

No.

In the Supreme Court of the United States

DAVID PETERSEN, ET AL.,
PETITIONERS,

v.

SNOHOMISH REGIONAL FIRE & RESCUE,
RESPONDENT.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether an employer can defeat a Title VII religious accommodation claim by establishing merely that it had a reasonable basis for believing that a requested accommodation would inflict an undue hardship on the employer or whether the employer must establish that the requested accommodation would have actually imposed an undue hardship.

II

PARTIES TO THE PROCEEDING

Petitioners David Petersen, Jay Stickney, Beau Watson, Evan Merritt, Norm Alan Peterson II, Riley Korf, Ryan Stupey, and Kevin Gleason were plaintiffs in the district court and appellants in the Ninth Circuit.

Respondent Snohomish Regional Fire & Rescue was a defendant in the district court and appellee in the Ninth Circuit.*

* Although the official caption in the court of appeals included an additional party as a defendant-appellee, the claims involving that additional party were resolved below and not raised in the court of appeals; the parties listed above are the only parties who participated in the proceedings at the appellate level.

III

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *Petersen v. Snohomish Regional Fire & Rescue*, No. 24-1044 (9th Cir. Dec. 17, 2025) (denying petition for rehearing and rehearing en banc)
- *Petersen v. Snohomish Regional Fire & Rescue*, No. 24-1044 (9th Cir. Sept. 2, 2025) (affirming district court's grant of employer's motion for summary judgment)
- *Petersen v. Snohomish Regional Fire & Rescue*, No. 22-1674 (W.D. Wash. Jan. 25, 2024) (granting employer's motion for summary judgment)

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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Petitioners David Petersen, et al., respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals is available at 150 F.4th 1211 (9th Cir. 2025). Pet.App.2a-26a. The opinion of the district court is available at 2024 WL 278973 (W.D. Wash. Jan. 25, 2024). Pet.App.27a-47a.

JURISDICTION

The judgment of the court of appeals was entered on September 2, 2025. A timely petition for rehearing en banc and for panel rehearing was denied on December 17, 2025. On March 6, 2026, Justice Kagan extended the time

for filing a petition for a writ of certiorari until April 16, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

**CONSTITUTIONAL AND STATUTORY PROVISIONS
INVOLVED**

42 U.S.C. § 2000e-2(a) provides:

It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

42 U.S.C. § 2000e(j) provides:

The term “religion” includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

42 U.S.C. § 2000e and 42 U.S.C. § 2000e-2 are reproduced in full, *infra*, Pet.App.48a-62a.

STATEMENT

This case involves an important, recurring issue concerning religious accommodation that calls for this

Court’s review. Title VII requires employers to accommodate their employees’ religious beliefs unless doing so would impose an undue hardship. Three Terms ago, this Court emphasized the seriousness of Congress’ command: only “excessive” or “unjustifiable” costs—not “trifling” ones—constitute undue hardships. *Groff v. DeJoy*, 600 U.S. 447, 469 (2023). This case is about whether those hardships must be real or whether good-faith but mistaken fears of such hardships suffice.

Petitioners—eight firefighters—sued their employer, Snohomish Regional Fire & Rescue (SRFR), for denying the firefighters’ requests for a religious exemption from a COVID-19 vaccination mandate and placing the firefighters on leave. SRFR claimed that accommodating the firefighters would have caused it undue hardship and moved for summary judgment. The firefighters disputed SRFR’s claim of undue hardship. For instance, petitioners pointed out that SRFR did not experience any hardship either before or after the brief period in which it enforced its vaccine mandate. And the firefighters highlighted that next-door fire departments did provide the exemption petitioners had requested and did not experience any hardship. That sort of evidence would typically create a dispute of fact, requiring a jury to resolve whether accommodation would have caused actual hardship. In the decision below, however, the Ninth Circuit affirmed the district court’s grant of summary judgment for SRFR.

Why? Because for the Ninth Circuit, an employer need only demonstrate a “reasonable concern” of an undue hardship to justify denying a religious accommodation. Pet.App.20a. And petitioners’ evidence that the accommodation would not in fact have imposed an undue hardship was insufficient to create a material dispute as

to whether SRFr was justified in having a *concern* that the accommodation would inflict undue hardship. Because SRFr had a reasonable basis for its decision, the court held that it was legally irrelevant whether that decision was correct.

In applying that rule, the decision below entrenched a 3-3 circuit split. The Third, Seventh, and Eighth Circuits hold that employers cannot “merely offer a good-faith—yet mistaken—reason for” refusing to accommodate but must instead “prove undue hardship arising from the accommodation.”¹ In direct conflict, the First and Sixth Circuits, like the Ninth Circuit, hold that a mere reasonable concern of undue hardship suffices.²

The question presented is critically important. As this case exemplifies, the reasonable-concern-of-hardship rule embraced below will often make it impossible for employees to get past an employer’s motion for summary judgment, even when the evidence is plainly sufficient for a jury to find that the accommodation would not inflict any undue hardship at all. That undermines *Groff* and thwarts Congress’ guarantee of religious freedom in the workplace. If, as the Ninth Circuit held below, empirical evidence disproving an employer’s claimed undue hardship is not good enough to create a triable issue of fact under the Ninth Circuit’s rule, it is hard to see what could. The issue is also frequently recurring—six courts of appeals

¹ See *Kluge v. Brownsburg Cmty. Sch. Corp.*, 150 F.4th 792, 807 (7th Cir. 2025); accord *Smith v. City of Atlantic City*, 138 F.4th 759, 774-75 (3d Cir. 2025); *Naylor v. County of Muscatine*, 151 F.4th 973, 977-78 (8th Cir. 2025).

² See *Rodrique v. Hearst Commc’ns*, 126 F.4th 85, 91 (1st Cir. 2025); *Henry v. S. Ohio Med. Ctr.*, 155 F.4th 620, 632 (6th Cir. 2025).

have already confronted the issue in the three years since *Groff*.

Employees' religious rights under federal law should not be so easily circumvented, nor should they turn on geography. This Court should grant certiorari.

A. Factual Background

SRFR is one of 18 independent fire districts in mostly rural Snohomish County, Washington. Pet.App.5a. SRFR provides fire suppression and emergency medical services to residents of its service area. *Id.* In 2021, SRFR had 11 fire stations, 248 employees, and over \$67 million in annual revenue. ECF 25 ¶¶ 3-4; *Annual Report, SRFR (2021)* at 12, <https://tinyurl.com/3t9mrxdb> (Annual Report).

SRFR's firefighters do their job in the most hazardous and taxing work environments. They work long, 24-hour shifts, punctuated by dangerous emergencies where every second counts. ECF 25 ¶ 6. Within 140 seconds of receiving a dispatch call, SRFR's firefighters are dressed in gear and ready in the response vehicle. Annual Report at 14. Fewer than 10 minutes later, they are at the scene—even in the most rural corners of the county. *Id.* Once there, SRFR's firefighters may risk their safety pushing through smoke and flames to extinguish wildfires or structural fires, protect the surrounding area, and rescue people trapped in the blaze. In 2021 alone, SRFR responded to 18,000 emergency calls. ECF 25 ¶ 8.

When SRFR's firefighters are on duty, they live at the fire station. ECF 25 ¶ 7. SRFR fire stations have separated bedrooms, shared bathrooms, and a communal kitchen and living space. *Id.* When responding to emergency calls, firefighters would often sit six feet apart in the back cab of a fire engine or separated by a plexiglass

screen from the rear compartment of an aid vehicle. *E.g.*, ECF 29 at 5.

Many of SRFR's firefighters are also people of faith. They are "guided" by deeply held beliefs and abide by those beliefs at home and at work. *See, e.g.*, ECF 1-4 at 2 (Petersen Decl.). For many years, those firefighters experienced no conflict between duty and conscience.

That remained true when the COVID-19 pandemic began. Firefighters masked, socially distanced, and tested regularly. ECF 25 at 9; ECF 41 Ex. A1. When vaccinations became widely available, SRFR's firefighters chose whether to vaccinate. Thus, both vaccinated and unvaccinated firefighters alike continued to serve the citizens of Snohomish County. ECF 41 at 146.

In late 2021, however, SRFR imposed a vaccine mandate on its employees, implementing Governor Inslee's formal proclamation requiring Washington healthcare workers to vaccinate against COVID-19. ECF 1 ¶ 11; ECF 1-1; ECF 1-2. Both the Governor's proclamation and SRFR's implementing mandate permitted accommodations for religious objections. ECF 1-1 at 5; ECF 1-2 at 2. However, SRFR's policy manual, which it had published almost two years before *Groff*, indicated that religious accommodations could be rejected if they "would be more than minimal cost ... on the employer." ECF 41 at 47. SRFR informed its employees that those who remained unvaccinated without an approved accommodation by October 19, 2021, would be subject to non-disciplinary dismissal. ECF 1-2 at 3.

Petitioners are eight firefighters who submitted formal requests for accommodation shortly after the Governor's proclamation issued. ECF 1-4. Each one attested that vaccination conflicted with his sincerely held reli-

gious beliefs and requested an exemption from the mandate. *See id.* Each also requested instead that he be permitted to mask, test, and follow the same safety guidelines that SRFR had created and utilized before the mandate and throughout the pandemic. *E.g.*, ECF 29 at 4.

SRFR met with the firefighters to discuss their requests but ultimately determined it could not accommodate the firefighters' religious beliefs. ECF 1-6. According to SRFR, following the same safety policies that had been in effect for the previous 20 months would now impose an undue hardship. *E.g.*, ECF 1-6 at 2-3. SRFR told the firefighters to use their accrued paid leave and, when that ran out, take a one-year leave of absence without pay. *Id.*

In litigation, SRFR offered several explanations for its decision. SRFR alleged that it could not grant the requested accommodations without challenges to health and safety, and to SRFR's operational capacity. ECF 1-6; ECF 25 ¶ 15. SRFR also stated that denying the accommodations would burnish SRFR's public image. ECF 25 ¶ 15.

SRFR also pointed to a September 23, 2021 letter from the Washington State Department of Corrections (DOC) that unvaccinated staff could not perform on-site work at any DOC facility, *id.*, though the letter showed that DOC "was willing to consider [religious] accommodations." Pet.App.20a; ECF 41 at 227-28. SRFR had a \$376,934 annual contract to serve the local Monroe Correctional Complex, a DOC facility. ECF 25 ¶ 15. SRFR claimed that contract would be threatened if SRFR granted the firefighters' requested accommodations. ECF 25 ¶ 15.

SRFR further relied on an October 14, 2021 letter from SRFR’s insurer stating that claims related to communicable diseases, whether from vaccinated or unvaccinated employees, were not covered by the insurance plan. *Id.*; ECF 28 at 163-64. This letter, in SRFR’s view, was the “straw that broke the camel’s back,” cementing its conclusion that accommodations would cause it undue hardship. ECF 41 at 201. SRFR contended that granting the firefighters’ accommodations would increase its exposure to lawsuits due to COVID-19 spread, *id.*; *id.* at 205-25, though SRFR’s own fire chief acknowledged that such lawsuits are “rare and difficult ... to win,” *id.* at 201.

On October 21, 2021, the firefighters were forced to go on leave. *E.g.*, ECF 32 at 3. Fewer than seven months later, on May 9, 2022, SRFR changed course and notified the firefighters by letter that their requested accommodations would be granted, and they could return to work without vaccinating. *E.g.*, ECF 25-2 at 150-59. There was no change in DOC’s policy or SRFR’s insurance coverage that prompted the reversal. ECF 28 at 165-68. In all, the firefighters lost close to seven months of pay and benefits. ECF 1 at 12-13.

B. Procedural History

On November 22, 2022, the firefighters filed suit in the U.S. District Court for the Western District of Washington, alleging SRFR violated Title VII and Washington’s Law Against Discrimination by failing to reasonably accommodate the firefighters’ religious beliefs. Pet.App.27a-47a.³ The firefighters alleged SRFR’s vac-

³ As the courts below recognized, the firefighters’ state-law claims rise and fall with their Title VII claims. *See* Pet.App.11a n.3; Pet.App.38a; *Kumar v. Gate Gourmet Inc.*, 325 P.3d 193, 197 (Wash. 2014) (en banc).

ination mandate conflicted with their sincerely held religious beliefs and that SRFR denied them reasonable accommodations despite the availability of alternative safety measures that would pose at most minimal burdens. Pet.App.31a. The firefighters sought backpay and damages for the months of forced leave. ECF 1 at 12-13.

SRFR moved for summary judgment, alleging that the firefighters' claims should be dismissed because "SRFR could not provide [the firefighters] with a reasonable accommodation ... without imposing an undue hardship on SRFR's operations." ECF 23 at 3. As evidence of undue hardship, SRFR pointed to the reasons above—potential health and safety risks, the potential loss of its DOC contract, potential liability from lawsuits relating to COVID-19 transmission, and potential harm to public confidence. *Id.* at 19.

The firefighters offered multiple responses in their opposition to SRFR's motion for summary judgment. ECF 40. The firefighters pointed to evidence that DOC's vaccine-mandate policy permitted religious accommodations and had never been enforced against other unvaccinated contractors that worked at DOC facilities. ECF 41 at 227-28; ECF 34 at 5; ECF 47 at 5. The firefighters further showed that the increase in liability risk from uninsured COVID-19 suits was so speculative that even SRFR's own fire chief admitted such suits are "rare and difficult ... to win." ECF 41 at 201. And any harm to public confidence was equally speculative because SRFR could not point to a single instance of the public expressing any concern about the matter. ECF 41 at 193-94.

As for operational or health-and-safety concerns, the firefighters noted that SRFR allowed its firefighters to work unvaccinated both before and after the Governor's mandate without issue. *See* ECF 25 ¶ 22. The firefighters pointed to testimony that SRFR suffered no significant

disruptions when SRFr permitted unvaccinated firefighters to work while wearing personal protective equipment (PPE) and following the department's "Playbook" on COVID-19 mitigation. *See, e.g.*, ECF 29 at 4-5. The firefighters also pointed to neighboring fire districts that successfully accommodated firefighters' religious opt-outs without hardship, and to the fact that SRFr even worked alongside those unvaccinated firefighters from those neighboring districts without concern or issue while keeping its own unvaccinated firefighters on leave. *E.g.*, ECF 45 at 7-8.

Nevertheless, the district court granted SRFr's motion and dismissed the firefighters' claims. The court reasoned that unvaccinated firefighters were at a "higher risk of contracting and transmitting COVID-19" and SRFr had therefore automatically established undue hardship as a matter of law. Pet.App.44a.

The Ninth Circuit affirmed. Pet.App.25a. Throughout its analysis, the court focused on whether SRFr's evidence could support a "reasonable concern" that accommodation would cause undue hardship. Pet.App.20a. Because SRFr's evidence indicated that SRFr was "justified in ... considering" a risk of health-and-safety, operational, and financial burdens, the panel concluded that SRFr had a reasonable basis for its decision not to accommodate and had therefore established its undue hardship defense as a matter of law. Pet.App.22a.

Critically, the Ninth Circuit held that it (and any potential jury) was precluded as a matter of law from considering the firefighters' evidence showing that the proposed accommodation would not have imposed an undue hardship. The legally relevant question, according to the Ninth Circuit, was instead whether the employer made a "reasonable[]" decision. Pet.App.20a. Evidence bearing on whether an accommodation *in reality* would impose an

undue hardship, the Ninth Circuit explained, is “hind-sight” evidence that does not inform whether SRFR’s decision was “justified.” Pet.App.22a. Evidence of what responses “employers should have taken” was deemed legally irrelevant. Pet.App.23a.

Thus, the panel disregarded the firefighters’ key evidence. In terms of health and safety and operational burdens, the Ninth Circuit refused to consider SRFR’s previous and later accommodations, other fire districts’ accommodations, SRFR’s side-by-side work with unvaccinated firefighters from nearby fire districts, or the firefighters’ evidence that SRFR’s testing and PPE protocols had been sufficient to prevent outbreaks and operational disruptions within SRFR throughout the pandemic. *See, e.g.*, ECF 29 at 4-5; ECF 32 at 7; ECF 47 at 4-5. With all of that evidence ruled out, the Ninth Circuit concluded there was no dispute worth sending to a jury.

Likewise, according to the panel, it did not matter that the firefighters had evidence that the asserted financial risks were entirely hypothetical. Because SRFR raised “reasonable concern[s],” the court held the undue hardship requirement satisfied as a matter of law. Pet.App.20a. As to the DOC policy, it was legally irrelevant to the panel that DOC was plainly unlikely to refuse emergency fire or medical assistance without checking vaccination status, that DOC “was willing to consider [religious] accommodations,” and that DOC did not enforce its vaccination policy. *Id.* For the panel, the issue was settled as a matter of law because “DOC’s policy is not within SRFR’s control,” so “SRFR had a reasonable concern that it would lose a lucrative contract.” *Id.* The Ninth Circuit even refused to permit a jury to consider whether the risk of losing a \$400,000 DOC contract would truly impose an undue hardship when considered in light of SRFR’s operating costs or yearly budget. It was

enough that the “potential loss of a contract with DOC was a cost that SRFR was entitled to consider.” Pet.App.20a-21a.

And as to the threat of uninsured liability from lawsuits based on disease transmission, the Ninth Circuit deemed irrelevant the firefighters’ evidence from a representative of SRFR’s insurer that the insurer “had never faced such a lawsuit.” Pet.App.21a. According to the panel, it was enough that “SRFR was justified in seriously considering whether it was prepared to assume the risk of liability” because the insurer issued a warning letter stating the insurer would not cover liability for claims related to communicable diseases. Pet.App.22a.

The firefighters subsequently petitioned for rehearing and rehearing en banc. C.A. Dkt. 59. The Ninth Circuit denied the petition. C.A. Dkt. 64.

REASONS FOR GRANTING THE PETITION

This petition is the ideal vehicle to resolve a consequential 3-3 circuit split over whether an employer must show actual undue hardship, or mere reasonable concern of undue hardship, before denying a Title VII religious accommodation. That question is important, recurring, and squarely presented. The reasonable-concern-of-hardship rule applied below undermines *Groff* and raises the bar for overcoming summary judgment on undue hardship impossibly high for many employees. The question recurs frequently, as evidenced by the fact that six circuits have already confronted the issue in the three years since *Groff*. And the issue was outcome-dispositive below, as the Ninth Circuit’s affirmance of summary judgment to the employer wholly depended on its application of the reasonable-concern-of-hardship rule. In the three courts of appeals on the other side of the split, the firefighters’ evidence would not have been ignored, and this case would

have proceeded to trial. This Court should grant certiorari and restore urgently needed uniformity to an important area of federal civil rights law critical to religious liberty.

I. The Ninth Circuit’s Ruling Entrenches a 3-3 Split in the Courts of Appeals over the Undue Hardship Standard

Title VII requires employers to accommodate an employee’s religious belief “unless an employer demonstrates” that accommodation would impose an “undue hardship on the conduct of the employer’s business.” 42 U.S.C. § 2000e(j). To succeed on an undue hardship defense, an employer must establish that the accommodation would impose “excessive” or “unjustifiable” costs—merely showing “*some* sort of additional costs” will not suffice. *Groff*, 600 U.S. at 469 (emphasis added).

Since *Groff*, the Third, Seventh, and Eighth Circuits have interpreted Title VII’s undue-hardship language to require actual hardship. In the First, Sixth, and Ninth Circuits, employers need only show a *reasonable concern* that they would suffer an undue hardship. This Court’s intervention is necessary to ensure that employees of faith in California and Massachusetts are afforded the same religious freedoms as employees in Pennsylvania and Wisconsin.

1. In the Third, Seventh, and Eighth Circuits, actual hardship, not reasonable-concern-of hardship, is the governing rule.

Third Circuit. In *Smith v. City of Atlantic City*, the Third Circuit held that an accommodation must “undisputably ... impose an undue hardship” for the defense to succeed. 138 F.4th 759, 775 (3d Cir. 2025). The issue arose when Smith, an air-mask technician, brought a Title VII

claim against his employer, the Atlantic City fire department, for failing to accommodate his religious practice of growing a beard. *Id.* at 768-69.

In vacating the district court’s grant of summary judgment to the fire department, the Third Circuit flatly rejected a reasonable-concern-of-hardship rule: “good faith is not ... a cure for a Title VII breach.” *Id.* at 774. Instead, the Third Circuit held that what matters is whether an accommodation would in fact “impose an undue hardship.” *Id.* at 775. The court reasoned that an “employer ... has a defense *only* if hardship is ‘undue.’” *Id.* at 774 (citations omitted). Thus, it did not matter that the fire department in *Smith* put forward evidence of a potential safety hazard when beards prevent breathing masks from sealing properly. *Id.* at 768, 775. That the department might have had a reasonable basis for its decision was immaterial to the question Title VII asks: whether Smith’s accommodation actually “would impose an undue hardship.” *Id.* at 775.

Seventh Circuit. The Seventh Circuit also embraces an actual-hardship rule, holding that an employer must “prove undue hardship arising from the accommodation,” and not “merely offer a good-faith—yet mistaken—reason for” refusing to accommodate. *Kluge v. Brownsburg Cmty. Sch. Corp.*, 150 F.4th 792, 807 (7th Cir. 2025). In *Kluge*, Brownsburg High School’s “name policy” required that staff refer to students by their preferred pronouns. *Id.* at 796. The name policy conflicted with music teacher John Kluge’s religious beliefs, so he requested—and for a time received—an accommodation permitting him to refer to students by their last names. *Id.* at 796-97. Eventually, however, the school concluded the last-names accommodation imposed an undue hardship because of the “emotional distress” it caused students, so it rescinded the accommodation. *Id.* at 797-99. Kluge sued Brownsburg

for failing to accommodate his religious beliefs in violation of Title VII, but the district court granted summary judgment to Brownsburg on its undue hardship defense. *Id.* at 800-01.

The Seventh Circuit reversed, holding that an employer must actually “prove undue hardship arising from the accommodation.” *Id.* at 807. The dissent advocated for a reasonable-concern-of-hardship rule, arguing that Brownsburg could not face Title VII liability because the school “reasonably concluded” and “in good faith believed” it would suffer undue hardship. *Id.* at 813, 818 (Rovner, J., dissenting). Even if that conclusion turned out to be “mistaken or misguided,” the dissent argued, there could be no liability because all that matters is what the employer “believed to be true.” *Id.* at 819, 822 (Rovner, J., dissenting).

The panel majority squarely rejected that rule, holding that if the school’s undue hardship determination was “incorrect,” then having “act[ed] in good faith” would not “shield[] it from liability.” *Id.* at 806. Relying on the Third Circuit’s decision in *Smith*, the Seventh Circuit reiterated that good faith is not “a cure” for an employer’s failure to accommodate a religious belief. *Id.* at 807 (citing *Smith*, 138 F.4th at 774). Because some teachers and students testified that the last-name accommodation caused no disruptions, Kluge felt no “animosity from students,” and Kluge testified that students in his class continued to perform well academically, the Seventh Circuit found a “genuine material factual dispute” as to whether the school suffered *actual* undue hardship and sent the case forward to a jury. *Id.* at 798, 810.

Eighth Circuit. The Eighth Circuit likewise holds that an employer must produce undisputed “evidence of an *actual*” hardship, and that reasonable concerns are not enough. *Naylor v. County of Muscatine*, 151 F.4th 973,

977 (8th Cir. 2025) (emphasis added). In *Naylor*, a jail administrator was fired for his religious internet posts, and the county concluded that any accommodation short of termination would impose an undue hardship by “harm[ing] [the county’s] public image” and “imperil[ing] its business relationships.” *Id.* at 976-77. The Eighth Circuit acknowledged there might be a reasonable basis to conclude accommodation would cause undue hardship: the employer had pointed to “some evidence” of possible “reputational harm” and “some evidence” that accommodating the employee’s religious conduct could cause third parties to “cancel their ... contracts with the jail.” *Id.* at 977-78. Nevertheless, the court explained, the undue hardship defense requires “definitive evidence” of actual hardship. *Id.* at 977. And in light of the employees’ evidence that the county’s asserted costs were conjectural, there was a material dispute for the jury as to whether the accommodation would “definitive[ly]” impose an undue hardship. *Id.*

EEOC. The EEOC takes the same approach. The EEOC’s regulations explain that “[a] refusal to accommodate is justified only when an employer or labor organization can demonstrate that an undue hardship would *in fact* result.” 29 C.F.R. § 1605.02(c) (emphasis added); see also U.S. Equal Emp. Opportunity Comm’n, EEOC-CVG-2021-3, Compliance Manual: Religious Discrimination § 12-IV-A-2 (2021) (employers must show “the plaintiff’s proposed accommodation would *actually* have posed an undue hardship.” (emphasis added)).

Recent EEOC appellate decisions, too, conflict with the Ninth Circuit’s approach. While the Ninth Circuit refused to credit evidence that SRFH had gotten by just fine before it imposed the vaccine mandate, the EEOC sees things differently. Evidence that an employer previously accommodated an employee without issue, the EEOC has

held, undermines an employer's later assertions of undue hardship. *See, e.g., Augustine V. v. Collins*, Appeal No. 2023004016 at 7 (E.E.O.C. Aug. 4, 2025); *Charlie L. v. Carlos Del Toro*, Appeal No. 2022003545 at 8 (E.E.O.C. Dec. 10, 2024).

2. The First, Sixth, and Ninth Circuits, in contrast, merely ask whether the employer had a reasonable concern of undue hardship, regardless of whether the accommodation would have actually caused undue hardship.

First Circuit. The First Circuit has held that an employer is not liable so long as it “acted reasonably when it determined” that an accommodation would impose undue hardship. *Rodrique v. Hearst Commc’ns*, 126 F.4th 85, 91 (1st Cir. 2025). In *Rodrique*, a broadcast news station imposed a COVID-19 vaccine mandate on its employees in late 2021 after having previously required only weekly testing. *Id.* at 87-88. When a news photographer sought a religious exemption from the mandate, the news station refused, concluding that the vaccine was effective and accommodating the photographer’s religious beliefs would pose an undue hardship. *Id.* The court held that because the employer “reasonably relied” on available evidence and “reasonably conclud[ed]” that an accommodation would cause the employer undue hardship, the undue hardship defense was met as a matter of law. *Id.* at 92.

Sixth Circuit. The Sixth Circuit likewise considers what “conclusions” “an employer [was] permitted to draw ... at the time,” even if other evidence points the other way. *Henry v. S. Ohio Med. Ctr.*, 155 F.4th 620, 632 (6th Cir. 2025). Thus, what matters is whether the employer’s “decision-making process” was supportable, even if the employee pointed to evidence that no actual hardship would result from an accommodation. *Wise v. Children’s Hosp. Med. Ctr. of Akron*, 2025 WL 1392209, at *5 (6th Cir. May 14, 2025). Courts and juries are barred from

“Monday morning quarterbacking” employers’ judgments. *Id.* Employers in the Sixth Circuit just need to show they “reasonably concluded” an accommodation would pose an undue hardship. *Savel v. MetroHealth Sys.*, 2025 WL 1826674, at *2 (6th Cir. July 2, 2025).

Ninth Circuit. The Ninth Circuit takes the same approach, holding that a “reasonable” basis for fearing an undue hardship satisfies the Title VII inquiry. Pet.App.20a; Pet.App.25a (citing *Rodrique*, 126 F.4th at 91). As explained, the panel held that SRFr’s decision not to accommodate was insulated from Title VII liability because the decision rested on “reasonable concern[s],” was “thoroughly explained,” and reflected “justified ... consider[ations].” Pet.App.20a-24a; *see supra* pp. 10-12.

Applying that rule, the Ninth Circuit disregarded extensive evidence showing that SRFr would not have *actually* suffered undue hardship—like the fact that SRFr did not require vaccination for many months, or that neighboring fire departments accommodated their firefighters, or that the risks of lawsuit liability and DOC contract cancellation were both vanishingly small. *See* Pet.App.22a-24a. Such evidence, according to the Ninth Circuit, is merely “hindsight” evidence that sheds light on whether there would have *in fact* been an undue hardship. Pet.App.23a. So long as the “cost[s] that SRFr was entitled to consider” supported SRFr’s “reasonable concern” that accommodation would impose undue hardship, that was good enough. Pet.App.20a-21a.

As a district court has understood the decision below, evidence that an accommodation will cause an undue hardship is out if it does “not establish that the [employer’s] determination was unreasonable.” *Carlson v. City of Redmond*, 2025 WL 3496535, at *11 (W.D. Wash. Dec. 5, 2025). Classic methods of disproving undue hard-

ship are now off the table: evidence that comparable employers granted similar accommodations without hardship is legally irrelevant because “*Petersen* forecloses this species of hindsight-based argument.” *Carlson*, 2025 WL 3496535, at *11.

This approach is diametrically opposed to the one taken on the other side of the split. Consider, for example, the stark difference in how the Ninth and Eighth Circuits resolved employers’ claims that they would suffer an undue hardship in the form of a contract cancellation. For the panel below, it was enough that DOC had “advised SRFr that it would require proof of vaccination for all on-site contractors” and that failure to provide such proof “may result in DOC denying entry”—without referring to any possibility of actual contract cancellation. Pet.App.20a. The firefighters pointed out that DOC had never enforced its vaccination policy and that DOC’s policy contained a religion exemption. Pet.App.20a-21a. None of that mattered to the Ninth Circuit because DOC’s “advise[ment]” generated a reasonable basis to fear contract cancellation, even if it was not actually likely to happen. Pet.App.20a.

In the Eighth Circuit it was a different story. In *Naylor*, the Eighth Circuit “acknowledge[d] that the County presented some evidence that contracts were threatened”: multiple officials “independently suggested that they might cancel their ... contracts with the jail.” 151 F.4th at 977-78. But even that direct threat was “insufficient ... as a matter of law” because threats that contracts “might” be cancelled do not indisputably establish that cancellation would have actually happened. *Id.* at 978.

Or consider the firefighters’ evidence that the accommodation here was unlikely to impose an undue hardship in terms of health and safety or operational burdens. The

firefighters pointed out that SRFr only briefly enforced its mandate and had successfully accommodated the firefighters for many months both before and after that period, and that other fire districts successfully accommodated their employees. Pet.App.22a. The Ninth Circuit called that evidence “hindsight,” and refused to credit it. Pet.App.22a-23a. But in the Seventh Circuit, evidence indicating that similar accommodations had not inflicted undue hardship was competent evidence to “preclud[e] summary judgment to the [employer].” *Kluge*, 150 F.4th at 809.

Likewise consider the difference between the Ninth and Seventh Circuits’ approaches to employers’ fears of legal exposure. In the decision below, it was sufficient for the SRFr to point out that its insurer “informed SRFr” that it would not cover liability stemming from disease spread. Pet.App.21a. That created a “justified” fear of hardship, even though the employer’s insurer confirmed that it “had never faced” such a lawsuit. Pet.App.21a-22a. In the Seventh Circuit, however, the employer must show actual undue hardship, so a mere “specter of liability” is not enough; only undisputed evidence that the accommodation would place the employer at least “on the ‘razor’s edge’ of legal liability” suffices. *Kluge*, 150 F.4th at 810-11 (citation omitted).

II. The Question Presented Is Important, Recurring, and Cleanly Presented

The question of whether employers can deny a religious accommodation based only on a reasonable concern of undue hardship or whether Title VII requires an actual undue hardship is a purely legal question of recurring importance that requires no further percolation.

1. Whether employers can deny religious accommodations based on a mere reasonable concern of undue

hardship is a question of exceptional importance. The reasonable-concern-of-hardship rule applied below renders Title VII’s protections toothless in many cases, drastically lowering employers’ burdens while ratcheting up employees’. In the First, Sixth, and Ninth Circuits, employers need only produce some evidence of a justifiable fear that the accommodation would threaten an undue hardship. Employees, however, must produce evidence that the risk of undue hardship is so remote as to render any fear entirely unreasonable. On such an asymmetric playing field, employees will often lose at summary judgment, as in this case, even when armed with more than ample evidence showing that an accommodation would not have imposed an actual undue hardship. The rule applied below cuts juries—who should be making the “fact-specific” judgments Title VII requires, *Groff*, 600 U.S. at 468—out of the process entirely.

The upshot is that the Ninth Circuit’s rule undermines *Groff*. Employees will lack recourse even when denied an accommodation that would not inflict any undue hardship. In effect, the reasonable-concern-of-hardship rule acts as a form of qualified immunity from Title VII liability for employers who erroneously (even if reasonably) conclude that a religious accommodation would cause undue hardship. This approach replicates the problems with the *de minimis* standard that *Groff* repudiated by turning Title VII’s narrow undue-hardship exception into one that “can be satisfied in nearly any circumstance,” and will “bless[] the denial of even minor accommodation in many cases.” *Groff*, 600 U.S. at 465 (citations omitted).

This issue is frequently recurring. In the three terms since this Court decided *Groff*, six courts of appeals have already been confronted with the question presented. That should be no surprise. The duties of faith and the workplace frequently collide. The EEOC has processed

nearly 22,000 charges of religious discrimination under Title VII in just the past three years with reported data. *Enforcement and Litigation Statistics*, U.S. Equal Emp. Opportunity Comm'n, <https://tinyurl.com/366v48t4> (last visited Apr. 14, 2026) (select “Charge Statistics”; then select “Charge Receipts”; select “2022” and “2024” as bounds under “Fiscal Year”; then select “Religion-Based” from “Discrimination Type” dropdown). And most employers in religious-accommodation cases do operate in good faith and will therefore have some reasonable explanation for their conduct. But that should not prevent employees of faith from receiving the accommodations they are statutorily owed.

2. This case squarely tees up the issue. The question presented was outcome-determinative below, and the panel’s decision exemplifies the dangers of the reasonable-concern-of-hardship rule. At every turn, the Ninth Circuit rejected evidence that would typically go to the heart of whether the accommodation would impose an undue hardship. SRFR’s own prior and subsequent ability to accommodate? Out. Neighboring fire departments’ consistent ability to accommodate? Out. Evidence that the lawsuits SRFR theorized had *never* happened before? Out. None of it mattered in the Ninth Circuit, because SRFR had “reasonable concern[s]” of undue hardship. Pet.App.20a. Yet in any of the circuits that require actual hardship, the firefighters’ evidence would have sent this case to a jury. *See supra* pp. 19-20.

This case thus demonstrates just how heavily the reasonable-concern-of-hardship rule, by ruling out classic rebuttal evidence, stacks the deck in favor of the employer. When employers raise health-and-safety risks associated with an accommodation, for example, one might expect a jury to be able to consider employees’ evidence illustrat-

ing what happened when the accommodation was implemented by that employer or by similarly situated employers as proof-in-practice that any alleged hardships are manageable, not undue. If employers raise concerns about contract cancellations, a jury should be able to consider employees' evidence that the accommodation would not breach the contract in question, or point to a lack of cancellations as disproving the employer's concern. And if employers fear that an accommodation would lead to liability, a jury should of course be able to consider evidence that the feared suits have never materialized. But under the reasonable-concern-of-hardship rule, none of that evidence counts, leaving employees forced to litigate with both hands tied behind their backs.

III. The Decision Below Is Wrong

The Ninth Circuit's reasonable-concern-of-hardship rule is plainly wrong.

1. The "actual text of Title VII" forecloses the reasonable-concern-of-hardship rule. *Cf. Groff*, 600 U.S. at 471. Under Title VII, an employer may refuse to accommodate religious beliefs only if the employer "demonstrates that [it] is *unable* to reasonably accommodate ... without undue hardship." 42 U.S.C. § 2000e(j) (emphasis added). The statute does not say an employer may refuse to accommodate if the employer "reasonably conclude[s]" or has a "reasonable concern" it will be unable to accommodate without undue hardship. *Rodrique*, 126 F.4th at 92; Pet.App.20a. An employer must be "*actual[ly]*" unable to do so. *Naylor*, 151 F.4th at 977 (emphasis added). Indeed, as the Third Circuit noted, "the phrase 'good faith'" (or any similar phrase) "is nowhere to be found" in the text of Title VII's religious-accommodation provisions. *Smith*, 138 F.4th at 774.

This Court’s interpretation of Title VII’s text in *Groff* is in accord: *Groff* held that for an employer to be “unable to reasonably accommodate ... without undue hardship,” 42 U.S.C. § 2000e(j), “the requisite burden ... *must rise* to an ‘excessive’ or ‘unjustifiable’ level,” *Groff*, 600 U.S. at 469 (emphasis added). Nothing in *Groff* supports the Ninth Circuit’s rule that “reasonable concerns” of undue hardship could substitute for actual undue hardship.

This Court has already rejected a similar “reasonable concerns” gloss on the analogous duty to accommodate in the ADA context. *See Bd. of Trs. of Univ. of Ala. v. Garrett*, 531 U.S. 356, 372 (2001). Using similar language to Title VII, the ADA provides that employers must accommodate disabled employees unless the employer can “demonstrate that the accommodation would impose an undue hardship on the [employer].” 42 U.S.C. § 12112(b)(5)(A). That language, the Court held, “makes it the employer’s duty to prove that it *would* suffer such a burden, instead of requiring ... that the complaining party negate reasonable bases for the employer’s decision.” *Garrett*, 531 U.S. at 372 (emphasis added).

2. The Ninth Circuit’s justification for its reasonable-concern-of-hardship rule is unpersuasive. The panel below focused on policy concerns, lamenting the perceived unfairness of “judg[ing] SRFr by the responses taken by other fire departments,” or of “judg[ing] SRFr with the clarity of hindsight.” Pet.App.23a. Because employers are “forced ... to make decisions quickly and with limited information,” the Ninth Circuit felt it would be harsh to second-guess those decisions and refused to look at “what ... responses ... employers should have taken.” Pet.App.23a. But Congress already struck the appropriate balance between the competing interests of employers and employees in the text of Title VII, which affords a de-

fense only to employers that are actually “unable to reasonably accommodate ... without undue hardship.” 42 U.S.C. § 2000e(j) (emphasis added). The Ninth Circuit’s policy concerns cannot “overcome” that “clear statutory directive.” *See BP P.L.C. v. Mayor & City Council of Balt.*, 593 U.S. 230, 245 (2021).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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