No. 25-239

IN THE

Supreme Court of the United States

TONYA C. HUBER,

Petitioner,

v.

WESTAR FOODS, INC.,

Respondent.

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

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Petitioner Tonya C. Huber managed a Hardee's restaurant for Respondent Westar Foods, Inc. She was disciplined multiple times for violating attendance rules. In December 2019, after a diabetic episode, she again failed to notify her supervisor of two absences. Respondent terminated her employment consistent with prior warnings.

Petitioner sued under the Americans with Disabilities Act ("ADA") and the Family and Medical Leave Act ("FMLA"). The district court granted summary judgment in favor of Respondent. A divided Eighth Circuit panel reversed, but the en banc court reinstated summary judgment by a 6-5 vote. The en banc court also revived Petitioner's FMLA interference claim, which remains pending in the District Court.

The questions presented are:

1. Whether this Court should revisit the *McDonnell Douglas* framework—a 50-year-old statutory precedent that has been widely incorporated in federal and state anti-discrimination law—where the Eighth Circuit's decision did not turn on the application of that framework.

2. Whether this Court should revisit the *McDonnell Douglas* framework's application to ADA disability discrimination and FMLA retaliation claims considering that a prima facie case does not require a plaintiff to eliminate common nondiscriminatory reasons for an employment action and instead asks simply whether it occurred under circumstances giving rise to an inference of discrimination or retaliation.

3. Whether upon a defendant's proffer of a legitimate, nondiscrimination reason for an employment action, a plaintiff should be excused from establishing prima facie cases of disability discrimination or FMLA retaliation, which require a plaintiff to establish, respectively, statutory prerequisites that include an ADA-qualifying disability or her exercise of rights protected by the FMLA.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Respondent Westar Foods, Inc. states that it has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

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STATEMENT OF THE CASE

Petitioner Repeatedly Violates Respondent's Attendance Policy and Is Discharged

Petitioner worked for Respondent as the store manager of a Hardee's restaurant in Elkhorn, Nebraska. Pet.App.2a, 30a, 73a. Petitioner worked for Respondent for approximately one year, from December 2018 until she was discharged in December 2019 for repeatedly violating Respondent's attendance policy. Pet.App.30a, 35a, 73a, 76a, 77a.

Respondent's attendance policy required employees who would be late or absent to "call the management person in charge immediately so that enough time is given to cover [the employee's] position." Pet.App.33a, 73a. Employees were expected to call "at least two-hours before [their] work shift [began] when possible." Pet. App.33a, 73a. The attendance policy required employees to "call and speak directly to the management person in charge" and made clear "[t]exting, emailing or leaving a message" were unacceptable ways to communicate tardiness or absences. Pet.App.33a, 73a.

Petitioner repeatedly violated Respondent's attendance policy. Pet.App.2a. In January 2019, after she left her shift without notifying her district manager, she received an "employee coaching tool" that reminded her to comply with the attendance policy. Pet.App.2a, 73a, 74a. In October 2019, she violated the attendance policy on two more occasions by missing a shift without notice and leaving another shift without "call[ing] . . . and speak[ing] directly" to her district manager. Pet.App.2a, 74a. She was

again formally disciplined and warned that any "further unscheduled or unexcused absences" risked "further disciplinary action, up to and including termination." Pet. App.2a, 60a.

Because she opened the restaurant, Petitioner's shift typically began at 5:00 a.m. each morning. Pet. App.2a, 30a, 73a. On the morning of December 20, 2019, Petitioner allegedly experienced a diabetic episode with low blood sugar levels. Pet.App.29a, 31a, 75a. When Petitioner was supposed to be arriving to work to open the restaurant, she instead had a 45-minute conversation with her boyfriend, drove herself to her doctor's office, and received an IV. Pet.App.3a, 75a, 87a. Petitioner spoke to her boyfriend and adult son several times throughout the day. Pet.App.32a. Despite receiving formal discipline just two months earlier for failing to give appropriate notice of absences and a warning that further unscheduled or unexcused absences could result in termination, she did not attempt to contact her district manager that day. Pet. App.3a, 32a, 75a.

As a result of Petitioner's failure to provide notice of her absence on December 20, Respondent did not learn that the restaurant was not opened until a customer called to complain. Pet.App.3a, 32a. The restaurant opened five hours late. *Id.* Petitioner's district manager, Cynthia Kelchen, tried calling Petitioner but she did not answer so Kelchen called Petitioner's adult son, who was listed as her emergency contact. Pet.App.32a, 75a. Petitioner's son told Kelchen that Petitioner was at the doctor's office, that her "levels were off," and that Petitioner would call back. Pet.App.32a, 75a. Petitioner did not call Kelchen that day. Pet.App.32a, 75a.

Petitioner was scheduled to open the restaurant the next day, December 21, at 5:00 a.m. Pet.App.3a, 75a. Around 7:45 a.m., Petitioner texted Kelchen a doctor's note that stated, "Please excuse patient from work due to illness through 12/26/19," and called Kelchen to provide some details about her condition. Pet.App.4a, 76a. Kelchen's notes of this conversation state that Petitioner had been at the doctor because "her levels of her diabetic w[ere] off," that Petitioner had been "too drugged out [to call], couldn't concentrate, and . . . would contact [Kelchen] later." Pet.App.4a. When Kelchen reminded Petitioner about "needing to make that simple phone call," Petitioner responded that she was "out of it" and "not making sense" because of "a serious medical happening." Pet.App.4a.

Immediately after the call with Petitioner, Kelchen called Respondent's President, Frank Westermajer, and the decision was made to terminate Petitioner. Pet. App.34a, 76a. The termination letter, sent five days later, explained Petitioner's employment was being terminated due to her "fail[ure] to follow [Respondent's] notice procedures for [her] absences" despite being "fully aware" of them after several prior disciplinary warnings. Pet. App.15a.

The District Court Grants Summary Judgment in Favor of Respondent

Petitioner sued under the ADA (and a parallel state law) and the FMLA. Pet.App.77a. The District Court granted summary judgment to Respondent on all claims, concluding Petitioner could not show Respondent's proffered reason for firing her was a pretext for discrimination under *McDonnell Douglas*. Pet.App.82a,

85a. The district court also held Petitioner failed to establish her FMLA interference claim. Pet.App.88a, 89a, 90a.

The Eighth Circuit Panel Decision

A divided panel of the Eighth Circuit reversed summary judgment on the ADA and FMLA retaliation claims. Pet.App.30a. The majority held Petitioner had produced sufficient evidence to allow a reasonable factfinder to conclude Respondent's stated justification for her firing was pretextual, both as to disability discrimination and FMLA retaliation. Pet.App.45a, 50a, 51a, 56a, 58a. The panel also unanimously reinstated Petitioner's FMLA "interference" claim (i.e. her leave-denial claim). Pet.App.56a.

One judge dissented, arguing summary judgment had been proper on both the discrimination and retaliation claims. Pet.App.59a. The dissenting judge, like the majority, proceeded under the *McDonnell Douglas* analysis—disagreeing with the majority only on whether Petitioner had met her evidentiary burden—and did not advocate any departure from that framework. Pet. App.61a, 62a, 63a.

The En Banc Eighth Circuit Decision

The en banc Eighth Circuit, in a 6-5 decision, reinstated the District Court's entry of summary judgment on Petitioner's ADA discrimination and FMLA retaliation claims. Pet.App.2a. Although the majority applied the *McDonnell Douglas* framework, its ruling did not depend upon Petitioner's inability to establish a prima facie case;

rather, the majority assumed without analysis that Huber established a prima facie case of disability discrimination, Pet.App. 14a-15a, and noted in passing that Huber "likely" did not establish a prima facie case of FMLA retaliation, Pet.App.10a. The majority proceeded to the final step of the *McDonnell Douglas* framework in relation to both claims while recognizing that Petitioner could demonstrate pretext through "[e]vidence that 'the employer's explanation . . . has no basis in fact' or 'that a [prohibited] reason more likely motivated the employer.'" Pet.App.15a. The majority determined Petitioner's evidence was not sufficient to do either. Pet.App. 11a-12a, 16a-21a. The majority therefore concluded Respondent was entitled to judgment on the ADA and FMLA retaliation claims, reversing the panel's decision on those issues and affirming the District Court's ruling. Pet.App.10a, 12a, 13a.

The en banc court agreed Petitioner's FMLA interference claim should survive summary judgment. Pet.App.21a. That claim remains pending before the District Court.

Five judges dissented from the majority's disposition of the ADA and FMLA retaliation claims. Pet.App.22a. The dissent believed the evidence could lead a jury to find Respondent's explanation unworthy of credence and accused the majority of resolving factual disputes that should be left to a jury. Pet.App.23a-28a.

Ultimately, the disagreement between the en banc majority and dissent was about whether Petitioner's evidence was sufficient to raise a triable issue of fact on whether prohibited animus motivated Petitioner's discharge. Neither the majority nor the dissent questioned

whether *McDonnell Douglas* was the correct legal framework. Petitioner never argued below that the *McDonnell Douglas* burden-shifting framework should be modified or bypassed on summary judgment.

REASONS TO DENY CERTIORARI

I. There Is No Circuit Split.

Petitioner portrays circuit courts as divided on whether and, if so, how to apply the *McDonnell Douglas* burden-shifting framework on summary judgment. Although circuit courts may in some cases use different labels and terminology when organizing and evaluating the evidence, they converge in substance on the ultimate inquiry: whether, when evaluating the evidence as a whole, a reasonable jury could find an adverse employment action was the result of discrimination.

This uniformity is not accidental. It results from this Court's repeated recognition that the *McDonnell Douglas* framework is a flexible evidentiary standard. *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 n. 13 (1973) ("The facts necessarily will vary in Title VII cases, and the specification . . . of the prima facie proof required . . . is not necessarily applicable in every respect to differing factual situations."); *Furnco Constr. Corp. v. Waters*, 438 U.S. 567, 577 (1978) ("The method suggested in *McDonnell Douglas* . . . was never intended to be rigid, mechanized, or ritualistic" but "merely a sensible, orderly way to evaluate the evidence in light of common experience as it bears on the critical question of discrimination.").

This flexibility explains why circuit courts may describe their methods for organizing or evaluating the evidence differently, even though the methodologies are practically the same. The District of Columbia Circuit's treatment of *McDonnell Douglas* demonstrates this point. In *Brady v. Office of Sergeant at Arms*, 520 F.3d 490 (D.C. Cir. 2008), because no prima facie elements unrelated to causation were in dispute, the court moved directly to the pretext stage of the *McDonnell Douglas* framework to evaluate the ultimate question of whether discrimination motivated the challenged action. And in that stage, the Circuit court reviewed the full evidentiary record to determine whether discrimination may have motivated the action. *Id.* at 495. This approach does not abandon *McDonnell Douglas—Brady* relied upon *United States Postal Service Board of Governors v. Aikens*, 460 U.S. 711 (1983), which applied *McDonnell Douglas. Id.* at 715 (*McDonnell Douglas* was "never intended to be rigid, mechanized, or ritualistic"). Rather, *Brady* provided that when only causation remains at issue, the ultimate question of whether a reasonable jury could find that the plaintiff's protected status caused the adverse action should drive the analysis. 520 F.3d at 494. When other prima facie elements are not so readily established, such as whether the plaintiff possessed a disability or suffered an adverse action, the District of Columbia Circuit requires analysis of those prima facie elements before proceeding to pretext, even if the employer has already proffered its reason for the adverse action. *See Waggel v. George Washington Univ.*, 957 F.3d 1364, 1374 (D.C. Cir. 2020) (evaluating whether plaintiff was disabled in prima facie case before evaluating pretext, despite employer having proffered a reason for the adverse action); *Murphy v.*

Noem, No. 19-cv-1954, 2025 WL 2779950, *5-13 (D.D.C. Sept. 30, 2025) (evaluating prima facie case before pretext even though employer proffered reason for reassignment, because whether the plaintiff's reassignment was an adverse action required evaluation of the evidence); *Brett v. Brennan*, 404 F. Supp. 3d 52, 61 (D.D.C. 2019) ("Consider the alternative. A plaintiff could maintain a disability discrimination case without a showing of any kind that he is disabled.").

Although not all circuits go directly to pretext when causation remains the only prima facie element at issue, all circuits evaluate causation in a similar manner. For example, in *Opara v. Yellen*, 57 F.4th 709, 721 (9th Cir. 2023), the Ninth Circuit reaffirmed that a plaintiff may proceed under the *McDonnell Douglas* framework or may support a prima facie case with direct or circumstantial evidence of discriminatory intent.

Similarly, in *Lui v. DeJoy*, 129 F.4th 770, 778 (9th Cir. 2025), the Ninth Circuit explained that the causation element of the prima facie case may be satisfied by a showing of "circumstances giving rise to an inference of discrimination," and recognized that many other circuits, including the Second, Fourth, Eighth, Tenth and Eleventh, adopt this broad "catch-all" at the prima facie stage. This same language appears across other circuits when describing the causation element of the prima facia case. *See, e.g.*, *Ripoli v. Dep't of Hum. Servs., Off. of Veterans Servs.*, 123 F.4th 565, 571 (1st Cir. 2024) ("under circumstances giving rise to an inference of discrimination"); *Littlejohn v. City of N.Y.*, 795 F.3d 297, 312-13 (2d Cir. 2015) ("under circumstances giving rise to an inference of discrimination"); *Sarullo v. U.S.*

Postal Serv., 352 F.3d 789, 798 (3d Cir. 2003) ("under circumstances that raise an inference of unlawful discrimination"); *Miles v. Dell, Inc.*, 429 F.3d 480, 487 (4th Cir. 2005) ("*McDonnell Douglas*' prima facie case requirements are 'not necessarily applicable in every respect to differing factual situations'" (internal quotation omitted)); *Kebiro v. Denton State Sch.*, 24 F.3d 240, 1994 WL 242587, at *1 (5th Cir. 1994) ("under circumstances that give rise to an inference of unlawful discrimination") (unpublished table decision); *Willard v. Huntington Ford, Inc.*, 952 F.3d 795, 808 (6th Cir. 2020) ("circumstances that support an inference of discrimination"); *Bruno v. City of Crown Point, Ind.*, 950 F.2d 355, 363 (7th Cir. 1991) ("under circumstances that give rise to an inference of unlawful discrimination" (quotation omitted)); *Plotke v. White*, 405 F.3d 1092, 1100 (10th Cir. 2005) ("The critical prima facie inquiry in all cases is whether the plaintiff has demonstrated that the adverse employment action occurred under circumstances which give rise to an inference of unlawful discrimination" (quotation omitted)); *Clark v. Coats & Clark, Inc.*, 990 F.2d 1217, 1223 n. 1 (11th Cir. 1993) ("[T]he requirements of a prima facie case under *McDonnell Douglas* vary depending on factual circumstances and the type of claim asserted, this court has avoided overly strict formulations of the elements of a prima facie case.").

Many circuits have explicitly recognized that the same evidence supporting an inference of discrimination at the prima facie stage also supports the analysis of pretext, underscoring the shared causation inquiry. *See, e.g.*, *Schnabel v. Abramson*, 232 F.3d 83, 90 (2d Cir. 2000); *Farrell v. Planters Lifesavers Co.*, 206 F.3d 271, 286 (3d Cir. 2000); *Rowe v. Marley Co.*, 233 F.3d 825, 830 (4th Cir.

2000); *Russell v. McKinney Hosp. Venture*, 235 F.3d 219, 223 (5th Cir. 2000); *Cicero v. Borg-Warner Auto., Inc.*, 280 F.3d 579, 588 (6th Cir. 2002); *O'Neal v. City of Chicago*, 392 F.3d 909, 911 (7th Cir. 2004); *Torgerson v. City of Rochester*, 643 F.3d 1031, 1046 (8th Cir. 2011) (en banc); *Cornwell v. Electra Cent. Credit Union*, 439 F.3d 1018, 1028 (9th Cir. 2006); *Kendrick v. Penske Transp. Servs., Inc.*, 220 F.3d 1220, 1226 (10th Cir. 2000); *Chapman v. AI Transp.*, 229 F.3d 1012, 1024 (11th Cir. 2000) (en banc).

Because a plaintiff's causation evidence must be sufficient to allow a reasonable inference of discrimination at both the prima facie stage and when evaluating pretext, the evidentiary analysis is functionally the same. *See, e.g.*, *Bentley v. AutoZoners, LLC*, 935 F.3d 76, 89 (2d Cir. 2019) ("A plaintiff may carry this burden [to show that the employer's proffered reason was pretext] by reference to the same evidence used to establish a prima facie case, provided that the evidence admits plausible inferences of pretext."); *Burton v. Teleflex Inc.*, 707 F.3d 417, 427 (3d Cir. 2013) ("[I]f a plaintiff has come forward with sufficient evidence to allow a finder of fact to discredit the employer's proffered justification, she need not present additional evidence of discrimination beyond her prima facie case."); *Green v. Franklin Nat'l Bank of Minneapolis*, 459 F.3d 903, 916 (8th Cir. 2006) ("To support her pretext argument, Green points to the same evidence she did to support the a [sic] finding of a causal connection [for purposes of her prima facie case]."); *Lowe v. City of Monrovia*, 775 F.2d 998, 1005 (9th Cir. 1985), amended by, 784 F.2d 1407 (9th Cir. 1986) (to show pretext, plaintiff may rely on same evidence offered to establish prima facie case); *Wells v. Colo. Dep't of Transp.*, 325 F.3d 1205, 1218 (10th Cir. 2003) ("evidence supporting the prima facie case is often helpful

in the pretext stage" (internal quotation marks omitted)); *Arrington v. Cobb Cnty.*, 139 F.3d 865, 875 n.20 (11th Cir. 1998) ("A plaintiff may rely on the same evidence both to establish her prima facie case and to cast doubt on the defendant's non-discriminatory explanations."); *Bart v. Golub Corp.*, 96 F.4th 566, 576 (2d Cir.), *cert. denied sub nom. The Golub Corp. v. Elaine Bart*, 145 S. Ct. 173 (2024) ("Though the plaintiff's ultimate burden may be carried by the presentation of additional evidence showing that the employer's proffered explanation is unworthy of credence, it may often be carried by reliance on the evidence comprising the prima facie case, without more." (citation omitted)).

Finally, all circuits, consistent with this Court's opinion in *Texas Dep't of Cmty. Affs. v. Burdine*, 450 U.S. 248 (1981), allow a plaintiff to establish discrimination at the final stage of the *McDonnell Douglas* framework "either *directly by persuading the court that a discriminatory reason more likely motivated the employer* or indirectly by showing that the employer's proffered explanation is unworthy of credence." *Id.* at 256 (emphasis added). Applying *Burdine*, *every* circuit holds that circumstantial evidence of an unlawful motive—i.e., evidence that "a discriminatory reason more likely motivated the employer"—creates a triable issue of fact on the question of pretext and commands a trial. *See, e.g.*, *Straughn v. Delta Air Lines, Inc.*, 250 F.3d 23, 35 (1st Cir. 2001); *Bart v. Golub Corp.*, 96 F.4th 566, 573-74 (2d Cir. 2024); *Qin v. Vertex, Inc.*, 100 F.4th 458, 474-75 (3d Cir. 2024); *Wannamaker-Amos v. Purem Novi, Inc.*, 126 F.4th 244, 257 (4th Cir. 2025); *McMichael v. Transocean Offshore Deepwater Drilling, Inc.*, 934 F.3d 447, 456-57 (5th Cir. 2019); *Levine v. DeJoy*, 64 F.4th 789, 798 (6th Cir. 2023);

Arnold v. United Airlines, Inc., 142 F.4th 460, 473 (7th Cir. 2025); *Torgerson v. City of Rochester*, 643 F.3d 1031, 1047 (8th Cir. 2011); *Huber v. Westar Foods, Inc.*, 139 F.4th 615, 625 (8th Cir. 2025); *Opara v. Yellen*, 57 F.4th 709, 723 (9th Cir. 2023); *Parker v. United Airlines, Inc.*, 49 F.4th 1331, 1336 (10th Cir. 2022); *Phillips v. Legacy Cabinets*, 87 F.4th 1313, 1323 (11th Cir. 2023); *McDaniel v. Perdue*, 717 F. App'x 5, 7 (D.C. Cir. 2017).

The circuit split that Petitioner claims exists is no circuit split at all. The Ninth Circuit's holding that "nothing compels the parties to invoke the *McDonnell Douglas* presumption" is merely a repackaging of *Burdine*'s holding that a plaintiff is not limited to relying upon falsity to establish pretext:

> As the Supreme Court elaborated a few years after *McDonnell Douglas*, the prima facie case 'eliminates the most common nondiscriminatory reasons for the plaintiff's rejection.' Therefore, 'we presume these acts, if otherwise unexplained, are more likely than not based on the consideration of impermissible factors.' *Burdine* clarified, however, that the plaintiff need not rely on this presumption: 'She may succeed . . . either directly by persuading the court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence.'

Costa v. Desert Palace, Inc., 299 F.3d 838, 855 (9th Cir. 2002) (quoting *Burdine*, 450 U.S. at 254, 256).

Again, *every* circuit allows a plaintiff to demonstrate pretext through evidence that the employer was more likely motivated by a discriminatory reason. The Fourth Circuit likewise labels evidence of animus differently than it labels evidence of "pretext." *See Hill v. Lockheed Martin Logistics Mgmt., Inc.*, 354 F.3d 277, 284, 285 (4th Cir. 2004) (providing "two avenues of proof" and holding second avenue entails proof "the employer's stated reasons 'were not its true reasons, but were a pretext for discrimination'") (quoting *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 143 (2000)). Petitioner identifies linguistic distinctions that have no functional difference.

While the Seventh and Eleventh Circuits have described the ability to organize and review the evidence as a "convincing mosaic" or totality-of-evidence,[1] this methodology is effectively the same as the "catch-all" approach for examining causation in other circuits. *See Ortiz v. Werner Enters., Inc.*, 834 F.3d 760, 763 (7th Cir. 2016); *Tynes v. Fla. Dep't of Juv. Just.*, 88 F.4th 939 (11th Cir. 2023), *cert. denied*, 145 S. Ct. 154 (2024). Under either method, all evidence relevant to causation is examined. And importantly, even when a plaintiff proceeds under the "mosaic" or totality of the evidence framework, if the employer has articulated a legitimate, nondiscriminatory reason for its action, pretext is still relevant to the analysis. *See Thompson v. DeKalb Cnty.,* No. 19-11260, 2021 WL 5356283, at *9 (11th Cir. Nov. 17, 2021) (evaluating whether

1. Petitioner contends that "convincing mosaic" is a "standard" utilized by the Seventh Circuit and "adopted" by the Eleventh Circuit. Both Circuits have made clear, however, that "convincing mosaic" is a metaphor, not a standard or test. *See Ortiz v. Werner Enters., Inc.*, 834 F.3d 760, 765 (7th Cir. 2016); *McCreight v. AuburnBank*, 117 F.4th 1322, 1335-36 (11th Cir. 2024).

plaintiff presented a "convincing mosaic" *after* evaluating pretext under *McDonnell Douglas*); *Bogle v. Ala. Law Enf't Agency*, No. 23-13947, 2024 WL 4635025, at *3 (11th Cir. Oct. 31, 2024) ("*McDonnell Douglas* and the convincing-mosaic theory 'are two ways to approach the same question:'" . . . "'[r]egardless of the term used—"pretext," "convincing mosaic," "summary judgment"—the substance of the argument is the same.'") (quoting *McCreight v. AuburnBank*, 117 F.4th 1322, 1336 (11th Cir. 2024)); *Napier v. Orchard Sch. Found.*, 137 F.4th 884, 891-92 (7th Cir. 2025), *cert. denied*, No. 25-191, 2025 WL 2949578 (Oct. 20, 2025) (convincing mosaic can include evidence that the employer offered a pretextual reason for an adverse employment action). "Convincing mosaic" is not the front-end inquiry Petitioner portrays it to be. *Id.*

Because *every* circuit asks the same underlying question—whether the plaintiff has proffered evidence from which a reasonable jury could infer the plaintiff's protected characteristic caused the adverse action—the different language used to ask that same question is not a substantive difference requiring this Court's intervention.

II. Most Critiques of *McDonnell Douglas* Stem from Its Application in Title VII Cases, Which Differs from How *McDonnell Douglas* Is Applied to ADA Discrimination and FMLA Retaliation Claims, Like Those Asserted by Petitioner.

A prima facie case of discrimination under Title VII aims to "eliminate[] the most common nondiscriminatory reasons for the plaintiff's rejection," creating a presumption that the employer's acts, "if otherwise unexplained, are more likely than not based on the consideration of

impermissible factors." *Burdine*, 450 U.S. at 254 (quoting *Furnco,* 438 U.S. at 577). A prima facie case under Title VII in some circuits may therefore require the plaintiff to show some form of comparator evidence, for instance, that she was replaced by someone outside her protected group or treated less favorably than other similarly situated employees. *See, e.g., Lohmeier v. Gottlieb Mem'l Hosp.*, 147 F.4th 817, 825-26 (7th Cir. 2025) (requiring proof that "similarly situated employees outside of the protected class were treated more favorably"); *Azawi v. McDonough*, No. 22-56157, 2025 WL 2803546, at *1 (9th Cir. Oct. 2, 2025) (requiring proof that "similarly situated individuals outside her protected class were treated more favorably" (quotation omitted)); *Lewis v. City of Union City, Ga.*, 918 F.3d 1213, 1224 (11th Cir. 2019) ("We have no trouble concluding, therefore, that a meaningful comparator analysis must remain part of the *prima facie* case" of Title VII discrimination).[2]

In claiming a circuit split, Petitioner cites a number of concurring opinions and dissents discussing the *McDonnell Douglas* framework in the context of Title VII

2. As noted in Section I, in the few circuits where the prima facie case under Title VII may require comparator evidence, those circuits allow an alternative that, practically speaking, operates like the causation "catch-all" used in other circuits in the prima facie case. All circuits thus effectively organize and review the evidence in essentially the same manner when evaluating a Title VII discrimination case, i.e., by examining all direct and indirect evidence when addressing the ultimate question of whether discrimination was the reason for the employer's action. This similar evidentiary framework applied across all circuits precludes the existence of a circuit split, even in the Title VII context.

cases.[3] But this is not a Title VII case. Petitioner alleges disability discrimination under the ADA and retaliation in violation of the FMLA. Applying *McDonnell Douglas* to claims of disability discrimination and FMLA retaliation provides no opportunity for a court to "evade[] the ultimate question of discrimination *vel non*." *U.S. Postal Serv. Bd. of Governors v. Aikens*, 460 U.S. 711, 714 (1983).

A prima facie case of disability discrimination does not require a plaintiff to eliminate "common nondiscriminatory reasons." Rather, an ADA plaintiff must always demonstrate a disability within the meaning of the ADA and an adverse employment action.[4] Then,

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3. *See, e.g.*, *Tynes*, 88 F.4th at 955 (Newsome, J., concurring) (expressing concern that *McDonnell Douglas* may cause courts "to get cases wrong" because, for example, "[a] plaintiff who can marshal strong circumstantial evidence of discrimination but who . . . for instance . . . can't quite show that her proffered comparator is sufficiently 'similarly situated'" would fail to establish a prima facie case); *Wells v. Colo. Dep't of Transp.*, 325 F.3d 1205, 1225 (10th Cir. 2003) (Hartz, J., writing separately) ("The very failure to say simply, 'a prima facie case is whatever evidence could convince a rational factfinder to find discrimination,' suggests that something further—a proper fit into a formal structure—is required.").

4. No evidence of animus—regardless of the circuit and whether characterized as direct, circumstantial, a "convincing mosaic," or something else—could relieve a plaintiff of establishing what the first two elements of a prima facie case of disability discrimination or FMLA retaliation require. Every plaintiff alleging disability discrimination must establish an ADA-qualifying disability and an adverse employment action. *See, e.g.*, *Tynes,* 88 F.4th at 946 ("A plaintiff who fails to prove that she was a member of a protected class, for example, or that she suffered an adverse employment action, will be unable to prove that she was unlawfully discriminated against. We'll admit that we have at times framed that analysis in terms of whether the plaintiff has established a prima facie case,

as the final prima facie element, the plaintiff need only present some evidence that the disability was the cause of the adverse action. *See Sutherland v. Peterson's Oil Serv., Inc.*, 126 F.4th 728, 738 (1st Cir. 2025) (providing, as third element of the prima facie case, evidence that plaintiff "was subject to an adverse employment action based in whole or part on his disability" (citation omitted)); *Lewis v. Redline Hockey, LLC*, No. 24-1342, 2025 WL 2629705, at *2 (2d Cir. Sept. 12, 2025) ("suffered [an] adverse employment action because of his disability" (citation omitted)); *Gibbs v. City of Pittsburgh*, 989 F.3d 226, 229 (3d Cir. 2021) ("suffered discrimination because of his disability"); *Gosby v. Apache Indus. Servs., Inc.*, 30 F.4th 523, 525-26 (5th Cir. 2022); *Smyer v. Kroger Ltd. P'ship I*, No. 22-3692, 2024 WL 1007116, at *6 (6th Cir. Mar. 8, 2024) ("suffered an adverse employment action because of his disability") (citing *Demyanovich v. Cadon Plating & Coatings, L.L.C.*, 747 F.3d 419, 433 (6th Cir. 2014)); *Bruno v. Wells-Armstrong*, 93 F.4th 1049, 1055 (7th Cir. 2024); *Equal Emp. Opportunity Comm'n v. Drivers Mgmt., LLC*, 142 F.4th 1122, 1130 (8th Cir. 2025); *Ulloa v. Nev. Gold Mines, LLC*, No. 24-1759, 2025 WL 2028307, at *2 (9th Cir. July 21, 2025); *Baker v. All. for Sustainable Energy, LLC*, No. 24-1143, 2025 WL 400743, at *3 (10th Cir. Feb.

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but the more fundamental problem with such a failure of evidence is that it means the plaintiff cannot prove a necessary element for his employment discrimination case." (citations omitted)); *Coleman v. Donahoe*, 667 F.3d 835, 863 (7th Cir. 2012) (Wood, J., concurring) ("[T]o defeat summary judgment, the plaintiff one way or the other must present evidence showing that she is in a class protected by the statute, that she suffered the requisite adverse action (depending on her theory), and that a rational jury could conclude that the employer took that adverse action on account of her protected class, not for any non-invidious reason.").

4, 2025); *Bueno v. Arhaus, LLC*, No. 24-13467, 2025 WL 2114207, at *3 (11th Cir. July 29, 2025).[5]

A prima facie case of FMLA retaliation is likewise open-ended in relation to its causation element, requiring only proof that the plaintiff's protected activity is causally connected to the adverse employment action. *Stratton v. Bentley Univ.*, 113 F.4th 25, 48 (1st Cir. 2024) (requiring only "a causal connection between [the plaintiff's] protected conduct and the adverse employment action" (citation omitted)); *Greenberg v. State Univ. Hosp. - Downstate Med. Ctr.*, 838 F. App'x 603, 606 (2d Cir. 2020)[6]; *Pontes v. Rowan Univ.*, No. 20-2645, 2021 WL 4145119, at *6 (3d Cir. Sept. 13, 2021); *Shipton v. Balt. Gas & Elec. Co.*, 109 F.4th 701, 708 (4th Cir.), *cert. denied*, 145 S. Ct. 774 (2024); *Decou-Snowton v. Jefferson Par.*, No. 24-30079, 2024 WL 4879466, at *4 (5th Cir. Nov. 25, 2024); *Jackson v. United States Postal Serv.*, 149 F.4th 656, 675 (6th Cir. 2025); *Lutes v. United Trailers, Inc.*, 950 F.3d 359, 369 (7th Cir. 2020); *Huber v. Westar Foods, Inc.*, 139 F.4th 615,

5. Because the Fourth Circuit does not require a plaintiff to rely on the *McDonnell Douglas* burden-shifting framework or establish a prima facie case, *Noonan v. Consol. Shoe Co., Inc.,* 84 F.4th 566, 572 n. 3 (4th Cir. 2023), it is immaterial that its prima facie case of disability discrimination requires evidence that the plaintiff "was fulfilling h[er] employer's legitimate expectations at the time of discharge." *Sigley v. ND Fairmont LLC,* 129 F.4th 256, 260 (4th Cir.), *cert. denied*, 145 S. Ct. 2736 (2025).

6. Although the Second Circuit's formulation of the prima facie case of FMLA retaliation requires the plaintiff to establish she was "qualified" for the position, this element generally does not apply where an employer has already hired the plaintiff. *See Gregory v. Daly*, 243 F.3d 687, 696 (2d Cir. 2001) (inference of minimal qualification is easily drawn where employer has already hired employee and discharge is at issue).

623 (8th Cir. 2025); *Cobb v. Alaska Airlines, Inc.*, No. 22-35240, 2023 WL 2624784, at *2 (9th Cir. Mar. 23, 2023); *Parker v. United Airlines, Inc.*, 49 F.4th 1331, 1336 (10th Cir. 2022); *Boan v. Fla. Dep't of Corr.*, No. 23-13116, 2024 WL 3084388, at *1 (11th Cir. June 21, 2024); *Waggel*, 957 F.3d at 1375.

In ADA discrimination and FMLA retaliation cases, the plaintiff's prima facie burden to present evidence of causation is not only "not onerous,"[7] it is "a catch-all requiring only that the adverse action 'occurred under circumstances giving rise to an inference of [] discrimination.'" *Lui v. DeJoy*, 129 F.4th 770, 778 (9th Cir. 2025) (quoting *Mont. v. First Fed. Sav. & Loan Ass'n of Rochester*, 869 F.2d 100, 104 (2d Cir. 1989) (citing *Montana v. First Fed. Sav. & Loan Ass'n of Rochester*, 869 F.2d 100, 104 (2d Cir. 1989)); *Mauter v. Hardy Corp.*, 825 F.2d 1554, 1557 (11th Cir. 1987); *Wierman v. Casey's Gen. Stores*, 638 F.3d 984, 993 (8th Cir. 2011); *McNellis v. Douglas Cnty. Sch. Dist.*, 116 F.4th 1122, 1139 (10th Cir. 2024)). Circuit opinions routinely make clear that this "catch-all" element—instead of limiting the plaintiff to proof, for instance, that she was replaced by an employee outside her protected class—is "flexible" and can be met through any variety of evidence that would allow for an inference of discrimination. *See Pye v. Nu Aire, Inc.*, 641 F.3d 1011, 1019 (8th Cir. 2011) ("'The required *prima facie* showing is a flexible evidentiary standard,' and a plaintiff can satisfy the [final] part of the *prima facie* case in a variety of ways, such as by showing more-favorable treatment of similarly-situated employees who

7. *See Lincoln v. BNSF Ry. Co.*, 900 F.3d 1166, 1193 (10th Cir. 2018) (citation omitted).

are not in the protected class, or biased comments by a decisionmaker." (citation omitted)); *Chertkova v. Conn. Gen. Life Ins. Co.*, 92 F.3d 81, 91 (2d Cir. 1996) ("[T]here is no unbending or rigid rule about what circumstances allow an inference of discrimination when there is an adverse employment decision."); *Roman v. Hyannis Air Serv., Inc.*, No. 23-1744, 2025 WL 2693402, at *6 (1st Cir. Sept. 22, 2025) ("When the plaintiff does not rely on mere temporal proximity alone to establish causation, we may consider, as have other circuits, 'the circumstances as a whole, including any intervening antagonism by the employer, inconsistencies in the reasons the employer gives for its adverse action, and any other evidence suggesting that the employer had a retaliatory animus when taking the adverse action.'"); *Adebiyi v. S. Suburban Coll.*, 98 F.4th 886, 892 (7th Cir. 2024) ("Relevant circumstantial evidence [of causation] may include 'suspicious timing, ambiguous statements of animus, evidence other employees were treated differently, or evidence the employer's proffered reason for the adverse action was pretextual.'") (quoting *Rozumalski v. W.F. Baird & Assocs., Ltd.*, 937 F.3d 919, 924 (7th Cir. 2019)).

This final "catch-all" element found across circuits' formulations of the prima facie case of disability discrimination and FMLA retaliation asks the very same question that the Fourth, Seventh, Ninth and Eleventh Circuits ask when determining whether a jury could conclude that an impermissible factor caused an employment action. *Compare Hill v. Lockheed Martin Logistics Mgmt., Inc.*, 354 F.3d 277, 285 (4th Cir. 2004) ("'[A] plaintiff need only present sufficient evidence,' direct or circumstantial, 'for a reasonable jury to conclude, by a preponderance of the evidence, that [an impermissible

factor] was a motivating factor for any employment practice.'" (citation omitted)); *Ortiz v. Werner Enters., Inc.*, 834 F.3d 760, 765 (7th Cir. 2016) (the standard "is simply whether the evidence would permit a reasonable factfinder to conclude that [an impermissible factor] caused the discharge or other adverse employment action"); *McGinest v. GTE Serv. Corp.*, 360 F.3d 1103, 1122 (9th Cir. 2004) (noting plaintiff "may simply produce direct or circumstantial evidence demonstrating that a discriminatory reason more likely than not motivated [the employer]"); *Smith v. Lockheed-Martin Corp.*, 644 F.3d 1321, 1328 (11th Cir. 2011) ("Yet, no matter its form, so long as the circumstantial evidence raises a reasonable inference that the employer discriminated against the plaintiff, summary judgment is improper."). The difference, again, is that the plaintiff's burden to establish "catch-all" causation in an FMLA or ADA case is "light," "easily met" and "not onerous." *Willard v. Huntington Ford, Inc.*, 952 F.3d 795, 808 (6th Cir. 2020).

Establishment of a prima facie case—utilizing this "catch-all" approach—forces an employer to produce a legitimate, nondiscriminatory reason for a challenged employment action. *See Burdine*, 450 U.S. at 255-56. A plaintiff may then, consistent with *Burdine*, present circumstantial evidence of an unlawful motive—i.e., evidence that "a discriminatory reason more likely motivated the employer"—to create a triable issue of fact on the question of pretext and command a trial. *See supra.*

Far from detracting from a court's focus on the ultimate question of liability, a prima facie case of disability discrimination or FMLA retaliation requires the plaintiff to present evidence capable of raising an

inference of causation and imposes no constraints on the type of evidence a plaintiff may present to meet that burden. The "catch-all" causation requirement applicable to disability discrimination and FMLA retaliation claims across circuits *asks*, rather than avoids, the ultimate question of whether the plaintiff presents sufficient evidence to allow a jury to find discrimination. This case simply is not the appropriate case due to the nature of the FMLA retaliation and ADA discrimination claims asserted by Petitioner.

III. The Holding of *Aikens* Has Limited Application to FMLA Retaliation and ADA Claims.

This Court's opinion in *Aikens* followed a Title VII bench trial in which the district court "erroneously thought that respondent was required to submit direct evidence of discriminatory intent, and erroneously focused on the question of *prima facie* case rather than directly on the question of discrimination." 460 U.S. at 717. Given that the "case was fully tried on the merits," the Court found it "surprising to find the parties and the Court of Appeals still addressing the question whether Aikens made out a *prima facie* case." *Id.* at 711, 713-14. The Court explained that *McDonnell Douglas* was "never intended to be [so] rigid, mechanized, or ritualistic" as to distract from "the critical question of discrimination":

> The *prima facie* case method established in *McDonnell Douglas* was 'never intended to be rigid, mechanized, or ritualistic. Rather, it is merely a sensible, orderly way to evaluate the evidence in light of common experience as it bears on the critical question of discrimination.'

> Where the defendant has done everything that would be required of him if the plaintiff had properly made out a *prima facie* case, whether the plaintiff really did so is no longer relevant. The district court has before it all the evidence it needs to decide 'whether the defendant intentionally discriminated against the plaintiff.'

Id. at 715 (internal quotations omitted).

Petitioner now seeks to transform the above observation, which has been called the "*Aikens* principle," into a rigid rule with mechanized application. And Petitioner would not limit the application of the *Aikens* principle to Title VII claims (she does not even have a Title VII claim), but rather would presumably stretch it across all federal employment statutes, including the FMLA and ADA under which her claims arise.

Again, *Aikens* was a Title VII disparate-treatment case. *Brady v. Off. of Sergeant at Arms*, 520 F.3d 490 (D.C. Cir. 2008), upon which the Petition heavily relies, also was a Title VII disparate-treatment case. In a Title VII case, assuming the defendant does not dispute the existence of an adverse employment action and has proffered a legitimate, nondiscriminatory reason for it, there indeed may be good reason to question the purpose of continuing to focus on whether the plaintiff has established a prima facie case. Under these circumstances, *Brady* concluded that "the district court need not—*and should not*—decide whether the plaintiff actually made out a prima facie case under *McDonnell Douglas*." 520 F.3d at 494.

Brady, however, placed two important qualifications upon this rule. First, *Brady* limited its rule to Title VII disparate-treatment claims. *Id.* Second, *Brady* limited its rule to circumstances in which the plaintiff established an adverse employment action, leaving only questions of causation at issue. *Id.*

But claims of disability discrimination under the ADA and retaliation under the FMLA raise a number of questions unrelated to causation. A prima facie case of disability discrimination typically requires a plaintiff to show that she "(1) has a disability within the meaning of the ADA, (2) is a qualified individual under the ADA, and (3) suffered an adverse employment action as a result of the disability." *See Denson v. Steak 'n Shake, Inc.*, 910 F.3d 368, 370 (8th Cir. 2018) (internal quotations omitted). A disability is "a physical or mental impairment that substantially limits one or more major life activities of such individual," "a record of such an impairment," or "being regarded as having such an impairment." 42 U.S.C. § 12102(1). There are legal standards for determining whether "life activities" are "major," and whether limitations are "substantial" for purposes of establishing an ADA-qualifying disability. *See, e.g.*, *Toyota Motor Mfg., Ky., Inc. v. Williams*, 534 U.S. 184, 197 (2002). Determining whether a plaintiff is a "qualified individual" under the ADA requires interacting evaluations of a plaintiff's abilities, what constitutes reasonable accommodation, and what job functions are essential. *See* 42 U.S.C. § 12111(8), 29 C.F.R. § 1630.2(n)(1) (2024).

A prima facie case of FMLA retaliation likewise raises questions that do not overlap with the ultimate question of discrimination. FMLA retaliation requires a plaintiff to

establish "protected activity," which means the employee's exercise of rights under the FMLA. *See Pulczinski v. Trinity Structural Towers, Inc.*, 691 F.3d 996, 1006 (8th Cir. 2012). Leave from work for reasons that do not qualify under the FMLA—such as leave not associated with a serious health condition or not arising out of incapacity caused by such health condition—cannot be the basis for an FMLA retaliation claim. *See, e.g.*, *Hurley v. Kent of Naples, Inc.*, 746 F.3d 1161, 1168 (11th Cir. 2014); *Jones v. Denver Pub. Schs.*, 427 F.3d 1315, 1323 n.2 (10th Cir. 2005). And "an employee must actually qualify for FMLA leave" to assert a retaliation claim. *Hurley*, 746 F.3d at 1167.

Title VII cases in which an adverse employment action is disputed are, by *Brady's* terms, exceptions to its rule. Relabeling the numerous statutory requirements underlying ADA and FMLA claims as *restrictions against*, rather than *requirements for*, passage under *McDonnell Douglas* does not simplify proceedings or prevent the "enormous confusion" that *Brady* sought to eliminate. 520 F.3d at 494.

It is simply not true in the context of disability discrimination claims and FMLA retaliation claims that "[w]here the defendant has done everything that would be required of him if the plaintiff had properly made out a prima facie case, whether the plaintiff really did so is no longer relevant." *Aikens*, 460 U.S. at 715. And contrary to Petitioner's contention that "[t]he District of Columbia Circuit . . . has repeatedly held that *Aikens* must be applied at summary judgment," Petition, p. 22, the District of Columbia Circuit recently cited neither *Aikens* nor *Brady*, and considered both the respective prima facie cases *and* the "pretext" step of *McDonnell Douglas*, in evaluating

disability discrimination and FMLA retaliation claims. *See Waggel*, 957 F.3d at 1374. In *Waggel*, the D.C. Circuit affirmed summary judgment, finding that portions of the plaintiff's disability discrimination and FMLA retaliation claims did not satisfy elements of a prima facie case, while other allegations "plausibly state a *prima facie* case but fail to rebut the University's legitimate, nonretaliatory explanations." *Id.* at 1376; *see also Figueroa v. Pompeo*, 923 F.3d 1078, 1087 (D.C. Cir. 2019) ("*Brady*'s suggested preference for merits resolution on the third prong is just that—a suggestion, which the District Court should follow only when feasible."); *Brett*, 404 F. Supp. 3d at 61 ("Consider the alternative. A plaintiff could maintain a disability discrimination case without a showing of any kind that he is disabled.").

Finally, in *Brady*, the district court granted summary judgment based upon its finding that the plaintiff failed to establish a prima facie case. 520 F.3d at 493. Here, the Eighth Circuit's en banc opinion did not. Rather, the Eighth Circuit observed in passing that Petitioner's FMLA retaliation claim "*likely* does not make it past the first step, establishing a prima-facie case" before holding that Petitioner failed to present evidence sufficient to establish pretext. *Huber,* 139 F.4th at 623 (emphasis added). The opinion then assumed without analysis that Petitioner had established a prima facie case of disability discrimination before, again, deciding the claim on the basis of pretext. *Id.* at 625. By seeking a ruling that the Eighth Circuit should not have done what the Eighth Circuit did not do, Petitioner does not seek to correct error. The Petition should be denied on that basis.

IV. Petitioner's Questions Are Not Outcome-Determinative Even If the Court Were To Grant Review.

Even assuming this Court were to review this matter, the result in this case would not change. Both the District Court and the en banc Eighth Circuit considered Petitioner's evidence in its entirety and determined she failed to present direct or circumstantial evidence sufficient to allow a reasonable jury to infer a discriminatory or retaliatory motive for her termination. This was not a case dismissed because of a formalistic failure to establish a prima facie element or a mechanized approach to the *McDonnell Douglas* framework. Rather, the courts below reviewed the totality of Petitioner's causation evidence and concluded it was insufficient.

The District Court, in granting summary judgment, evaluated the entire record to determine whether there was a genuine dispute of fact regarding whether Respondent's stated reasons were pretextual. It did not rest its decision on whether Petitioner had satisfied the prima facie elements in isolation. Likewise, the Eighth Circuit sitting en banc explicitly affirmed summary judgment because the evidence as a whole did not support an inference that Petitioner's termination was caused by discriminatory or retaliatory animus. The court observed that Petitioner's violations of the attendance and call-in policies, and the employer's consistent enforcement of those policies, broke the causal chain between her protected status or activity and the termination decision. This approach mirrors how courts applying *Brady* and the totality-of-evidence and/or convincing-mosaic analysis

resolve summary judgment questions by assessing all causation evidence at the pretext stage.

The Eighth Circuit's opinion similarly did not stop short in its analysis based on the prima facie case. After acknowledging the record was fully developed at summary judgment, it effectively evaluated all the evidence at the pretext stage and concluded Petitioner could not show the proffered reason for her termination was a pretext for discrimination or retaliation.[8] This is functionally indistinguishable from how courts in other circuits using totality-of-evidence or convincing-mosaic standards evaluate causation.

Because the result below rests not on the articulation of a prima facie element but on a holistic evaluation of the entire evidentiary record, even if this Court were to revise or reinterpret *McDonnell Douglas* in the manner

8. Petitioner points to deposition testimony of her district manager, Kelchen, as claimed evidence of falsity and discriminatory motive that she contends was overlooked; however, she did not raise that argument before the District Court, nor did she preserve that issue for appeal. Although the Eighth Circuit considered the evidence and found it would not change the result, the Eighth Circuit also properly found the argument waived. Pet.App.18a, n.1. This waiver is fatal to any claim that this case presents a meaningful opportunity to revisit doctrine: even if a new legal standard were adopted, Petitioner's unpreserved argument should not be considered, and the unchanged record supports summary judgment. This Court's precedent reinforces that preservation rules are binding. In *Muldrow v. City of St. Louis,* 601 U.S. 346, 359-60 (2024), the Court noted it would not upset a lower court's decision based on arguments neither raised nor pressed in the lower courts. And in *Stanley v. City of Sanford,* 145 S. Ct. 2058, 2075-76 (2025) (Thomas, J., concurring), Justice Thomas wrote that waiver rules apply with full force in this Court's review of lower-court judgments.

Petitioner urges, the judgment would remain unchanged. Under any labeled method, the record contains no evidence sufficient to allow a reasonable jury to find Petitioner's termination was motivated by discrimination or retaliation. For that reason alone, the questions Petitioner raises are not outcome determinative, and granting certiorari would not alter the result on Petitioner's claims.

The circumstances of this case present another, independent reason why certiorari would be inappropriate. Specifically, Petitioner still has one claim, her FMLA interference claim, that survived summary judgment and remains pending for trial in the District Court. If this Court were to grant review on the discrimination and retaliation claims, the remaining claim would necessarily be stayed, forcing the parties to wait months or even years for this Court's decision before proceeding to trial, with no change in the outcome for Petitioner's dismissed claims, even if the Court accepted review. This result would be inequitable and further underscores why this case is an especially poor vehicle to reevaluate *McDonnell Douglas*, even if a basis to do so existed.

V. Stare Decisis Strongly Counsels Against Revisiting *McDonnell Douglas*.

The *McDonnell Douglas* burden-shifting framework has been a cornerstone of federal employment discrimination law for over half a century. Since first announcing it in 1973, this Court has reaffirmed the framework repeatedly, both explicitly and implicitly, as the appropriate paradigm for analyzing discrimination and retaliation claims where plaintiffs rely on circumstantial evidence. *See, e.g.*, *Burdine*, 450 U.S. at 252; *St. Mary's*

Honor Ctr. v. Hicks, 509 U.S. 502, 506 (1993); *Young v. United Parcel Serv., Inc.*, 575 U.S. 206, 210-11 (2015).

Congress has amended Title VII and other employment discrimination statutes multiple times, most notably with the Civil Rights Act of 1991, yet it has not displaced or restructured the *McDonnell Douglas* framework. This silence reflects legislative acquiescence and the reality that Congress, courts and litigants have come to rely on this stable evidentiary standard. Every Circuit has structured its summary judgment jurisprudence around this framework, whether explicitly or through substantively equivalent formulations.

The *McDonnell Douglas* framework provides a clear and predictable structure to assist courts in separating unsupported claims from those warranting a trial. Lower courts apply it daily in thousands of cases each year. Lawyers understand its requirements and structure their discovery and motion practice around it. Displacing or substantially revising this framework would cause enormous uncertainty and invite inconsistent results across jurisdictions. No special justification exists to justify such a destabilizing shift.

CONCLUSION

Petitioner failed to establish any compelling reasons for the Court to grant the Petition. Respondent respectfully requests the Court deny the Petition.

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Respectfully submitted,

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