and often carried waitlists, with no performance or disciplinary issues prior to the events at issue. This baseline both satisfies Saud’s prima facie burden and undermines DePaul’s later proffered explanations.

Second, Saud was subjected to adverse employment actions. DePaul declined to rehire him as an adjunct despite student demand and rehired similarly situated white faculty. DePaul also subjected Saud to a reopened and discriminatory OIDE investigation that culminated in a permanent ban from employment and participation in DePaul-sponsored academic activities. Both actions materially altered Saud’s employment prospects.

Third, Saud presented comparator evidence showing that similarly situated white faculty were treated more

favorably. David Lysik, who taught in the same department under the same chair and followed the same VAP-to-adjunct pathway, was rehired and continued teaching despite a higher salary request and despite being accused of serious misconduct. Joseph Suglia, investigated by the same Title IX investigator, was afforded procedural protections and limited escalation denied to Saud. A jury could reasonably conclude that these disparities reflect race-based differential treatment.

Fourth, the record reflects heightened scrutiny and escalation following racially charged external targeting. After a Campus Watch publication singled out Saud as an Arab-American professor, OIDE initiated investigative activity without a complainant, relied on third-party reports, and subjected Saud to an accusatory process. D.Ct. Dkt. 248 ¶¶ 9–10, 14, 21–26, 73, 76. Evidence that Campus Watch publications triggered investigations and that faculty of color were treated less favorably provides contextual support for an inference of discriminatory motive.

Fifth, Saud presented evidence of procedural irregularities and departures from ordinary practice, including denial of the opportunity to file a counter-complaint, reliance on an unverified pleading, inference of dishonesty from silence without follow-up, nondisclosure of alleged reports, disparate escalation to the Dean, and reopening of an investigation after the non-retention decision. Under *Reeves* and *Staub*, such irregularities are probative of pretext and discriminatory intent.

Independent institutional testimony reinforces these inferences. Cheryl Wayne, a former Title IX investigator

at DePaul, testified that OIDE typically did not pursue investigations when an accuser declined to participate, that minority faculty were treated less favorably than white faculty, and that investigator Tamburro exhibited racial bias. A jury could credit Wayne's testimony as corroborating Saud's evidence of selective enforcement and biased process.

Finally, DePaul's explanations shifted over time and were contradicted by sworn testimony. The non-retention decision was initially justified by enrollment and salary, then later by litigation and investigatory findings. Decisionmakers gave conflicting accounts of what factors mattered and when. A reasonable jury could view these inconsistencies as evidence that the stated reasons were assembled post hoc to mask discrimination.

Taken together—as *Reeves* requires—these mutually reinforcing strands of evidence more than suffice to create a genuine issue of material fact as to race discrimination.

C. The Seventh Circuit improperly weighed evidence and drew inferences against Saud.

Rather than asking whether a reasonable jury could credit Saud's evidence, the Seventh Circuit evaluated whether it found DePaul's explanations persuasive. It discounted comparator evidence by crediting employer distinctions, minimized procedural irregularities as harmless, accepted asserted beliefs as dispositive, and treated background context as irrelevant. That approach mirrors the very errors this Court has repeatedly corrected.

The court also fractured the evidence, rejecting each strand in isolation rather than considering their combined force. This piecemeal analysis is incompatible with *Reeves* and *Liberty Lobby*, which require courts to assess whether the evidence, taken as a whole, permits a finding of discrimination.

VII. This Case Is an Ideal Vehicle for Resolving the Questions Presented

This case presents a clean vehicle for resolving the Questions Presented. The judgment below is final, and the Seventh Circuit squarely decided each issue on which review is sought, adopting legal rules on causation, pretext, comparator analysis, “honest belief,” and internal investigations that conflict with this Court’s precedent and with decisions of other circuits.

Each question was preserved and fully litigated below. The district court addressed them in granting summary judgment, and the Seventh Circuit affirmed on those grounds. There are no jurisdictional defects, alternative bases for affirmance, or procedural barriers to reaching the merits.

The record is fully developed, and the material facts are established by documentary evidence and sworn testimony. The questions presented are legal in nature and arise in the summary-judgment posture in which this Court has repeatedly granted review. All issues stem from the same course of conduct and decisionmaking process, making this an efficient vehicle for providing needed guidance on the proper application of federal civil-rights law.

CONCLUSION

The decision below reflects a pattern of errors that substantially weaken the protections Congress guaranteed in 42 U.S.C. § 1981. By misapplying this Court's causation standard, discounting shifting explanations, insulating asserted "honest beliefs," rejecting valid comparator evidence, and treating a racially-biased Title IX investigation as neutral, the Seventh Circuit resolved factual and credibility disputes that belong to a jury.

For these reasons, and to restore uniformity and fidelity to this Court's precedent, the petition for a writ of certiorari should be granted.

Respectfully submitted,

CHRISTINA ABRAHAM
Counsel of Record
ABRAHAM LAW & CONSULTING, LLC
33 North Dearborn
Suite 1000
Chicago, IL 60602
(312) 588-7150
christina.w.abraham@gmail.com

APPENDIX

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**APPENDIX A — DECISION AND ORDER OF THE
UNITED STATES COURT OF APPEALS FOR THE
SEVENTH CIRCUIT, FILED OCTOBER 8, 2025**

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 25-1034

LAITH SAUD,

Plaintiff-Appellant,

v.

DEPAUL UNIVERSITY,

Defendant-Appellee.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 19-cv-3945 – **Lindsay C. Jenkins**, *Judge.*

ARGUED SEPTEMBER 5, 2025 DECIDED OCTOBER 8, 2025

Before ST. EVE, JACKSON-AKIWUMI, AND LEE, *Circuit
Judges.*

ST. EVE, *Circuit Judge.* After having sex with a student in his class and being sued by the student for sexual harassment, DePaul University decided not to hire Laith Saud as an adjunct professor and deemed him ineligible for future employment. Saud then sued DePaul

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for discriminating against him based on his race. The district court granted DePaul's motion for summary judgment, finding DePaul had advanced legitimate, nondiscriminatory reasons for its decisions. Because we find Saud failed to carry his burden to show that DePaul's reasons were pretext for racial discrimination, we affirm.

I. Background

Saud, who is Arab American, started working at DePaul in 2005 or 2006 as an adjunct instructor in its Department of Religious Studies. Later he became a term faculty member (a non-tenure track position on annual teaching contracts).

On April 10, 2017, DePaul College of Liberal Arts and Social Sciences Dean Guillermo Vásquez de Velasco informed Saud and another term faculty member in the Department, David Lysik, that due to budgetary constraints, DePaul would not be renewing their contracts for the next year.¹ The next day Department Chair Dr. Khaled Keshk emailed school administrators about retaining Saud and Lysik as adjuncts.

Also on April 10, an attorney sent Saud and DePaul a letter claiming Saud had committed "repeated acts of sexual misconduct ... involving" one of his students, C.M. Karen Tamburro, DePaul's Title IX coordinator in its Office of Institutional Diversity and Equity ("OIDE"), opened an investigation into C.M.'s claim. While DePaul

1. Saud does not challenge this decision.

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does not have a specific policy prohibiting relationships between faculty and students when the student is enrolled in the faculty member's course, its policy provides that "[t]he determination of what constitutes sexual harassment depends upon the specific facts and the context in which the conduct occurs."

Tamburro interviewed Saud, who acknowledged he had had a sexual relationship with C.M. but maintained it was consensual and began when C.M. was no longer his student. C.M. did not participate in the investigation. On May 9, 2017, Tamburro finalized her report, which concluded there was insufficient evidence to find that Saud engaged in misconduct.

Meanwhile, Saud and Keshk continued to discuss Saud's appointment as an adjunct. In mid-May 2017, Keshk and Saud agreed that Saud would teach two classes. On June 26, the Dean's office told Keshk it was reinstating Saud's adjunct position. On June 28, Keshk asked Saud and Lysik what they thought was "fair" payment. And on July 1, Saud requested \$6,000 per course, exceeding the \$4,800 per course Keshk had the authority to offer.

On June 29, C.M. filed a lawsuit against Saud and DePaul, alleging that while she was Saud's student, he attempted to get her intoxicated and took her to his home, where he "began to aggressively seek sexual relations with [her]" and had sex with her. She also alleged that Saud told her she would get an A in his class and she did not have to take the final exam.

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On July 6, Keshk informed Saud that due to “low projected course enrollment [and] ... [Saud’s] compensation requirements,” he could not offer Saud an adjunct position for the coming fall.

Later that summer, Tamburro informed Saud that OIDE would conduct a second investigation based on the allegations in C.M.’s lawsuit. Saud gave Tamburro the verified answer he filed in C.M.’s lawsuit but declined an interview request this time. Saud’s answer admitted he sent C.M. an email asking her for a drink while she was a student in his class, and that he and C.M. had sex. Saud did not deny that the sex occurred while C.M. was his student.

On October 5, Tamburro issued her second report, which found by a preponderance of the evidence that Saud had sexually harassed C.M. She based this finding on inconsistencies between Saud’s description of his interactions with C.M. in his OIDE interview and his admissions in his answer to C.M.’s lawsuit.

On October 23, Dean Velasco informed Saud that, based on OIDE’s findings, he was no longer eligible for future employment at DePaul, and he could not provide formal or informal instruction in any classroom-based or co-curricular activities sponsored by the school.

In June 2019, Saud sued DePaul and two former DePaul employees, alleging that DePaul violated 42 U.S.C. § 1981 by discriminating against him based on his race, among other claims. Following two amended complaints, the district court dismissed Saud’s other claims. After

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discovery, the district court granted DePaul's motion for summary judgment on Saud's § 1981 claim, reasoning that Saud had failed to raise a genuine issue of material fact as to whether DePaul discriminated against Saud.

Saud appealed.

II. Discussion

We review de novo a district court's grant of summary judgment. *Vassileva v. City of Chicago*, 118 F.4th 869, 873 (7th Cir. 2024). Construing all facts and making all reasonable inferences in the nonmoving party's favor, summary judgment is proper if "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); see *Parkey v. Sample*, 623 F.3d 1163, 1165 (7th Cir. 2010).

A. Section 1981 Employment Discrimination

"Section 1981 provides a federal remedy against racial discrimination in private employment." *McCurry v. Kenco Logistics Servs., LLC*, 942 F.3d 783, 789 (7th Cir. 2019). Like Title VII, to succeed on a § 1981 claim, a plaintiff must show membership in a protected class, an adverse employment action, and causation.² See *Lewis v. Ind. Wesleyan Univ.*, 36 F.4th 755, 759 (7th Cir. 2022); see also *Gamble v. County of Cook*, 106 F.4th 622, 625 (7th Cir.

2. There is no dispute the first two requirements are met. Here, the dispute is over causation.

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2024) (“The same legal standard applies to claims of racial discrimination under Title VII [and] Section[] 1981 ...”). For § 1981 claims, race must have been a but-for cause of the adverse employment decisions. *Comcast Corp. v. Nat’l Ass’n of Afr. Am.-Owned Media*, 589 U.S. 327, 333, 140 S. Ct. 1009, 206 L. Ed. 2d 356 (2020); *Lewis*, 36 F.4th at 759.

The fundamental question is “whether the evidence would permit a reasonable factfinder to conclude that the plaintiff’s race, ethnicity, sex, religion, or other proscribed factor caused the discharge or other adverse employment action.” *Ortiz v. Werner Enters., Inc.*, 834 F.3d 760, 765 (7th Cir. 2016); *see also Lewis*, 36 F.4th at 760. And, we have emphasized that “[e]vidence must be considered as a whole, rather than asking whether any particular piece of evidence proves the case by itself.” *Ortiz*, 834 F.3d at 765.

To help answer this question, a plaintiff may invoke the well-known *McDonnell Douglas* burden-shifting framework. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-04, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973); *see also Lewis*, 36 F.4th at 759.

First, the plaintiff must make out a prima facie case of employment discrimination by showing he: (1) belongs to a protected class, (2) met the defendant’s legitimate expectations, (3) suffered an adverse employment action, and (4) was treated less favorably than similarly situated employees who were not members of his protected class. *Lewis*, 36 F.4th at 759.

Second, if the plaintiff satisfies each element, “the burden shifts to the employer to articulate a legitimate,

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nondiscriminatory reason for the adverse employment action.” *Id.* at 760.

Finally, “[t]he burden then shifts back to the employee to show why the employer’s explanation is pretextual.” *Id.* “Pretext is [a] lie, specifically a phony reason for some action,’ not ‘just faulty reasoning or mistaken judgment on the part of the employer...” *Napier v. Orchard Sch. Found.*, 137 F.4th 884, 892 (7th Cir. 2025) (quoting *Barnes v. Bd. of Trs. of Univ. of Ill.*, 946 F.3d 384, 389-90 (7th Cir. 2020)). That is, pretext is not shown when the employer “honestly believed” the reason for its decision. *Anderson v. Street*, 104 F.4th 646, 654 (7th Cir. 2024); *see also Cunningham v. Austin*, 125 F.4th 783, 789-90 (7th Cir. 2025). Nor do we question an honestly held reason. *Cunningham*, 125 F.4th at 789-90.

On appeal, Saud argues the district court erred in granting summary judgment under both *McDonnell Douglas* and *Ortiz*. Neither party disputes that Saud has met the first three requirements of his prima facie case: (1) he is a member of a protected class (he is Arab American), (2) prior to the events at issue, he met DePaul’s legitimate expectations, and (3) he suffered adverse employment actions. The parties focus on whether Saud satisfied the fourth step, but we have often said that “[b]ecause the prima facie and pretext inquiry [] overlap, if a defendant offers a nondiscriminatory reason for its actions, we can proceed directly to the pretext inquiry.” *Barnes*, 946 F.3d at 389; *see also Upchurch v. Indiana*, 146 F.4th 579, 587 (7th Cir. 2025).

Saud identifies two adverse employment actions: (1) De-Paul’s decision not to employ him as an adjunct

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and (2) De-Paul’s decision deeming him ineligible for future employment.³ In both instances, DePaul offered nondiscriminatory reasons for its actions. We address each in turn, proceeding directly to Saud’s argument that DePaul’s reasons were pretext for discrimination based on his race.

B. Decision Not to Hire Saud as an Adjunct

DePaul says it did not hire Saud as an adjunct for the Fall 2017 quarter because of the allegations in C.M.’s lawsuit, two additional reports of potential misconduct, low projected enrollment in his courses, and his request for more money than the Department could pay. Saud argues these reasons are pretext for racial discrimination.

First, Saud invokes comparator evidence, which asks the court to “draw an inference of pretext from evidence

3. Contrary to Saud’s assertion, the district court did not “entirely ignore[]” a third adverse employment action—the Title IX investigation itself. Indeed, it correctly rejected his argument that the investigation was an independent adverse employment action and considered Saud’s arguments as part of its pretext analysis. *See Saud v. DePaul Univ.*, No. 19-cv-3945, 2024 U.S. Dist. LEXIS 221111, 2024 WL 5007833, at *9 n.11 (N.D. Ill. Dec. 6, 2024). For an employment action to be materially adverse, it must bring “about some ‘disadvantageous’ change in an employment term or condition.” *Muldrow v. City of St. Louis*, 601 U.S. 346, 354, 144 S. Ct. 967, 218 L. Ed. 2d 322 (2024) (quoting *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 80, 118 S. Ct. 998, 140 L. Ed. 2d 201 (1998)). While the investigation had downstream consequences, Saud has not presented a triable fact about whether the process meaningfully altered his employment.

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that [DePaul] treated another employee differently.” *Upchurch*, 146 F.4th at 588. He says Lysik, a white man OIDE investigated in 2014 following anonymous allegations of sexual assault posted online, is a suitable comparator DePaul treated more favorably. “When using comparators to demonstrate pretext, a plaintiff must usually ‘show that the comparators (1) dealt with the same supervisor, (2) were subject to the same standards, and (3) engaged in similar conduct without such differentiating or mitigating circumstances as would distinguish their conduct or the employer’s treatment of them.’” *Napier*, 137 F.4th at 894 (citation modified) (quoting *Coleman v. Donahoe*, 667 F.3d 835, 846 (7th Cir. 2012)). In other words, Saud must establish that “the purported comparator was ‘directly comparable to [him] in all material respects’ so as to ‘eliminate other possible explanatory variables.’” *Mitchell v. Exxon Mobil Corp.*, 143 F.4th 800, 810 (7th Cir. 2025) (citation modified).

But Lysik is not “directly comparable to [Saud] in all material respects.” *Id.* (quoting *Gamble*, 106 F.4th at 626). For starters, Saud admitted to having sex with C.M., whereas De-Paul could not identify the accuser in Lysik’s case or gather any other information about the allegations. Moreover, Keshk based his decision not to hire Saud on C.M.’s lawsuit, not the first OIDE investigation which cleared Saud. In fact, during and after OIDE’s first investigation, Keshk worked with both Saud and Lysik to have them hired as adjunct professors. It was only after C.M. filed her lawsuit (yet another material difference from Lysik’s case) that Keshk informed Saud DePaul would not hire him. Although comparators “need not be

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identical in every conceivable way,” *Coleman*, 667 F.3d at 846, Saud’s focus on Lysik overlooks these material differences.

Second, Saud claims Keshk’s reasons for his decision not to hire Saud were shifting and inconsistent. But to give rise to pretext, “explanations must actually be shifting and inconsistent.” *Bagwe v. Sedgwick Claims Mgmt. Servs., Inc.*, 811 F.3d 866, 881 (7th Cir. 2016) (quoting *Schuster v. Lucent Techs., Inc.*, 327 F.3d 569, 577 (7th Cir. 2003)). Merely providing multiple, or additional, reasons for an adverse employment decision does not establish pretext. *See Sweet v. Town of Bargersville*, 18 F.4th 273, 280 (7th Cir. 2021); *Castro v. DeVry Univ., Inc.*, 786 F.3d 559, 577 (7th Cir. 2015).

Here, Saud first points to supposed inconsistencies between the reasons Keshk gave for Saud’s dismissal in his July 2017 email to Saud and at his deposition. At the time, Keshk told Saud he was not being hired due to “low projected course enrollments” and Saud’s salary request, but, during his deposition, Keshk said C.M.’s lawsuit and additional reports of Saud’s misconduct also factored into his decision. Saud also asserts there is evidence Keshk forwarded Lysik’s salary request to the Dean, but no evidence he forwarded Saud’s request. Saud says this directly undermines the compensation reason.

None of these amounts to pretext. As the district court found, though Keshk later said that C.M.’s lawsuit and the two additional reports of misconduct also played a role, he never disclaimed the enrollment and budgetary

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reasons. “Where an employer relies on multiple reasons for the termination, its failure to address *all* of the reasons in *each* communication about the employee is not enough to show contradictions or shifts in rationales that suggest pretext.” *Castro*, 786 F.3d at 577.

Further, Keshk’s failure to forward Saud’s salary request fades as evidence of pretext when viewed in context. Saud’s salary request came two days after C.M. filed her lawsuit. And Keshk provided multiple reasons that, working together, led to his decision. Retaining Lysik and forwarding only his salary request to the Dean does not suggest that Keshk lied about compensation being one of several reasons for the decision not to hire Saud as an adjunct—particularly given the backdrop of the lawsuit and the other reports of misconduct Keshk received. Given this context, Keshk’s failure to send Saud’s salary request to the Dean does not demonstrate such a weakness, implausibility, inconsistency, or contradiction in DePaul’s asserted reason amounting to pretext for racial discrimination. *See Parker v. Brooks Life Science, Inc.*, 39 F.4th 931, 938 (7th Cir. 2022) (quoting *Marnocha v. St. Vincent Hosp. & Health Care Ctr., Inc.*, 986 F.3d 711, 721 (7th Cir. 2021)).

Third, Saud says DePaul’s reasons for its decision are unsupported or contradicted by the evidence. None of Saud’s arguments is availing.

Saud claims C.M.’s lawsuit did not provide the basis for DePaul’s decision because there is evidence suggesting the University made its decision before C.M. filed her lawsuit.

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Saud points to the decision in early May 2017 to list his courses as reassigned to “STAFF”—rather than list his name as the instructor—and a June 2017 email from the Dean’s office stating that Saud’s position “was terminated [but it is being] reinstat[ed] ... today.”

The very email Saud points to says the school was reinstating Saud’s adjunct position. Further, Keshk and Saud communicated throughout May and June, discussing Saud’s appointment as an adjunct. It was only after C.M.’s lawsuit that Keshk informed Saud he would not be hired as an adjunct. And though DePaul’s process for delisting Saud’s courses may have been “unstructured” and not “accurate, wise, or well-considered,” this alone does not show that DePaul’s reason was a lie. *Barnes*, 946 F.3d at 390 (quoting *Bates v. City of Chicago*, 726 F.3d 951, 956 (7th Cir. 2013)). All is to say, the evidence Saud points to does not suggest DePaul had made a decision prior to C.M.’s lawsuit.

Relatedly, Saud claims DePaul manufactured his low projected course enrollment by listing his courses as assigned to “STAFF” because it knew his classes typically had high enrollment. But Saud’s argument wades too far into “mere conjecture and speculation.” *Ennin v. CNH Indus. Am., LLC*, 878 F.3d 590, 597 (7th Cir. 2017). He points to no evidence demonstrating that listing a class as “STAFF” violated DePaul procedures or led to the low enrollment. See *Everett v. Cook County*, 655 F.3d 723, 728 (7th Cir. 2011) (“[F]or a jury to be able to infer any impropriety based on an employer’s failure to abide by its own procedures, the employee must show that there

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was an actual procedure in place that served to bind the employer’s discretion.”).

Saud briefly raises a series of other arguments to demonstrate pretext. For many of the same reasons, they fail. Saud claims, for example, that Keshk acted “in self-interest” because Keshk testified he worried Saud would “throw [him] under the bus” before DePaul administrators. But Keshk’s full testimony was that he was worried Saud would “throw [him] under the bus” by “lying to him” about whether the reported misconduct occurred. Even assuming this shows Keshk was dishonest (in many ways, Keshk’s testimony *reinforces* his belief in the reasons for the decision), it does not show that “prohibited animus” motivated Keshk. *Napier*, 137 F.4th at 893 (quoting *Hitchcock v. Angel Corps., Inc.*, 718 F.3d 733, 740 (7th Cir. 2013)). And Saud points to no evidence suggesting his race motivated Keshk.

Ultimately, our inquiry is “[w]hether a reasonable juror could conclude that [Saud] would have [been employed as an adjunct for the fall quarter] if he had a different ethnicity, and everything else remained the same.” *Ortiz*, 834 F.3d at 764. Saud has not put forth evidence that meets this inquiry.

C. Decision Deeming Saud Ineligible for Future Employment

DePaul deemed Saud ineligible for future employment because the second OIDE investigation found by a preponderance of the evidence that Saud sexually harassed

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C.M. Sexual misconduct is a legitimate, nondiscriminatory reason for an adverse employment action. *See, e.g., Cung Hnin v. TOA (USA), LLC*, 751 F.3d 499, 506 (7th Cir. 2014); *Swearnigen-El v. Cook Cnty. Sheriff's Dept.*, 602 F.3d 852, 861 (7th Cir. 2010).

Moreover, so long as an employer “honestly believed it made the correct employment decision—even if its decision was inaccurate, unfair, foolish, trivial, or baseless—[the] claims cannot succeed.” *Barnes-Staples v. Carnahan*, 88 F.4th 712, 716 (7th Cir. 2023) (citation modified); *Upchurch*, 146 F.4th at 587. That is, to establish pretext, Saud must show that Dean Velasco, as the final decisionmaker, “did not honestly believe his reasons for” deeming Saud ineligible for future employment. *Cung Hnin*, 751 F.3d at 507; *see also Hill v. Tangherlini*, 724 F.3d 965, 968 (7th Cir. 2013) (“[W]e evaluate the honesty of the employer’s explanation, rather than its validity or reasonableness ...”). Saud fails to identify any evidence that Dean Velasco did not “honestly believe” he was making the correct employment decision.

Saud’s attempt to rely on a comparator for pretext again fails. In addition to pointing to Lysik, who is not a comparator for the reasons already discussed, Saud points to Joseph Suglia, a white professor at DePaul. OIDE and Tamburro investigated Suglia following complaints about “verbal exchanges ... of an explicit sexual nature” with a student no longer enrolled in his course. OIDE found that Suglia violated DePaul policy, and Suglia’s department chair deemed him ineligible for employment at DePaul.

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Like Lysik, Suglia is not a proper comparator. Suglia faced the same sanction as Saud, so DePaul did not treat Suglia more favorably.⁴ See *Bragg v. Munster Med. Rsch. Found. Inc.*, 58 F.4th 265, 273 (7th Cir. 2023). Additionally, Suglia’s department chair, not Dean Velasco, issued the sanction, so Saud and Suglia did not “deal[] with the same supervisor.” *Napier*, 137 F.4th at 894; see *Mourning v. Ternes Packaging, Ind., Inc.*, 868 F.3d 568, 571 (7th Cir. 2017) (noting comparator requires more favorable treatment “by the same decisionmaker”).

Nor can Saud establish pretext through his general assertions of institutional bias. Saud focuses on a January 2017 discussion he hosted titled “Muslim American Civil Liberties in the age of Trump” and an April 2017 “*Campus Watch*” article published about Saud, his Arab American identity, and his political views. Although he asserts DePaul “flagged” him for hosting the event and subsequently launched OIDE’s first investigation into him after the *Campus Watch* article came out, Saud does not put forth any evidence that DePaul “flagged” him for the event based on his race (as opposed to, say, his political views). Cf. *Ennin*, 878 F.3d at 597 (explaining that “[w]ithout ... any other indicators of racial bias” plaintiff is left with “mere conjecture and speculation” which does not establish pretext). And Saud does not suggest DePaul had

4. Saud disputes that Suglia faced the same sanction because, while Suglia was deemed ineligible for future employment, he was not “banned from participating in DePaul activities.” Even if this is a material distinction, it would not establish Suglia as a comparator because Suglia’s department head determined his sanction, not the Dean.

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anything to do with the *Campus Watch* article, nor does he attempt to connect the article to the OIDE investigation.

Finally, Saud advances a cat's paw theory of liability, trying to impute Tamburro's supposed discrimination to the Dean's decision. This theory applies when "a biased subordinate who lacks decision-making power uses the formal decision maker as a dupe in a deliberate scheme to trigger a discriminatory employment action." *Johnson v. Koppers, Inc.*, 726 F.3d 910, 914 (7th Cir. 2013) (citation modified). But this argument fails because Saud points to no evidence showing that Tamburro was "biased."

Saud claims Tamburro was discriminatory because De-Paul did not have a policy prohibiting faculty-student relationships, yet she investigated him following C.M.'s claims and ultimately found that he had violated DePaul policy. But DePaul's policy merely says that such relationships are not per se prohibited, not that they can never amount to misconduct. Indeed, DePaul might have put itself at risk by not investigating the sexual harassment complaints. *See C.S. v. Madison Metro. Sch. Dist.*, 34 F.4th 536, 544-45 (7th Cir. 2022). And Tamburro cleared Saud of wrongdoing initially, only changing her conclusion once more evidence emerged.

In any event, we do not evaluate whether an employer's given reason for its decision "was accurate or even whether it was unfair. Our sole focus is on whether the employer's stated reason can be characterized as a falsehood rather than an honestly held belief." *Brooks v. Avancez*, 39 F.4th 424, 435 (7th Cir. 2022) (quoting *Robertson v. Dep't of*

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Health Servs., 949 F.3d 371, 378 (7th Cir. 2020)). And, like Dean Velasco, Saud has not shown that Tamburro did not honestly believe Saud violated the policy following her second investigation.

Saud’s remaining arguments, that the investigation itself shows discrimination because Saud was not treated as fairly as Suglia and that Tamburro has a history of discrimination generally, are not supported by the evidence. Moreover, these generalized claims do not “undercut the specific justifications given by [DePaul]” for Saud’s termination. *Barnes*, 946 F.3d at 390 (quoting *Ford v. Marion Cnty. Sheriff’s Off.*, 942 F.3d 839, 858 (7th Cir. 2019)). Any remaining evidence of racial bias is “too scant [and] disjointed,” *Saud*, 2024 U.S. Dist. LEXIS 221111, 2024 WL 5007833, at *17 (citing *Ford*, 942 F.3d at 858), and “[g]eneral allegations of an ‘ongoing history of discrimination’ are not enough to impugn a particular employment decision,” *Ford*, 942 F.3d at 858 (quoting *Sublett v. John Wiley & Sons, Inc.*, 463 F.3d 731, 739 (7th Cir. 2006)).

* * *

The judgment of the district court is

AFFIRMED.

**APPENDIX B — MEMORANDUM OPINION AND
ORDER OF THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF
ILLINOIS, FILED DECEMBER 6, 2024**

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 19 CV 3945

LAITH SAUD,

Plaintiff,

v.

DEPAUL UNIVERSITY,

Defendant.

MEMORANDUM OPINION AND ORDER

Plaintiff Laith Saud brings this employment discrimination action against his former employer, Defendant DePaul University. He alleges that DePaul failed to rehire him as an adjunct instructor and then barred him from future employment in violation of 42 U.S.C. § 1981. Before the Court are the parties' cross-motions for summary judgment, [Dkt. 205 (Defendant); Dkt. 220 (Plaintiff)].¹ For the reasons that follow, the Court

1. Citations to docket filings generally refer to the electronic pagination provided by CM/ECF, which may not be consistent with page numbers in the underlying documents.

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grants Defendant's motion for summary judgment and denies Plaintiff's motion for summary judgment.

I. Threshold Issues**A. Local Rule 56.1 Statements & Statements of Additional Facts**

“On summary judgment, the Court limits its analysis of the facts to the evidence that is presented in the parties’ Local Rule 56.1 statements.” *Kirsch v. Brightstar Corp.*, 78 F. Supp. 3d 676, 697 (N.D. Ill. 2015). The statements serve a valuable purpose: they help the Court in “organizing the evidence and identifying disputed facts.” *Fed. Trade Comm’n v. Bay Area Bus. Council, Inc.*, 423 F.3d 627, 633 (7th Cir. 2005). “To dispute an asserted fact, a party must cite specific evidentiary material that controverts the fact and must concisely explain how the cited material controverts the asserted fact. Asserted facts may be deemed admitted if not controverted with specific citations to evidentiary material.” L.R. 56.1(e)(3).

DePaul asks the Court to disregard much of Saud’s Local Rule 56.1 Statement [Dkt. 241] and Statement of Additional Facts [Dkt. 258 at 40] for failing to comply with Rule 56.1. [Dkt. 249 at 8; Dkt. 263 at 6.] As a remedy, DePaul encourages the Court to treat all DePaul’s facts as admitted. [Dkt. 263 at 6.]

Saud’s Local Rule 56.1 Statement and Statement of Additional Facts suffer from a variety of Local Rule 56.1 violations. Many paragraphs are improperly padded with

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multiple facts in violation of L.R. 56.1(d)(1) (“statement of material facts ... must consist of *concise* numbered paragraphs.”) (emphasis added) [See, *e.g.* Dkt. 241, ¶¶ 44, 49, 57, 69.] Saud often fails to cite evidence to support the factual statements included in his Rule 56.1 Statement, and many of Saud’s factual assertions misstate the record.² L.R. 56.1(d)(2), (e)(3). In his own Local Rule 56.1 Statement and in response to DePaul’s Rule 56.1 Statement, Saud cites large sections of deposition testimony and other evidence without including pin citations. L.R. 56.1(d)(2). He also disputes as misleading and incomplete many of the facts DePaul cites in its Local Rule 56.1 Statement, but Saud’s cited evidence falls far short of actually disputing the asserted fact. L.R. 56.1(e)(3). In this way, Saud contravenes another aspect of Local Rule 56.1, which prohibits parties from setting out in their response to an asserted fact a new fact not fairly responsive to the asserted fact. L.R. 56.1(e)(2).

The Seventh Circuit “has repeatedly recognized that district courts may require exact compliance with their local rules,” including the “local rules governing summary judgment.” *Allen-Noll v. Madison Area Tech. Coll.*, 969 F.3d 343, 349 (7th Cir. 2020) (collecting cases). Consistent with the purpose of Local Rule 56.1, however, the Court has “broad discretion” to relax or enforce strictly local rules governing summary judgment practice. *Edgewood Manor Apt. Homes, LLC v. RSUI Indem. Co.*, 733 F.3d

2. The Court notes below where Saud’s factual assertions misstate the record only slightly and the correct assertion is obvious from admissible evidence cited. In that event, the Court considers the factual assertion as true.

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761, 770 (7th Cir. 2013) (citing *Modrowski v. Pigatto*, 712 F.3d 1166, 1169 (7th Cir. 2013)); *see also Cracco*, 559 F.3d at 632.

Despite these issues, and because the Court prefers to decide cases on the merits, not on technicalities, the Court will not disregard Saud's Statement of Facts or Statement of Additional Facts entirely. Nor will it accept wholesale DePaul's factual assertions. However, where plagued by the issues discussed, the Court disregards Saud's factual assertion, and where appropriate, treats DePaul's assertion as undisputed.

B. Admissibility

Several of the documents the parties rely on in their summary judgment motions present hearsay concerns, which the Court addresses at the outset.

First, are Karen Tamburro's notes from her interview with Saud on May 2, 2017. [Dkt. 208-13.] During her deposition Tamburro testified that when she met with Saud she took handwritten notes. [Dkt. 226-7 (Tamburro Deposition 85:15-86:15; 119:4-11).] As was her practice, she prepared a typed version of the notes, expanding upon the shorthand she used but not otherwise changing the note's substance. [*Id.*] Saud objects on hearsay grounds. The objection is overruled. The notes themselves are business records under the hearsay exception provided in Rule 803(6) of the Federal Rules of Evidence. *See Igasaki v. Illinois Dep't of Fin. & Pro. Regul.*, 988 F.3d 948, 956 (7th Cir. 2021) (explaining "performance evaluations,

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corrective action plans, and disciplinary documents are all business records”). Tamburro testified to taking handwritten notes during the interview with Saud and then memorializing them in typewritten fashion. [*Id.* at 85:15-86:15.] From Tamburro’s deposition testimony, it is clear this was her regular practice when conducting Title IX investigations for DePaul. [*Id.* at 119:4-11.]

Saud protests that the substance of Tamburro’s notes differs from his own memory of their meeting and suggests that Tamburro’s practice of transcribing notes is further evidence of untrustworthiness. *See* F.R.E. 803(6)(E). But Saud’s differing memory of the event does nothing to contradict *Tamburro’s* memory of their meeting. Tamburro’s testimony about her notetaking processes confirms their trustworthiness for summary judgment purposes—at least as to Tamburro’s memory of her meeting with Saud.³ The portions of the notes that summarize what Saud said are not hearsay because they are the admission of a party opponent under Rule 801(2). Consequently, Tamburro’s notes are admissible evidence, and the Court will consider them.

Second are Tamburro’s notes from her meetings with other DePaul administrators and students such as A.R. [Dkt. 223-12]; Khaled Keshk, Religious Studies Chair, [Dkt. 215 at DEF00214-15, DEF00217]; and Michael Van Dorp, formerly the assistant to the Religious Studies Chair [*Id.* at DEF00216]. Like the notes from Tamburro’s

3. Saud’s related argument, that the entire Title IX investigation, including Tamburro’s reports and notes, was pretextual, will be considered as part of his pretext argument.

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meeting with Saud, they are business records under Rule 803(6). However, where Tamburro’s notes summarize what A.R., Keshk, Van Dorp and others told her, those statements are hearsay to which no applicable exception applies.⁴ *United States v. Christ*, 513 F.3d 762, 769 (7th Cir. 2008) (“[S]tatements made by third parties in an otherwise admissible business record cannot properly be admitted for their truth unless they can be shown independently to fall within a recognized hearsay exception.” (citation and internal quotation marks omitted) (cleaned up)); *United States v. Borrasi*, 639 F.3d 774, 780 (7th Cir. 2011) (“[C]ourts may not permit the introduction of hearsay contained within hearsay unless *each* layer is properly admitted under an exception to Rule 802.”). Therefore, the Court disregards those portions of Tamburro’s notes.

Third are the Title IX Investigation Reports—one from May 2017 and the other from October 2017. [Dkt. 223-14; Dkt. 208-26.] Like the notes, the reports are business records under Rule 803(6). The portions of the reports that rely on statements made by Saud are admissions of a party opponent under Rule 801(2). However, sections of the reports that rely on conversations with others and information learned from those conversations are hearsay and inadmissible. *See Christ*, 513 F.3d at 769; *Borrasi*, 639 F.3d at 780. That includes information shared by other students or about other students as well as information Keshk shared with Tamburro. Saud argues in passing that the reports are not admissible because they were

4. Since A.R.’s affidavit was filed in support of Saud’s motion, it is appropriate for consideration on summary judgment. *James v. Hale*, 959 F.3d 307, 315 (7th Cir. 2020).

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“prepared with an eye toward litigation.” [Dkt. 257 at 6.] He provides no factual support for that assertion, and the evidence presented in this case suggests otherwise. Consequently, the Court will consider the portions of those reports that are not hearsay.

Fourth are declarations DePaul attached in support of its motion for summary judgment. [Dkt. 208-1; Dkt. 208-6; Dkt. 216.] Saud asks the Court to disregard those declarations claiming they contradict the witness’s testimony in a prior deposition—specifically, depositions taken in C.M.’s civil case. *See James*, 959 F.3d at 316 (discussing sham-affidavit rule).

Saud offers one example, arguing that the declarants, Valesco, Keshk, and Tamburro, attested that they did not consider Saud’s race in their decision-making but made contradictory representations in deposition testimony. But Saud does not direct the Court to any contradiction, and the Court found none relevant to these motions. *See U.S. ex rel. Salazar v. Liebach*, 2002 U.S. Dist. LEXIS 19079, 2002 WL 31253890, at *10 (N.D. Ill. Oct. 4, 2002) (“An undeveloped argument speaks to its paucity and the court may refuse to consider it” (citing *United States v. Jones*, 224 F.3d 621, 626 (7th Cir. 2000))).

II. Background

Unless noted, all facts recounted below are undisputed either because the parties agree or because of the failure to properly cite evidence refuting the fact asserted as required by Rule 56.1. Because both parties have moved

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for summary judgment, when evaluating each motion, the Court must view the record in the light most favorable to the nonmovant. *See Frazier-Hill v. Chi. Transit Auth.*, 75 F.4th 797, 802 (7th Cir. 2023). As explained below, if the Court views the record in Saud’s favor, DePaul is entitled to summary judgment, so it is apparent that if the Court views the record in DePaul’s favor, Saud’s motion must be denied. Rather than present two versions of the record, and because the Court ultimately grants DePaul’s motion for summary judgment, the Court presents disputed facts in the light most favorable to Saud. *Emad v. Dodge Cty.*, 71 F.4th 649, 650 (7th Cir. 2023). The Court only relays facts that are material. That is, “facts that might affect the outcome of the suit.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

DePaul is a private Catholic, Vincentian university in Chicago. [Dkt. 208-1 at ¶3; Dkt. 66, ¶7.] Saud, an Iraqi Arab American, began working in DePaul’s Department of Religious Studies as an adjunct instructor in 2005 or 2006. [Dkt. 226-2 (Saud Deposition 12:4-8; 20:4-12, 20:21-24; 187:15-18).] Adjunct faculty teach a maximum of two courses per quarter. [Dkt. 226-3 (Keshk Deposition 104:23-105:8).]

At some point Saud became a term faculty member in the Religious Studies Department. [Dkt. 226-2 (Saud Deposition 31:3-10).] The term faculty position is a non-tenure track position hired through annual teaching contracts which expire at the end of each academic year. [Dkt. 208-1 at ¶7.] Unlike adjuncts, term faculty teach three courses per quarter. [Dkt. 226-2 (Saud Deposition

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171:3-6).] Saud's last term faculty appointment at DePaul was for the 2016-2017 academic year, running through June 30, 2017, with possibility of renewal depending on annual performance review and/or budget availability. [Dkt. 208-9 at 2.]

Dr. Khaled Keshk was the Chair of the Religious Studies Department within DePaul's College of Liberal Arts and Social Sciences (LAS), and Guillermo Vásquez de Velasco was Dean of LAS. [Dkt. 208-8 at ¶3; Dkt. 208-1 at ¶5.] As Chair, Keshk was responsible for deciding' what courses would be taught, reviewing enrollment in courses, determining whether the course should move forward and, if so, confirming with the adjunct assigned to teach the course. [Dkt. 208-8 at ¶4.]⁵ The Dean is responsible for overseeing the operations of the college or school. [Dkt. 208-1 ¶4.] That includes providing input on curriculum, managing the budget, and other administrative duties. [*Id.*]

A. DePaul's Policy

DePaul's Anti-Discrimination and Anti-Harassment Policy and Procedures (ADAH Policy) includes a section

5. Saud disputes this assertion as incomplete and misleading, (*see* dkt. 258, ¶ 18), claiming that the Chair reports to the Dean, is limited to the budget set by the Dean, and the Dean is "always involved" in the hire of adjuncts. In support Saud cites Keshk's deposition where Keshk testified that the Dean's Office was "always involved" in disciplining or terminating an adjunct. [Dkt. 226-3 (Keshk Deposition 17:3-16.)] Because Saud's citations do not contradict DePaul's, the Court deems DePaul's fact admitted.

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titled “Special Considerations - Consensual Relationships.”
[Dkt. 208-4 at 4.] It states:

Amorous relationships that might be appropriate in other circumstances present serious difficulties within the University Community. Relationships between individuals in inherently unequal positions (such as teacher and student, supervisor and employee) may undermine the real or perceived integrity of the supervision and evaluation process, as well as affect the trust inherent in the educational environment. Consensual romantic or sexual relationships in which one party is in a position to review the work or influence the career of the other may provide grounds for complaint when that relationship gives undue access or advantage to, restricts opportunities of, or creates a hostile and unacceptable environment for one of the parties to the relationship, or for others.

In such circumstances, consent may not be considered a defense against a charge of sexual harassment in violation of this Policy. The determination of what constitutes sexual harassment depends upon the specific facts and the context in which the conduct occurs. [*Id.*]

Subject to the above “Special Considerations,” DePaul’s ADAH Policy does not explicitly prohibit relationships between faculty and students when the

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student is currently enrolled in the faculty member's course.⁶ [*Id.*]

B. January 2017 On-Campus Event

In January 2017 Saud planned an on-campus discussion entitled “Muslim American Civil Liberties in the age of Trump.” [Dkt. 224-7.] On January 18, 2017, Linda Blakley, DePaul’s VP of Marketing and Communications learned of the planned event from a subordinate who forwarded her a flier explaining that while “[t]he language in the flier does not suggest it is specifically in protest of Trump’s inauguration ... it is the same day and Saud has been vocal about his dislike for Trump.” [Dkt. 224-4 (Blakley Deposition 49:17-50:10); Dkt. 224-7.] The same day, Blakley forwarded the email and the event flyer to other administrators at DePaul including the Office of Institutional Diversity and Equity (OIDE). [Dkt. 224-7; Dkt. 224-4 (Blakley Deposition 51:9-22).]

6. At SOF No. 3, Saud asserts that “DePaul’s ADAH Policy does not prohibit consensual relationships between faculty and students, even where the student is currently enrolled in a course instructed by the faculty member.” [Dkt. 250 at 2.] DePaul disputes this fact, citing to the policy language. [*Id.*] Saud’s SOF is not fully supported by the ADAH Policy language. In the “Consensual Relationships” section, the Policy states that “consent may not be considered a defense against a charge of sexual harassment in violation of this Policy.” [Dkt. 208-4 at DEF00050.] Therefore, while consent is not always relevant when evaluating the permissibility of the amorous relationship, Saud is correct that the policy does not include a blanket prohibition on relationships between faculty and students. Therefore, the Court views Saud’s factual assertion to align with the undisputed evidence and to permit it to consider this evidence in the light most favorable to him.

*Appendix B***C. Campus Watch Article**

On April 6, 2017, a website, *Campus Watch*, published an article about Saud teaching at DePaul, as well as his midwestern upbringing as an Arab American, and political views.⁷ [Dkt. 224-11.] DePaul contracts with a third-party vendor to monitor news and reports about DePaul and forward any to Blakley's department. [Dkt. 224-4 (Blakley deposition 46:20-47:2).] DePaul may have received a link to the *Campus Watch* article about Saud through the third-party vendor, but Blakley did not recall seeing it. [*Id.* at 48:9-15.]

D. The Non-Renewal of Saud's Term Faculty Contract

On April 10, 2017, the Religious Studies Department completed Saud's annual review, which indicated that the Personnel Committee and the Chair of the Religious Studies Department voted to renew him for a one-year term faculty position. [Dkt. 224-6.] On the same day, however, Dean Velasco sent Saud a letter informing him that he would not be reappointed for academic year 2017-2018 due to budgetary constraints within the college. [Dkt. 208-10 at 2.] As a result, Saud's then-current appointment would end on June 30, 2017, in accordance with his contract. [*Id.*] The Dean nonetheless thanked Saud for his dedication to students' education and noted

7. DePaul objects to this evidence on hearsay grounds, but that objection is overruled. Saud is not relying on the article for its truth, but rather for its alleged impact or effect on DePaul administrators. See *United States v. Cruse*, 805 F.3d 795, 810 (7th Cir. 2015).

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that his department's review reflected favorably on his instructional and collegial performance. [*Id.*] Another term faculty member in the Religious Studies Department, David Lysik, was also informed that his contract would not be renewed for budgetary reasons. [Dkt. 226-3 (Keshk Deposition 96:5-25).]

The following day, April 11, 2017, Keshk contacted DePaul administrators about retaining Saud and Lysik as adjuncts for the fall quarter. [Dkt. 224-28.] The highest pay Keshk was authorized to offer an adjunct was \$4,800 per course. [Dkt. 208-11 at 2.] Dean Velasco's approval was needed for adjuncts to be paid more. [*Id.*]

E. First Title IX Investigation

On April 10, 2017, an attorney sent a letter to Saud and DePaul claiming that Saud had committed "repeated acts of sexual misconduct and reckless behavior" against C.M., "a student taking one of [his] classes." [Dkt. 208-12 at 2.]

A copy of the letter made its way to Karen Tamburro, DePaul's Title IX coordinator who sits within DePaul's OIDE. [Dkt. 208-6 at ¶3.] She was responsible for investigating complaints and concerns of sexual discrimination, sexual harassment, and sexual and relationship violence impacting DePaul students and faculty under DePaul's ADAH Policy. [*Id.*] Tamburro opened an investigation into C.M.'s claim. [Dkt. 226-7 at 35-36, 50-51, 57 (35:10-12, 36:2-6, 50:14-51:9, 57:6-8).]

Tamburro interviewed Saud about C.M.'s allegations on May 2, 2017. [Dkt. 226-7 (Tamburro Deposition 199:20-200:1, 204:6-10).] She took handwritten notes using

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shorthand during the interview and prepared a typed version of her notes after the interview, which stated, in part:

Prof al Saud stated that a sexual relationship developed [with C.M.] in mid-June 2016, after the course ended and she was no longer a student ... Prof. al Saud stated that they had sex on two separate occasions in his home in June 2016. He stated that the sex was consensual ... Prof al Saud stated that [C.M.] did not return to DePaul in fall 2016.

[Dkt. 208-13 at 2-3; Dkt. 226-7 (Tamburro Deposition 85:25-86:15).]

C.M.'s attorney informed Tamburro that his client would not participate in DePaul's investigation and directed Tamburro not to contact C.M., so C.M. did not participate in DePaul's investigation. [Dkt. 226-7 (Tamburro Deposition 56:19-57:5); Dkt. 224-19 at DEF00069-70.]

Tamburro's investigation encompassed a second report concerning Saud and DePaul student, A.R., which was brought to her attention on April 12, 2017. [Dkt 226-7 (Tamburro Deposition 36:2-6, 50:6-17); Dkt. 223-9.] Tamburro met with A.R. on April 18, 2017. [Dkt. 226-10.] A.R. denied anything physical occurred between her and Saud and explained no conduct occurred that made her feel uncomfortable. [Dkt. 223-12.] From the meeting with Tamburro, A.R. got the impression that "[DePaul was] trying to build a case against Laith Saud." [Dkt. 223-18.]

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On May 9, 2017, Tamburro finalized a written report summarizing her investigation. [Dkt. 226-7 (Tamburro Deposition 72:5-17).] In it she explained there was insufficient evidence to support a finding that Saud engaged in a sexual offense, sexual misconduct, or sexual harassment with respect to C.M. as those terms are defined in DePaul's ADAH Policy. [Dkt. 214 at 6-8.] The report stated, in part,

The information presented supports that Prof. al Saud did not request or solicit, directly or indirectly that [C.M.] engage in a sexual relationship with him while she was a student in his class. No information suggests that a sexual relationship was connected to [C.M.'s] participation in the class or the grade she received in the class.

[*Id.* at 6.] The report reached the same conclusion about A.R. [Dkt. 223-14 at 5.]

Tamburro notified Saud of her findings on May 10, 2017. [Dkt. 208-15 at 2.] Saud, in turn, notified Keshk that he was cleared. [Dkt. 226-2 (Saud Deposition 191:20-192:9).]

F. Adjunct Contract Negotiations

On May 2, 2017, before Tamburro's report was finalized, Keshk's assistant notified the administration that the Religious Studies Department wanted to cancel all three of Saud's upcoming courses but only one of Lysik's

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courses—the other Religious Studies Department term faculty member whose contract had not been renewed. [Dkt. 224-30 at 1-2.] Two of Saud’s courses were relisted and assigned to “STAFF.” [Id.] When Saud inquired about it, Keshk told him “[w]e cancelled the term faculty classes now so that we don’t have to do it at the last minute.” [Dkt. 224-13.]

On May 17, 2017, after Tamburro’s report was finalized, Saud emailed Keshk’s assistant about scheduling his courses for the Fall 2017 quarter. [Dkt. 164-33.]⁸ Keshk replied informing him that his courses had been “taken off and now we are trying to reschedule you.” [Id.] He asked if Saud could teach REL 265 and REL 224 on Tuesdays and Thursdays. [Id.] Saud replied, “Sounds great.” [Id.] A few weeks later, the Dean’s office contacted Keshk, explaining:

An adjunct position was created for David Lysik, so he may be terminated in the system from his full-time role [if you have not already done so]. ... Laith Saud’s adjunct position was terminated and I’m reinstating it today. I’ll confirm when that is done and then you can terminate him in the system... [Dkt. 224-35.]

On June 8, 2017, Saud emailed Keshk about the possibility of receiving more than \$4,800 per course as an adjunct. He wrote, “After doing some investigating and speaking with folks on campus, ‘enhanced pay’ has come

8. Saud did not attach Exhibit 44 to his present motion but did for his earlier summary judgment filing. The Court relies upon this filing.

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to my attention for adjuncts. Is this something we could look into?” [Dkt. 208-17 at 2.] A few weeks later, on June 28, 2017, Saud emailed Keshk again, explaining, “I am aware the Dean’s office does approve pay above the \$4,800 mark. Katie [Kutina from the Dean’s office] instructed me that the process for me to request such pay should begin with my department chair.” [Dkt. 208-18 at 2.]

On June 28, 2017, Keshk asked Saud and Lysik what a “fair” amount would be for their adjunct salary and informed them that he would “send a letter soliciting that amount from the Dean.” [Dkt. 208-19 at 3.]

G. C.M.’s Lawsuit

The next day, on June 29, 2017, C.M. filed a lawsuit against Saud and DePaul, asserting claims for battery, negligence, and violation of the Illinois Gender Violence Act. [Dkt. 208-20.] Her lawsuit alleged, in part, that on April 15, 2016, while she was a student in Saud’s class, she and Saud had dinner where he “plied [her] with alcohol in an attempt to get her intoxicated”; after dinner Saud took her to his home and “began to aggressively seek sexual relations with [her],” and Saud “had sexual intercourse with [her] at that time.” [*Id.* at ¶7.] C.M.’s complaint also alleged that Saud told her he would give her an A in his class and that she did not have to take the final exam. [*Id.* at ¶9.]

The same day C.M. filed her suit, the Chicago Sun Times published an article about it. [Dkt. 208-8 at ¶5.] Keshk learned of the lawsuit on June 30, 2017. [Dkt. 226-3 (Keshk Deposition 185:1-4).]

*Appendix B***H. Continued Adjunct Pay Negotiations**

On July 1, 2017, Saud replied to Keshk's June 28, 2017, email and requested \$6,000 per course. [Dkt. 208-19 at 3.] Lysik requested \$37,529 per year which equates to \$6,254.83 per course. [Dkt. 226-20.] Keshk forwarded Lysik's request to someone at the Dean's office. [*Id.*] Keshk testified that he forwarded Saud's request to the Dean's office, too, but aside from this testimony, there is no written record of Keshk doing so.⁹ [Dkt. 226-3 (Keshk Deposition 141:8-19).]

On July 5, 2017, Keshk contacted Tamburro to advise her that he received two reports regarding Saud after the publication of the Chicago Sun Times article.¹⁰ [Dkt. 226-12 at 1.] The following day, Keshk sent Saud this email:

Dear Laith,

Thank you for your note. I must inform you that I cannot offer you a course assignment for the Fall Quarter. In addition to low projected

9. Saud's SOF No. 32 asserts "there is no record Keshk forwarded or otherwise relayed Saud's enhanced pay request to the Dean." [Dkt. 250 at 12-13.] The Court views Saud's assertion to align with the evidence.

10. Saud objects to the statement on hearsay grounds. He is correct that the substance of the reports is inadmissible hearsay. However, the fact that reports were made to Keshk is not offered for the truth of any matter asserted in the reports but instead for its impact on both the Title IX investigation and Keshk's decision with respect to Saud's employment.

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course enrollments, and thus uncertainties about final course offerings, your compensation requirements far exceeds what I am able to pay adjunct instructors.

Should an assignment that would be suitable for you become available, I will contact you to discuss your availability. In the meantime, I suggest that you pursue other opportunities, as I do not know if any suitable assignments will be available a DePaul in the immediate future. [Dkt. 208-19 at 2]

At his deposition, Keshk testified that C.M.'s "case" was a "black cloud over [Saud's] head" at the time Keshk decided not to hire him as an adjunct for the 2017 Fall Quarter. [Dkt. 226-3 (Keshk Deposition 146:12-147:19).] Keshk testified that C.M.'s lawsuit was a factor in his decision not to hire Saud as an adjunct for the 2017 Fall Quarter, but that he did not include it in his email to Saud because he was not sure if he had "the right" to discuss the lawsuit with Saud. [*Id.* at 147:11-19.] He did not feel comfortable having Saud teach in the classroom, and "would always have been very fearful that those allegations were actually correct." [*Id.* at 264:1-22.]

I. Second Title IX Investigation

On August 21, 2017, Tamburro sent Saud a letter explaining, "OIDE obtained additional information concerning the allegations made by [C.M.] concerning you. Based on the information, OIDE is initiating further

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investigation.” [Dkt. 208-24 at 2.] Tamburro’s letter went on:

Specifically OIDE is investigating an allegation that you engaged in sexual harassment of [C.M.] by initiating a dating relationship while she was a student enrolled in your class, initiating sexual acts with her both on and off campus while she was a student enrolled in your class, and promising her a grade of an A, in absence of taking the final in [your] class due to your relationship with her.

[*Id.*] The letter requested an interview with Saud by September 1, 2017. [*Id.* at 3.]

On September 1, 2017, Saud emailed Tamburro a copy of the verified Answer he filed in C.M.’s lawsuit. [Dkt. 208-25 at 2.] He declined the interview request on the advice of counsel given that the investigation related to C.M.’s civil suit but forwarded his verified Answer so that Tamburro could “review [his] position with respect to the most recent allegations.” [*Id.*]

Saud’s Answer admitted that while C.M. was a student in his class during the spring 2016 quarter, he sent her an email asking to get a drink and she agreed. [*Id.* at 4.] Saud also admitted that at an unspecified time he and C.M. had sex. [*Id.* at 8.] Saud’s Answer left open the question of whether C.M. was still a student in his class when they had sex. Tamburro did not contact Saud about any potential discrepancy between his pleadings and the statements he made during his May interview, namely that the relationship developed in mid-June 2016, after

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the course ended and C.M. was no longer a student. [Dkt. 226-7 (Tamburro Deposition 146:11-25).]

C.M.'s attorney informed DePaul that C.M. did not wish to participate in an interview related to the second Title IX investigation. [*Id.* at 109:19-21.]

On October 5, 2017, Tamburro issued her report which found by a preponderance of the evidence that Saud subjected C.M. to sexual harassment. [Dkt. 208-26 at 10.] That conclusion was based in part on Tamburro's finding that Saud was inconsistent about when the sexual relationship began: Saud initially reported to Tamburro that it began in mid-June 2016, but this date was omitted from his Answer to C.M.'s complaint. [Dkt. 226-22 at 9.] She notified Saud by email the following day about the outcome of the investigation and informed him that Keshk and Dean Velasco would contact him to discuss the consequences. [Dkt. 208-27 at 2-3.]

On October 23, 2017, Saud received a letter from Dean Velasco informing him that as a result of the Title IX investigation, he was no longer eligible for future employment at DePaul. [Dkt. 226-2 (Saud Deposition 335:17-336:1; 342:6-23).] In addition, Dean Velasco informed Saud that he could not provide formal or informal instruction in any classroom-based or co-curricular activities sponsored by DePaul. [Dkt 224-57.]

A trial was held in C.M.'s lawsuit in April 2019. A judge found against C.M. on her claims and in Saud's favor on his counterclaim for defamation. [Dkt. 250 at 24 (SOF #68).]

This lawsuit followed.

*Appendix B***II. Legal Standard**

Summary judgment “is the ‘put up or shut up’ moment in a lawsuit, when a party must show what evidence it has that would convince a trier of fact to accept its version of events.” *Wade v. Ramos*, 26 F.4th 440, 446 (7th Cir. 2022) (quoting *Schacht v. Wis. Dep’t of Corr.*, 175 F.3d 497, 504 (7th Cir. 1999)). A party opposing summary judgment must “set forth specific facts showing that there is a genuine issue for trial.” *Anderson*, 477 U.S. at 250. A genuine issue of material fact exists if “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.* at 248. On the other hand, summary judgment is proper if the nonmoving party “fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Ellis v. CCA of Tennessee LLC*, 650 F.3d 640, 646 (7th Cir. 2011) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)).

The Court “may not make credibility determinations, weigh the evidence, or decide which inferences to draw from the facts; these are jobs for a factfinder.” *Johnson v. Rimmer*, 936 F.3d 695, 705 (7th Cir. 2019) (quoting *Payne v. Pauley*, 337 F.3d 767, 770 (7th Cir. 2003)).

III. Analysis

Saud brings a race discrimination claim against DePaul based on 42 U.S.C. § 1981. “Section 1981 ... protects the right of all persons to make and enforce contracts regardless of race.” *Oliver v. Joint Logistics Managers*,

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Inc., 893 F.3d 408, 411 (7th Cir. 2018) (citation and internal quotation marks omitted). The statute “offers relief when racial discrimination blocks the creation of a contractual relationship, as well as when racial discrimination impairs an existing contractual relationship.” *Circle City Broad. I, LLC v. AT&T Servs., Inc.*, 99 F.4th 378, 383 (7th Cir. 2024) (citation and internal quotation marks omitted).

At summary judgment, the pertinent question is whether a reasonable juror could conclude that Saud would have been hired as an adjunct professor for the fall of 2017 and not barred from future employment at DePaul “if he had a different ethnicity, and everything else had remained the same.” *Ortiz v. Werner Enterprises, Inc.*, 834 F.3d 760, 764 (7th Cir. 2016); *see also Reives v. Illinois State Police*, 29 F.4th 887, 892 (7th Cir. 2022). To defeat summary judgment, Saud “must either provide enough evidence to permit a reasonable factfinder to conclude that [his] race caused the ... adverse employment action,” under *Ortiz*, 834 F.3d at 765, or shoulder his burden under *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-05, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973).” *Oliver*, 893 F.3d at 411-12 (cleaned up).

Saud alleges there are two distinct adverse actions at issue in this case: first, DePaul’s decision not to hire him as an adjunct in Fall 2017, and second, DePaul’s decision to bar him from future employment.¹¹ The Court addresses each adverse action separately below.

11. Saud argues Tamburro’s allegedly discriminatory investigation constitutes an independent adverse employment action. [Dkt. 242 at 6.] *Muldrow v. City of St. Louis* requires that the

*Appendix B***A. Race Discrimination in Fall 2017 Adjunct Hiring**

Saud first alleges that in the summer of 2017 he was not hired to be an adjunct instructor for the Fall 2017 quarter on account of his race. Under *McDonnell Douglas*, Saud must establish a *prima facie* case of racial discrimination by showing: (1) he is a member of a protected group; (2) he was qualified for the position and (3) he suffered an adverse employment action; and (4) other similarly situated persons who were not members of Saud’s protected class were treated more favorably. *Gamble v. Cnty. of Cook*, 106 F.4th 622, 626 (7th Cir. 2024); *Oliver*, 893 F.3d at 412. If plaintiff carries his initial burden it moves “to the employer to articulate some legitimate, nondiscriminatory reason” for its decision. *McDonnell Douglas Corp.*, 411 U.S. at 802. Then the burden shifts back to plaintiff “to demonstrate that [his employer’s] reason was pretext to hide a discriminatory motive.” *Oliver*, 893 F.3d at 411.

1. Prima Facie Case

Both Saud and DePaul agree that Saud satisfies the first two elements of the *prima facie* case. He is a member of a protected class on account of his race, [Dkt. 250, ¶ 4], and he was subjected to an adverse action when he was not rehired to teach as an adjunct. *Oliver*, 893 F.3d at 413.

at-issue action “brought about some ‘disadvantageous’ change in an employment term or condition.” 601 U.S. 346, 354, 144 S. Ct. 967, 218 L. Ed. 2d 322 (2024). The Court considers these arguments as part of its pretext analysis.

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There is sufficient evidence in the record to suggest that Saud was qualified for the position. In 2016, Saud received an evaluation of “good” on his department review. [Dkt. 224-46.] His review from the spring of 2017 also indicates that his department was prepared to recommend to the Dean that his one-year term faculty position contract be renewed. [Dkt. 224-6.] It was common for his classes to have a waitlist. [Dkt. 224-58 (C.M. Trial Testimony 62:6-7).] He was also frequently recommended by his peers for speaking engagements. [Dkt. 224-2 (Keshk Deposition 91:14-170).] While there may be valid reasons for DePaul to categorically prohibit a person from teaching when facing a lawsuit like the one C.M. filed against Saud, as DePaul argues, *see C.S. v. Madison Metropolitan School District*, 34 F.4th 536, 542 (7th Cir. 2022), there is no evidence of such a DePaul policy here. [Dkt. 209 at 12-13.]

To complete his *prima facie* case, Saud must identify comparators—similarly situated persons not a member of Saud’s protected class who were treated more favorably. *Bless v. Cook Cnty. Sheriff’s Off.*, 9 F.4th 565, 575 (7th Cir. 2021). “Although similarly situated employees need not be identical in every conceivable way, they must be directly comparable to the plaintiff in all material respects.” *McDaniel v. Progress Rail Locomotive, Inc.*, 940 F.3d 360, 369 (7th Cir. 2019). In most cases “material respects” means that plaintiff and his comparator “(1) dealt with the same supervisor, (2) were subject to the same standards, and (3) engaged in similar conduct without such differentiating or mitigating circumstances as would distinguish their conduct or the employer’s treatment

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of them.” *Id.* (cleaned up). “Whether a comparator is similarly situated is typically a question for the fact finder, unless, of course, the plaintiff has no evidence from which a reasonable fact finder could conclude that the plaintiff met his burden on this issue.” *Id.* That is the case here.

Saud points to David Lysik as a comparator who was treated better, but Lysik did not engage in similar conduct and mitigating circumstances explain DePaul’s different treatment of him.

Lysik was a white male professor in the Religious Studies Department. [Dkt. 226-3 (Keshk Deposition 98:11-16).] In early 2014, DePaul’s Public Safety office received information about a comment posted on a public Facebook page entitled “DePaul Confessions.” [Dkt 216, ¶4.] The comment by “Donny Juan” said “PROFESSOR LISACK a DePaul Catholick [sic] studies Teacher RAPED ME.” [*Id.*, ¶¶4,5.] Then-Vice President of OIDE, Barbara Schaffer, was assigned to investigate. [*Id.*, ¶4.] The case report Schaffer received from the Public Safety office explained, “The accused name is not found in DePaul University Directory. The only name found in DePaul University Directory that is similar is David Lysik of Re[l]i[g]ious Studies.” [*Id.*, ¶4.] DePaul also could not locate any student with the name “Donny Juan.” [*Id.*, ¶5.]

On May 2, 2014, Lysik emailed Schaffer informing her that he located a professor at another university, Dr. David Lisak, whose research specialty is rape. [Dkt. 217 at 2.] On June 2, 2014, Schaffer told Lysik that OIDE closed the case because it was “unable to turn up any

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other information.” [*Id.*] Neither Keshk nor the Dean made any decisions related to Lysik’s employment at DePaul in 2014.¹² Lysik was permitted to continue teaching after the investigation closed.

There are material differences between the allegations against Lysik and Saud that, taken together, confirm Lysik is not a valid comparator. The allegation against Lysik was made on a Facebook page while the allegation against Saud was made by an attorney representing the complainant. DePaul could not identify the person making the complaint against Lysik but could identify C.M. Because of the misspelling, the subject of “Donny Juan’s” allegation was unclear. In contrast, C.M.’s allegation was unequivocally against Saud, and Saud admitted to having sex with C.M. during his interview with Tamburro—substantiating part of C.M.’s claim. A more appropriate comparator would be an identifiable faculty member who was accused of misconduct by a known or identified student but who was nonetheless permitted to teach as an adjunct. As a result of these significant differences, the fact that Lysik was permitted to continue teaching at DePaul “does not suggest anything ‘fishy’ about” DePaul’s decision to not rehire Saud as an adjunct instructor. *Bless*, 9 F.4th at 575. Because there is an absence of evidence from which a jury could find Lysik to be a similarly situated comparator, Saud has failed to establish a *prima facie* case of race discrimination under § 1981.

12. Plaintiff’s objection to this statement of fact is overruled because he fails to cite evidence refuting DePaul’s factual assertion specifically as to Lysik in the year 2014.

*Appendix B***2. Pretext**

McDonnell Douglas framework aside, DePaul has offered a non-discriminatory reason for the employment decision, so Saud must offer evidence from which the jury could find that the explanation is pretextual. *Vassileva v. City of Chicago*, 118 F.4th 869, 874 (7th Cir. 2024) (cleaned up); *Ortiz*, 834 F.3d at 765.

DePaul's "legitimate nondiscriminatory rationale" for not rehiring Saud was that he was being sued for coercing a student, C.M., into having sex with him, and admitted to having sex with her. It argues that the evidence shows Keshk proceeded with the idea of hiring both Saud and Lysik as adjuncts but abandoned the plan days after C.M. filed her lawsuit. [Dkt. 208-19 at 2-3.]

Saud has the burden to show that DePaul's non-discriminatory reason was dishonest and the true reason was based on a discriminatory intent. *Logan v. City of Chicago*, 4 F.4th 529, 537 (7th Cir. 2021) (citation and internal quotation marks omitted). Pretext is "a dishonest explanation, a lie rather than an oddity or an error." *Vassileva*, 118 F.4th at 874; *Burton v. Bd. of Regents of Univ. of Wisconsin Sys.*, 851 F.3d 690, 698 (7th Cir. 2017) ("[P]retext involves more than just faulty reasoning or mistaken judgment on the part of the employer; it is a lie, specifically a phony reason for some action." (cleaned up)). The question "is not whether the employer's stated reason was inaccurate or unfair, but whether the employer honestly believed the reason it has offered for the adverse action," *Liu v. Cook Cnty.*, 817 F.3d 307, 316 (7th

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Cir. 2016) (cleaned up). “A plaintiff may show a genuine dispute of fact on pretext by identifying such weaknesses, implausibilities, inconsistencies, or contradictions in a stated reason that a reasonable trier of fact could find it unworthy of credence.” *Id.* (cleaned up).

First, Saud directs the Court’s attention to Keshk’s shifting explanations for why he was not rehired. A jury can “reasonably infer pretext from an employer’s shifting or inconsistent explanations for the challenged employment decision.” *Appelbaum v. Milwaukee Metro. Sewerage Dist.*, 340 F.3d 573, 579 (7th Cir. 2003). In his July 6, 2017 email to Saud, Keshk listed two reasons for his decision not to offer Saud course assignments for the upcoming quarter. First, that Saud asked for too much money, and second that “low projected course enrollments” resulted in “uncertainties about final course offerings.” [Dkt. 208-19 at 2] At his deposition, Keshk stated that C.M.’s “case” was a “black cloud over [Saud’s] head” and influenced his decision not to rehire Saud. [Dkt. 226-3 (Keshk Deposition 146:12-147:19).] According to Keshk, he did not reference the lawsuit in his email because he wasn’t sure if he had the right to discuss it with Saud. [*Id.*]

To be evidence of pretext, the explanations must be inconsistent so as to “permit an inference of mendacity.” *Davenport v. Northrop Grumman Sys. Corp.*, 281 F. App’x 585, 588 (7th Cir. 2008); *Bagwe v. Sedgwick Claims Mgmt. Servs., Inc.*, 811 F.3d 866, 881 (7th Cir. 2016). The shifting explanations Saud points to—pay requirements, low projected enrollment, and the recently filed lawsuit—would not permit the inference that DePaul’s reasons were dishonest, or a “mask” for illegal discrimination.

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Regarding “low projected course enrollments,” there is no evidence that Keshk’s assertion about low projected course enrollments was a lie. Saud argues that Keshk manufactured low enrollment by cancelling Saud’s courses in May 2017, before Saud requested enhanced adjunct pay. [Dkt. 242 at 10.] But Keshk worked with the Dean’s office to cancel Saud’s term faculty courses and faculty member status in the system because his term faculty contract had not been renewed. This was done so that the courses could be relisted, and Saud could be added to the system as an adjunct professor and continue teaching.¹³

On the money front, Saud sees as pretextual DePaul hiring Lysik as an adjunct when he requested more money per course. It is true Lysik requested \$37,529 per year or \$6,254.83 per course, (*see* dkt. 226-20), but Lysik ultimately accepted just \$4,800 per course, which is less than what he or Saud requested. [Dkt 208-23 at 2.]

No reasonable fact finder could conclude that these reasons were pretext (*i.e.*, dishonest), even in light of Keshk’s subsequent deposition testimony. Keshk did not disown the reasons listed in his email. [Dkt. 226-3 (Keshk Deposition 146:6-147:19).] And even if Keshk’s email wasn’t the full story of why Keshk refused to rehire him, Saud offers no evidence of an impermissible motivation. *Vassileva*, 118 F.4th at 874. In other words, the “shift” Saud identifies does not mean a reasonable jury could find that “the real reason [for the adverse employment action]

13. Similarly, Saud’s factual assertion that it was common for his courses to have waiting lists does not disprove Keshk’s claim that in the summer of 2017 his courses had low projected enrollment. [Dkt. 224-58 (C.M. Trial Testimony, 62:6-7).]

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was discriminatory.” *Stockwell v. City of Harvey*, 597 F.3d 895, 901-02 (7th Cir. 2010).

Next Saud points to irregularities in DePaul’s processes. He argues that DePaul’s cancellation of his courses in May 2017 proves that it decided not to rehire him before C.M. filed her lawsuit and therefore, its alleged nondiscriminatory reason for its decision was pretextual. He also points out that in May 2017, DePaul cancelled all three of Saud’s fall 2017 courses and relisted two of them as assigned to “STAFF.”¹⁴ Lysik, whose term faculty contract was also not renewed due to budget constraints, only had one of his courses cancelled. In support, Saud highlights Keshk’s inability to explain at his deposition why Saud and Lysik received different treatment. [Dkt. 226-3 (Keshk Deposition 165:17-22).]

An employer’s “unusual deviation from standard procedures can serve as circumstantial evidence of discrimination.” *Baines v. Walgreen Co.*, 863 F.3d 656, 664 (7th Cir. 2017). To show pretext, there must be evidence permitting a jury to infer that the true motive for DePaul’s actions were illegal discrimination. *Chatman v. Bd. of Educ. of City of Chicago*, 5 F.4th 738, 747 (7th Cir. 2021). Keshk’s statements would not permit a jury to infer such a motive. Assuming that the decision to cancel Saud’s courses for the upcoming quarter deviated from ordinary procedures or resulted in unfair treatment, they have nothing to do with race. Nor is there evidence

14. Recall that term faculty teach three course per quarter while adjunct instructors teach only two. [Dkt. 226-2 (Saud Deposition 171:3-6); Dkt. 226-3 (Keshk Deposition 104:23-105:8).]

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suggesting that the differences were intended to “cover up more nefarious motives.” *Id.*

As explained above, DePaul’s cancellation of Saud’s term faculty courses does not support the inference that DePaul had decided to fire him in May 2017. From late May until late June 2017, Keshk and others at DePaul communicated about relisting Saud in the system as an adjunct professor with adjunct courses Saud could continue to teach. [Dkt. 224-13; Dkt. 224-35.] Salary negotiations concerning enhanced adjunct pay continued throughout this time period. [Dkt. 208-17 at 2; Dkt. 208-18 at 2.] While DePaul’s practice of cancelling term faculty members and reinstating them as adjuncts may be cumbersome, inconsistent, or poorly executed, Saud is unable to tie any process issues to race, which is fatal to his argument. *Barnes v. Bd. of Trustees of Univ. of Illinois*, 946 F.3d 384, 390 (7th Cir. 2020) (explaining that even if the employer’s “process was not accurate, wise, or well-considered” does not make it pretextual).

Saud offers other scattershot arguments aimed at establishing Keshk’s motives were discriminatory. None hit the mark. He asserts—without citation—that (1) his January 2017 event on campus about Muslim civil rights was flagged to high-level administrators; (2) days before he was accused he was the subject of a *Campus Watch* article; (3) DePaul never informed Saud of additional complaints when it reopened his investigation in August 2017; (4) Keshk was up for reappointment in June 2017; (5) Keshk has a pattern of ignoring faculty discrimination concerns, but was aware of them; (6) Keshk believed Saud

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would “throw [him] under the bus” and (7) Saud was not afforded an appeal. [Dkt. 257 at 12.] But without any evidence of discrimination—specifically, evidence that Keshk’s decision was based Saud’s race—Saud’s critiques of Keshk fall short. *See Ennin v. CNH Indus. Am., LLC*, 878 F.3d 590, 597 (7th Cir. 2017) (explaining that “mere conjecture and speculation” is insufficient to support race discrimination claim).

On this record, no jury could find that illegal discrimination was why DePaul decided not to permit Saud to teach as an adjunct. Even when the record is viewed in Saud’s favor and the evidence is considered “in a single pile,” a factfinder could not reasonably conclude that the adverse employment action was because of Saud’s race. *Ortiz*, 834 F.3d at 766.

B. Race Discrimination Regarding Future Employment

Saud also argues that DePaul violated § 1981 when Dean Velasco, after the conclusion of the second Title IX investigation in October 2017, decided Saud was ineligible for future employment at DePaul. The Court considers this claim under both the *McDonnell Douglas* and *Ortiz* standards.

1. *Prima Facie* Case

The same *prima facie* requirements discussed above apply. Saud is undisputedly a member of a protected

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class,¹⁵ and the parties also do not dispute that being deemed ineligible for future employment is an adverse employment action. [Dkt. 209 at 16; Dkt. 266 at 5.]

There is evidence, as discussed above, that Saud was qualified for future employment with DePaul. Though DePaul argues that the Title IX investigation determined Saud had violated DePaul's Policy with respect to C.M., it fails to cite evidence that violating the policy renders an instructor ineligible for future employment. The ADAH Policy itself includes no such provision.

Saud must also identify comparators—that is, someone who DePaul found violated the policy but was not deemed ineligible for future employment. *See Coleman v. Donahoe*, 667 F.3d 835, 846 (7th Cir. 2012) (explaining the purpose of identifying comparators “is to eliminate other possible explanatory variables” for the employer’s decision “such as differing roles, performance histories, or decision-making personnel”).

Saud points to Lysik as a comparator, but as already discussed there are too many distinctions between them. Comparators need not “be identical in every conceivable way,” but the differences between Saud, who was found to have violated the policy, and Lysik, who was not, “render[s]

15. DePaul argues, relying on Dean Velasco’s declaration, that the Dean was unaware of Saud’s race and therefore could not have impermissibly considered it. [Dkt. 208-1 at ¶1.] Saud counters that his name reflects his race. Since Saud’s § 1981 claim can be resolved in other ways, the Court assumes Dean Velasco was aware of Saud’s race.

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the comparison effectively useless.” *Humphries v. CBOCS W., Inc.*, 474 F.3d 387, 405 (7th Cir. 2007), *aff’d*, 553 U.S. 442, 128 S. Ct. 1951, 170 L. Ed. 2d 864 (2008). Put another way, evidence of Lysik’s treatment does not eliminate the possibility that DePaul made its decision with respect to Saud’s future employment because of his policy violation rather than on account of his race.

Alternatively, Saud identifies Joseph Suglia, another white professor at DePaul. In 2015, Tamburro headed an OIDE investigation into a complaint that Suglia engaged in “verbal exchanges ... of an explicit sexual nature” with a student no longer enrolled in his course. [Dkt. 218 at 2.] OIDE determined Suglia violated the “Consensual Relationship” portion of DePaul’s ADAH Policy and issued several sanctions against Suglia, including a determination that he was not eligible for rehire at DePaul. [*Id.* at 3.]

Suglia’s ineligibility for future employment with DePaul means that he is not a suitable comparator. Indeed, evidence of Suglia’s treatment supports the conclusion that DePaul barred from future employment individuals who violated its ADAH Policy, regardless of their race. A comparison with Suglia also fails because a different decisionmaker meted out his punishment—his department Chair, not the Dean of LAS. [Dkt. 218 at 3.] *Little v. Illinois Dep’t of Revenue*, 369 F.3d 1007, 1012 (7th Cir. 2004) (“A similarly-situated employee must have been disciplined, or not, by the same decisionmaker who imposed an adverse employment action on the plaintiff.”); *Mourning v. Ternes Packaging, Indiana, Inc.*, 868 F.3d 568, 571 (7th Cir. 2017) (holding that “to be an adequate comparator” plaintiff

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would need to show the comparator “was treated more favorably ... by the same decisionmaker”). So Saud cannot establish his *prima facie* case for this reason either.¹⁶

2. Pretext

The Court next considers Saud’s argument that DePaul’s reason for barring him from future employment was pretextual.¹⁷ His pretext arguments generally fall into the following categories: how DePaul conducted its investigation; discrepancies with Tamburro’s recordkeeping and investigation practices; his disparate treatment during the investigation; and general allegations concerning DePaul’s ongoing history of discriminating against minorities. Ultimately, even in combination, this evidence does not permit an inference of race discrimination. *Ortiz*, 834 F.3d at 764.

16. Saud argues that he was subjected to a worse outcome than Suglia because he was also prohibited from participating in DePaul sponsored events. Assuming being barred from sponsored events is a separate adverse employment action, Suglia still is not a suitable comparator because a different decisionmaker decided on his punishment. Consistent with *Ortiz*, however, the Court discusses the different treatment in its pretext discussion below.

17. Saud’s briefing leaves murky what pretext arguments relate to which adverse employment action. The Court has endeavored to sort them out, giving Saud the benefit of the doubt wherever possible. *See Patterson v. Howe*, 96 F.4th 992, 999 (7th Cir. 2024) (“It is not the courts’ responsibility to develop an argument for a party.”)

*Appendix B***i. Investigation Discrepancies and Errors**

In her October Title IX Report, Tamburro determined that Saud lacked credibility on when the sexual relationship with C.M. began. That determination underpinned the finding that Saud violated DePaul's policy and, in turn, the Dean's ultimate decision regarding future employment.

To demonstrate pretext, Saud takes aim at Tamburro's negative credibility determination, which was based primarily on the conflict Tamburro identified between what Saud told her during his May interview and the information contained in Saud's verified Answer filed in September. The Answer did "not provide a timeframe for when the sexual relationship [with C.M.] began," but Tamburro's interview notes indicate that Saud "reported that the sexual relationship began sometime in mid-June 2016 when [C.M.] was not a student enrolled in his course." [Dkt. 226-22 at 4.]

Saud says that Tamburro manufactured a conflict between the interview notes and Saud's Answer by purposefully taking inaccurate notes. Even assuming this were true, it does not reveal pretext. Setting aside that the notes formed the basis for the May Report that *cleared* Saud, any inaccuracies were, at worst, a mistake; there is no evidence they were a "phony excuse." *Mullin v. Temco Mach., Inc.*, 732 F.3d 772, 778 (7th Cir. 2013) (holding that a "mere mistake by an employer does not constitute pretext; instead, pretext "is a phony excuse.") Nor does Saud identify anything about the notes that reveal a discriminatory motive. *Tyburski*, 964 F.3d at

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599 (“Tyburski has pointed to no evidence of improper motivation, other than the interviewers’ knowledge of his age relative to that of the other candidates. This is not enough.”) Put differently, even a “false report ..., standing alone, is insufficient to establish discriminatory animus.” *Bragg v. Munster Med. Rsch. Found. Inc.*, 58 F.4th 265, 273 (7th Cir. 2023).

Saud also notes there was no inconsistency between the statements he made to Tamburro during the May interview and his verified Answer, which did not specify a date when Saud had sex with C.M. [Dkt. 257 at 15.] This, Saud suggests, means that Tamburro’s conclusion that he lacked credibility was inaccurate because there was no conflict. But again, “faulty reasoning or mistaken judgment on the part of the employer” is insufficient to show pretext. *Harden v. Marion Cnty. Sheriff’s Dept.*, 799 F.3d 857, 864 (7th Cir. 2015). To survive summary judgment, Saud must point to evidence permitting an inference of discriminatory animus. *Chatman*, 5 F.4th at 747 (pretext argument failed because plaintiff could not “persuasively assert that the Board’s decision to eliminate the position was driven by discriminatory animus.”)¹⁸ He has not done so on this record.

Saud’s other arguments attacking the way in which Tamburro reached her conclusion about his lack of credibility fare no better. He argues that Tamburro and

18. Saud’s argument that Tamburro should have contacted him to inquire about the perceived inconsistency (*see* dkt. 208-25 at 2) or should have viewed his Answer through the lens of an attorney-drafted document (*see* dkt. 266 at 12) are unpersuasive for the same reason.

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Keshk’s testimony at C.M.’s trial was inconsistent, with each claiming that they relied on information supplied by the other to determine that Saud lied. [*Compare* Dkt. 242 at 11 *with* Dkt. 257 at 15.] As discussed, shifting or inconsistent explanations can demonstrate pretext when they permit an inference of mendacity, but Saud fails to meaningfully develop any argument or point to any evidence from which a jury could infer dishonesty from the differing testimony. Undeveloped arguments like this one are waived. *Greenbank v. Great Am. Assurance Co.*, 47 F.4th 618, 629 (7th Cir. 2022) (“We have made clear that perfunctory and underdeveloped arguments, and arguments that are unsupported by pertinent authority are waived.”)

Lastly, because Saud has not shown Tamburro was biased, his cat’s paw theory of liability also fails. Under this theory, “when a biased subordinate lacks decision-making power to [take adverse action against] an employee, but uses a formal decision maker as a dupe in a deliberate scheme to trigger a discriminatory employment action, [the Court] will consider the biased subordinate’s actions as direct evidence of discrimination.” *Nichols v. Michigan City Plant Plan. Dep’t*, 755 F.3d 594, 600 (7th Cir. 2014) (cleaned up). To prove the theory, the plaintiff must show: “(1) the biased subordinate actually harbored discriminatory animus against [him]; and (2) “the subordinate’s input was a proximate cause of the adverse employment decision.” *Bragg*, 58 F.4th at 273 (cleaned up).

Without evidence that Tamburro, the allegedly biased subordinate, expressed racial bias towards Saud or acted

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in some discriminatory manner, Saud does not “get past the first step in the cat’s-paw theory.” *Id.* at 274. The absence of evidence that Tamburro was racially biased in her investigation is fatal to Saud’s assertion that Dean Velasco was used as a dupe.¹⁹

ii. Other Disparities

Saud points to at least one instance where a similarly situated person was treated better following an OIDE investigation. He argues that Suglia was notified that he could file a counter-complaint against his accuser and was given greater detail about the nature of his policy violation. [Dkt. 218 at 2]. Additionally, Saud was barred from participating in DePaul-sponsored events when Suglia was not. [Dkt. 257 at 14.] Better treatment of people similarly situated but for the protected characteristic is one way to establish pretext. *Joll v. Valparaiso Cmty.*

19. Saud argues the Dean premised his decision to bar Saud from future employment on a misunderstanding of Tamburro’s October Title IX Report. According to Saud, the Dean interpreted Tamburro’s report to mean that OIDE found Saud had done all the things C.M. accused him of doing, including exchanging grades for sex. [Dkt. 266 at 9; Dkt. 224-12 (Velasco Deposition 184:10-187:8).] But the October Title IX Report found in Saud’s favor on that allegation. [Dkt. 208-26 at 10.] Whether or not Dean Velasco misunderstood the Title IX report is irrelevant absent evidence that he acted purposefully, or someone else acted purposefully in encouraging that mistake. *See Mullin*, 732 F.3d at 778. Furthermore, mistakenly predicating Saud’s discipline on the belief that he agreed to exchange grades for sex is not evidence of race discrimination, which Saud needs to avoid summary judgment. *Stockwell*, 597 F.3d at 901-02; *Ptasznik v. St. Joseph Hosp.*, 464 F.3d 691, 696 (7th Cir. 2006).

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Sch., 953 F.3d 923, 929 (7th Cir. 2020). The Court agrees that Saud has identified some evidence of discrimination through different treatment of Suglia, a white professor, following his OIDE investigation. This is not enough to sustain an inference of racial discrimination on its own, but something to add to the pile for consideration as a whole.

Saud next argues the outcome of his OIDE investigation was “predetermined” and thus indicative of pretext.²⁰ For example, he asserts that Tamburro and Keshk attempted to elicit information about other potential accusers, and that neither notified Saud about the other reports.²¹ According to Saud, “white faculty are always informed and integrated into investigations.” [Dkt. 257 at 10.] But Saud does not cite to any evidence in the record in support of this assertion, and “generalized argument[s] that supervisors treat white employees better than [minority] employees,” without support from record, is not sufficient. *Johnson v. Advoc. Health & Hosps. Corp.*, 892 F.3d 887, 899 (7th Cir. 2018).

20. Saud admits his arguments about insufficient process received during the Title IX investigation relate to his pretext claim. [Dkt. 257 at 16.] Such allegations cannot support a procedural due process claim since that claim was dismissed. [Dkt. 36 at 7; Dkt. 61 at 19.]

21. Keshk’s testimony about reports made by others is hearsay and inadmissible to show pretext. *See Fall v. New York State United Tchrs.*, 289 F. App’x 419, 421 (2d Cir. 2008) (“[A] plaintiff must offer specific, admissible evidence of pretext.”); *Parker v. Four Seasons Hotels, Ltd.*, 845 F.3d 807, 812 n.3 (7th Cir. 2017) (“[A] court may consider only admissible evidence in assessing a motion for summary judgment.”).

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Nor is the Court persuaded by Saud's arguments that the outcome of the Title IX investigation was pretextual because he "was punished for something that was not prohibited at DePaul." [Dkt. 242 at 12.] It is true that DePaul's ADAH policy does not explicitly prohibit sexual relationships between professors and students, even while students are currently enrolled in a professor's class. But whether Saud's actions violated DePaul's policy is beside the point (as is the fact that Saud later prevailed in C.M.'s lawsuit). What matters for pretext purposes is whether the relevant decisionmakers honestly believed Saud violated the policy when they made the decision to bar him from future employment. *See Ptasznik*, 464 F.3d at 696 ("An employer's mistaken belief that the plaintiff's conduct merited termination is not unlawful, so long as the belief was honestly held."); *Cung Hnin v. TOA (USA), LLC*, 751 F.3d 499, 506 (7th Cir. 2014) (dispensing with employee's argument that his conduct did not violate his employer's policy because the issue is whether the employer honestly believed it did). Saud has mustered no evidence that the relevant actors and decisionmakers believed his conduct did not violate the policy.

Finally, Saud makes a variety of arguments aimed at showing an "ongoing history of discrimination" at DePaul and within OIDE. *Ford v. Marion Cnty. Sheriff's Off.*, 942 F.3d 839, 858 (7th Cir. 2019). He identifies (sometimes by name) other DePaul employees who were treated poorly (or treated well, if they were white), had their claims of race discrimination ignored, and were targeted by OIDE, including after publication of *Campus Watch* articles. [Dkt. 257 at 16; Dkt. 242 at 13; Dkt. 266 at 2; Dkt 266 at 15; Dkt 224-48].

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While “a plaintiff can demonstrate pretext ... by presenting evidence of the employer’s ... practices with respect to minority employment,” Saud presents insufficient evidence to impugn DePaul’s employment decision with respect to him. *Sublett v. John Wiley & Sons, Inc.*, 463 F.3d 731, 739 (7th Cir. 2006). Much of Saud’s evidence is hearsay, such as Schaffer’s testimony that others complained to her that they believed she discriminated against them. [Dkt. 226-17 (Schaffer Deposition 92:6-15).] The remaining evidence—such as Schaffer’s testimony that an African American professor once brought a noose to her office during an investigation [*Id.*, 92:22-93:1]—is too scant, disjointed, and general “to impugn a particular employment decision.” *Ford*, 942 F.3d at 858; *Stinson v. Cty. of Cook*, 2020 U.S. Dist. LEXIS 218638, 2020 WL 6870816, at *15 (N.D. Ill. Nov. 23, 2020) (explaining, in retaliation context, that even assuming plaintiff mustered evidence that her employer had a “culture of retaliation” she failed to connect any “general culture of retaliation to” her adverse employment action).

Also insufficient are Saud’s passing references to Keshk’s belief that Saud would throw him under the bus [Dkt. 226-3 (Keshk Deposition 265:21-266:24)] and how Keshk dismissed as a joke an instance where a peer evaluator commented about Saud having allegiance to Saudi Arabia. [*Id.* at 84:13-88:11.] These assertions are undeveloped and therefore waived. Waiver aside, even taken together, they are too scant to permit an inference of race discrimination.

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Considered as a whole per *Ortiz*, 834 F.3d at 764, including DePaul's better treatment of Suglia, the evidence does not "permit a reasonable jury to infer 'an overall likelihood of discrimination' that merits a trial." *Joll*, 953 F.3d at 929 (citing *Ortiz*, 834 F.3d at 763).

IV. Conclusion

DePaul's Motion for Summary judgment is granted.
Saud's Motion for Summary Judgment is denied.

Enter: 19-cv-3945

Date: December 6, 2024

/s/ Lindsay C. Jenkins

Lindsay C. Jenkins

United States District Judge

APPENDIX C — 42 U.S.C. § 1981

42 U.S.C. § 1981 Equal Rights Under the Law

(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 white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) “Make and enforce contracts” defined

For purposes of this section, the term “make and enforce contracts” includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c) Protection against impairment

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.