

App. No. 25A_____

In the Supreme Court of the United States

SHANNON CROSS,
Petitioner,

v.

CENTRAL CONTRA COSTA TRANSIT AUTHORITY
Respondent.

APPLICATION TO EXTEND TIME TO FILE PETITION FOR A WRIT OF
CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT, FROM MAY 21, 2026, TO JULY 20, 2026

To the Honorable Justice Kagan, as Circuit Justice for the Ninth Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5, 22, and 30, petitioner Shannon Cross respectfully requests that the time to file a petition for a writ of certiorari in this case be extended to and including July 20, 2026. The United States Court of Appeals for the Ninth Circuit issued its opinion in this case on January 13, 2026 (App., *infra* at 1a). On February 20, 2026, the Ninth Circuit entered an order denying Cross’s petition for rehearing and petition for rehearing en banc (App. at 9a). Absent an extension, the petition for a writ of certiorari would be due on May 21, 2026. Petitioner is filing this application at least ten days before that date. *See* Sup. Ct. R. 13.5. This Court has jurisdiction under 28 U.S.C. § 1254 to review this case.

BACKGROUND

This case presents a question of exceptional importance: whether the *McDonnell Douglas* framework – a 50-year-old, judge-made evidentiary tool – is compatible with the standard for summary judgment under Rule 56 of the Federal Rule of Civil Procedure. The continued viability of the *McDonnell Douglas* framework at the summary judgment stage has come before the Court. While recent petitions have been denied, multiple Justices have signaled the issue is ripe for decision, observing the current framework has “spawned enormous confusion” and lacks a basis in statutory text. To settle expectations for litigants and lower courts alike, it is essential that the Supreme Court resolve this tension and replace the existing confusion with a standard aligned with the plain requirements of Rule 56

Petitioner’s case is an ideal vehicle for this Court to resolve the question. Shannon Cross is a Muslim woman who was devoted to a religious practice of publicly wearing a head covering (a “hijab”), while working as a bus driver for a public transit authority. Evidence in the record supported Cross’s claim that the employer explicitly and implicitly coerced her to abandon her religious practice, and after she complained, it terminated her for a bus accident that was not her fault. Responding to the employer’s motion for summary judgment, Cross argued that a convincing mosaic of evidence existed in the record, which – under ordinary standards of Rule 56 – was sufficient for a jury to find in her favor. Such evidence included:

- a. The employer had no religious accommodation policy or instruction against religious harassment. [4-ER-383, ¶¶8-10.]

- b. Despite getting a letter from the employer stating that she had permission to wear her hijab, Cross was harassed by two different supervisors on two different occasions, both of whom told Cross that she could not wear her hijab, calling it “that” and “that thing.” [4-ER-385, ¶¶21-26; 4-ER-386, ¶41.]
- c. Cross was humiliated and mocked by one of the supervisors in front of other bus drivers, after the employer announced that it was going to begin enforcing a “no hat” policy, singling out Cross as the exception, and the reason for the suddenly enforced rule. [4-ER-386, ¶¶30, 31.]
- d. Cross reported the harassment to Human Resources, but the employer did nothing to investigate her complaint or remedy the treatment. [4-ER-386, ¶42; 3-ER-62.]
- e. Cross testified that she experienced the social environment of the workplace as hostile and intolerable, causing tangible psychological injury. She became very uncomfortable and self-conscious on the job, and she felt her face flushed and hot, a tightness in her chest, and actual terror. [4-ER-385, ¶¶25-28.] She testified that she “continued to go to work every day with anxiety and fear about what would happen next.” [4-ER-387, ¶40.] After the actions of two supervisors, Cross was led to the belief that the employer wanted her to remove it. “So I understood clearly that if I did not remove it, I was likely to face consequences.” [Id., ¶¶43, 44.]

- f. Those consequences came six weeks later, when Cross was summarily terminated following a collision between the bus Cross was driving and a bicyclist. Immediately before the incident, the bicyclist was in a stationary position to the right side of the road, stopped in the gutter, with his foot on the curb. Without looking for traffic or signaling, he started to proceed into the bus's lane, with less than a second before the bus passed by. Realizing he riding into the side of the bus, the bicyclist turned his wheel, lost his balance, wobbled, and fell into the back portion of the right side of the bus, damaging his watch. [See, e.g., 4-ER-401-410.]
- g. The employer claimed Cross was completely at fault for the collision, but an on-board video capturing the incident showed otherwise. [4-ER-469 (at 8:36:03).] The bicyclist's decision to jump off the curb from a stopped position, and to start riding into the bus's lane without signaling or looking left, violated Cal. Vehicle Code § 22106 (making it unlawful to "start a vehicle stopped, standing, or parked on a highway . . . until such movement can be made with reasonable safety"). Bicycle safety expert David Brinton opined that it was the bicyclist's unreasonable and unsafe actions which led to the collision. [4-ER-402-403, ¶5a-d.]
- h. The transit authority violated its own protocols following a collision of this nature. [4-ER-395, ¶7; 4-ER-398-399.] The employer viewed the video remotely and fired Cross on the spot, without asking her any questions. [4-ER-388, ¶¶48-49.] The employer had already formed an intent to terminate

by the afternoon. Cross was not given an opportunity to review the video or tell her side. [3-ER-310.]

- i. This was Cross's first and only collision. Prior to the time she asked to wear a hijab, Cross had been found "exceptional" behind the wheel, no one had criticized her driving, and she had no prior occurrences. [4-ER-389, ¶59.] Evidence showed the employer violated its own progressive discipline policy for employees with preventable collisions. [See OB, at 17, n.6.]
- j. Cross was singled out for disparate treatment. Literally hundreds of bus drivers at the transit authority were responsible for preventable collisions, and infraction much worse. And yet, Cross was the *only* non-probationary employee ever fired for a collision. Other operators involved in preventable collisions were merely given warnings or retraining. [See OB at pp. 19-20.] Five other drivers were issued notices of intent to terminate following collisions, but each involved serious misconduct. And, each of these employees was given a "last chance" letter. [4-ER-354:4-365:3; and OB at p.20, n. 12.]
- k. Another bus driver, Ronnette Brown, was not discharged or even disciplined despite running over a teenage bicyclist and putting her in the hospital. [4-ER-390, ¶70; 5-ER-614, 618.] The video of the Brown collision, Exh. C1 [7-ER-937], and the detailed reviews by experts Gregory Hanson and Brinton [4-ER-401-410, 456-463], show Brown's misconduct far exceeded Cross's actions [see OB, at 21-22]. And yet, when the employer

concluded that Brown's collision was preventable, the driver was suspended temporarily and told to undergo 8 hours of training. [7-ER-932.] Ultimately, the employer imposed no discipline on Brown despite her involvement in 16 occurrences in the previous five years. [2-ER-36, ¶18, referring to 7-ER-813-832.]

1. Although several other bus operators were involved in far worse conduct but were given "last chance agreements," Cross was denied this by the employer. [4-ER-371:4-374:10.] One of the two only other employees denied an agreement was Keith Polee, who also had complained about harassment. The employer refused to offer Polee a last chance out of retaliation. [See 4-ER-393-395, ¶¶2-6.]

Cross did not seek to invoke the *McDonnell Douglas* burden-shifting framework in the courts below. That rubric has spawned a rat's nest of surplus tests, departing from statutory text, and diluting the Rule 56 question in employment cases. Cross argued that her claims survived summary judgment because a convincing mosaic of evidence, when considered as a whole, created triable issues of fact as to whether her termination was "because of" religious discrimination or retaliation.

Cross cited *Ortiz v. Werner Enters., Inc.*, 834 F.3d 760, 763 (7th Cir. 2016), and what she had assumed was Ninth Circuit law. See *Smith v. Lockheed Martin Corp.*, 644 F.3d 1020, 1028 (9th Cir. 2011) (a plaintiff may use the *McDonnell Douglas* framework, or "by presenting a convincing mosaic of circumstantial evidence that would allow a jury to infer intentional discrimination by the decisionmaker"). Under

Rule 56, the question is “simply whether the evidence would permit a reasonable factfinder to conclude that the plaintiff’s race, ethnicity, sex, religion, or other proscribed factor caused the discharge or other adverse employment action.” *Ortiz*, 834 F.3d at 765.

The district court granted summary judgment, however, and the Ninth Circuit affirmed. (App., at 1a). Following its circuit precedent in *Hittle v. City of Stockton*, 101 F.4th 1000 (9th Cir. 2024), *cert. denied*, 145 S. Ct. 759 (March 10, 2025), the Ninth Circuit divided the evidence into “direct” and “indirect” groups. It then applied *McDonnell Douglas* to what it found to be indirect evidence. It credited the employer’s testimony regarding the reasons for Cross’s termination, and it dismissed the evidence supporting Cross as insufficient under *McDonnell Douglas* to raise an inference of discrimination.

Cross seeks a writ of certiorari in this Supreme Court. The *McDonnell Douglas* framework is not helpful in resolving summary judgment motions in Cross’s case and many other employment cases. *See Ames v. Ohio Dep’t of Youth Servs.*, 605 U.S. 303, 313-14 (2025) (concurring opinion of Justice Thomas) (“the *McDonnell Douglas* framework lacks any basis in the text of Title VII and has proved difficult for courts to apply. In a case where the parties ask us to do so, I would be willing to consider whether the *McDonnell Douglas* framework is a workable and useful evidentiary tool”); *Hittle*, 145 S. Ct. 759 (March 10, 2025) (Justices Thomas, dissenting from the denial of certiorari, joined by Justice Gorsuch);

Moreover, by crediting the employer’s articulated reason for discharge, and by putting the onus of responsibility on the employee to disprove that reason, application of the *McDonnell Douglas* test necessarily clashes with *Bostock v. Clayton Cty.*, 590 U.S. 644, 656-657 (2020). There, this Court held that showing an adverse action was “because of” discrimination does *not* impose a burden on an employee to disprove or even minimize other factors that contributed to the adverse decision. Under *Bostock*, it is “irrelevant” whether non-discriminatory or non-retaliatory factors *also* motivated the decision. *Id.* The proper question is whether an unlawful factor contributed to the adverse decision. *Bostock* requires reconsideration of *McDonnell Douglas* in the summary judgment context.¹

The facts of Cross’s case present an ideal vehicle to revisit *McDonnell Douglas*, one that is much better than *Hittle*. *Hittle* involved highly disputed, subjective facts regarding a fire chief’s professional misconduct, a 250-page investigative report, and alleged misuse of city resources. This gave many alternative factual bases to rule against Hittle, making it difficult to isolate the *McDonnell Douglas* framework as the sole reason for the outcome. In contrast, this case presents a clearer factual dispute, since the evidence shows the bicyclist was at fault and not the bus driver, and the totality of circumstances provide a basis for a jury to conclude Cross’s religion played a material role, regardless of the employer’s “legitimate reason.” This case presents

¹ See Noelle N. Wyman, “Because of Bostock,” 119 Mich. L. Rev. Online 61 (2021); Deborah A. Widiss, “Proving Discrimination by the Text,” 106 Minn. L. Rev. 353 (2021).

a much better vehicle to determine that the *McDonnell Douglas* framework prevented proper consideration of otherwise strong mosaic of evidence showing discrimination, inconsistent with Rule 56 standards.

In addition, this case intersects directly with two other important Supreme Court cases. Cross's claim of religious discrimination for wearing a hijab draws directly on *Groff v. DeJoy*, 143 S. Ct. 2279 (2023) and *EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 771 (2015). *Groff* heightened the standard for an employer claiming "undue hardship" in granting religious accommodation. As a result, the same facts presented by Cross would preclude summary judgment for failure to accommodate; but the employer achieved summary judgment under *McDonnell Douglas* because Cross supposedly did not disprove the company's non-discriminatory or non-retaliatory reason.

And in *Abercrombie & Fitch*, the employer could not lawfully refuse to hire an applicant based upon a religious practice of wearing a *Hijab* if the need for an accommodation was a motivating factor in the employer's decision, even if the employer had no explicit, subjective knowledge of the need. And yet, here, the Ninth Circuit panel found the employer entitled to summary judgment because it believed the employer's rule to be a facially neutral dress code policy.

Petitioner raises another potential issue for certiorari: whether the Court should formally recognize *quid pro quo* harassment in the context of religious discrimination. This theory is supported by Title VII, FEHA, and EEOC guidance, and it is critical for protecting employees from coercion to abandon their religious

practices. As this Court noted in the context of sex harassment, “‘Quid pro quo’ and ‘hostile work environment’ do not appear in the statutory text,” but after appearing “in the academic literature” they “found their way into decisions of the Courts of Appeals” and “were mentioned in this Court’s decision.” *Burlington Indus. v. Ellerth*, 524 U.S. 742, 751-52 (1998) (citations omitted). No basis exists to recognize the *quid pro quo* theory in the context of sex, but deny it in the religious context.

Record evidence in this case supports a finding that Cross reasonably understood the employer to have explicitly and implicitly pressured her to abandoned her religious practice as a condition of keeping her job and avoiding discipline. Although Cross requested accommodation from the dress code policy, the employer failed to “eliminate the conflict.” “To offer an accommodation that in practice will result in continued infringement does not fulfill Title VII’s requirements.” *Groff v. DeJoy*, 35 F.4th 162, 171 (3d Cir. 2022), reversed on other grounds, 143 S. Ct. 2279 (2023). *See, e.g., Opuku-Boateng v. State of Cal.*, 95 F.3d 1461, 1467 (9th Cir. 1996), as amended (Nov. 19, 1996) (“Where the negotiations do not produce a proposal by the employer that would *eliminate the religious conflict*, the employer must either accept the employee’s proposal or demonstrate that it would cause undue hardship were it to do so”) (emphasis supplied).

Since denial of the petition for rehearing and petition for rehearing en banc (App. 9a), Cross has been evaluating the filing of a petition for a writ of certiorari on these issues.

REASONS FOR GRANTING AN EXTENSION OF TIME

The time to file a petition for a writ of certiorari should be extended to July 20, 2026, for several reasons.

First, the press of other matters will make preparation of the petition difficult absent an extension. In addition to this petition, counsel has been managing numerous recent and upcoming deadlines. A nonexclusive list of cases with such deadlines includes:

- Appellant's Brief in *Harrison, et al. v. Valley's Best Hospice, Inc., et al.*, Ninth Circuit Case No. 25-7862, and briefing on post-judgment motions in the same case in the Central District of California, Case No. 2:20-cv-11218-AH-E;
- Appellant's Brief in *Osinek et al. v. Mazik, et al.*, Ninth Circuit Case No. 26-2425, proceedings in *United States ex rel. Osinek v. Kaiser Permanente*, Northern District of California Case No. 3:13-cv-03891-EMC, and proceedings in *United States ex rel. Mazik v. Kaiser Foundation Health Plan*, Eastern District of California Case No. 2:19-cv-00559-DAD-JDP;
- Representation of named plaintiffs and putative class counsel in multiple proceedings in *Rake et al. v. Regents of the University of California*, Alameda County Superior Court Case No. 22CV019075;
- Representation of Demetris Lawrence in multiple proceedings, in *Lawrence v. Bisignano*, Eastern District of Missouri Case No. 4:25-cv-

01892-RWS; and in Lawrence v. Wormuth, Eastern District of California Case No. 2:23-cv-01717-TLN-JDP;

- Multiple proceedings on behalf of two plaintiffs in Hyde *et al.* v. Kaiser Foundation Health Plan, *et al.*, Alameda County Superior Court Case No. 23CV039174;
- Proceedings and appearances in People of the State of California *ex rel.* Ray v. Foresight Mental Health, Inc., *et al.*, Alameda County Superior Court Case No. 23CV029283; and
- Appellate argument in United States *ex rel.* Morgan-Lee v. Whittier Health Network, First Circuit Case No. 25-1139.

In addition to these cases with deadlines, the undersigned sole practitioner has plans for travel which will take him out of his office, including a trip from June 19 until June 29, in a prearranged travel plan coordinated with approximately 60 other people; and possibly a trip overseas in early July to attend a memorial service for a former employer.

Second, no prejudice will result from the requested extension. Whether the extension is granted or not, the petition will be considered next Term—and, if granted, the case will be argued and decided next Term. In the interim, the status *quo ante* remains intact.²

² Counsel for respondent has advised that respondent opposes the requested extension. No reasons were provided for any opposition.

Third, the petition is likely to be granted. This case raises an important issue of law that has sown chaos among the courts and evades resolution in the circuit courts.

CONCLUSION

For the foregoing reasons, the time to file a petition for a writ of certiorari should be extended to and including July 20, 2026.

Respectfully submitted,

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Dated: May 11, 2025

APPENDIX

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NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 13 2026

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

SHANNON CROSS,

Plaintiff - Appellant,

v.

CENTRAL CONTRA COSTA TRANSIT
AUTHORITY,

Defendant - Appellee.

No. 24-6068

D.C. No.

4:21-cv-01312-JST

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Jon S. Tigar, District Judge, Presiding

Submitted January 9, 2026**
San Francisco, California

Before: NGUYEN and BENNETT, Circuit Judges, and MATSUMOTO, District
Judge.***

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision
without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Kiyoo A. Matsumoto, United States District Judge for
the Eastern District of New York, sitting by designation.

Plaintiff-Appellant Shannon Cross (“Cross”) appeals the district court’s grant of summary judgment in favor of her former employer, Defendant-Appellee Central Contra Costa Transit Authority (“CCCTA”). Less than a year after her employment as a bus operator, Cross collided with a bicyclist while operating a CCCTA bus. After an investigation revealed that Cross was completely at fault for the collision, and had also repeatedly violated multiple CCCTA policies and California Vehicle Code violations, CCCTA terminated Cross. Cross sued, alleging claims for religious discrimination, retaliation, and hostile work environment under Title VII of the Civil Rights Act and California’s Fair Employment and Housing Act (“FEHA”). We have jurisdiction under 28 U.S.C. § 1291, and review *de novo*. *Brinson v. Linda Rose Joint Venture*, 53 F.3d 1044, 1047 (9th Cir. 1995). We affirm.

1. The district court did not err in granting summary judgment to CCCTA on Cross’s religious discrimination claims under Title VII and FEHA. “To establish a *prima facie* case, a plaintiff must offer evidence that gives rise to an inference of unlawful discrimination.” *Cordova v. State Farms Ins. Cos.*, 124 F.3d 1145, 1148 (9th Cir. 1997) (citation modified). A *prima facie* case may be established either by “direct evidence of discriminatory intent” or through the *McDonnell Douglas* framework. *Wallis v. J.R. Simplot Co.*, 26 F.3d 885, 889 (9th Cir. 1994); *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973); *see Guz v.*

Bechtel Nat. Inc., 24 Cal. 4th 317, 354 (2000) (“Because of the similarity between state and federal employment discrimination laws, California courts look to pertinent federal precedent when applying our own statutes.”).

“Direct evidence of discriminatory intent consists of evidence which, if believed, proves the fact of discriminatory animus *without inference or presumption.*” *Mayes v. WinCo Holdings, Inc.*, 846 F.3d 1274, 1280 (9th Cir. 2017) (quoting *Aragon v. Republic Silver State Disposal Inc.*, 292 F.3d 654, 662 (9th Cir. 2002)) (emphasis added).

As direct evidence, Cross points to the statements of Supervisors Morris and Carroll that she cannot wear her hijab. But CCCTA explained that the supervisors were “merely attempting to enforce the dress code,” and under CCCTA’s handbook for transit operators, supervisors were expressly empowered to issue verbal warnings for perceived rule infractions of CCCTA’s policy, such as wearing unauthorized headwear. “[W]here there are obvious alternative explanations for the purportedly . . . invidious discrimination plaintiff asks us to infer, discrimination is not a plausible conclusion.” *Hittle v. City of Stockton, California*, 101 F.4th 1000, 1014 (9th Cir. 2024) (citation modified). Because these statements do not necessarily lead to the conclusion that the supervisors harbored an animus against the Muslim religion rather than an attempt to enforce the dress code, Cross fails to establish discriminatory intent through direct evidence.

Under the *McDonnell Douglas* burden-shifting framework, a plaintiff may establish a prima facie case of discrimination by showing: (1) they belong to a protected class; (2) they were qualified to do the job; (3) they were subject to an adverse employment action; and (4) the employer treated similarly situated employees outside of the plaintiff's class more favorably, or other circumstances surrounding the adverse employment action give rise to an inference of discrimination. *Fonseca v. Sysco Food Servs. of Ariz., Inc.*, 374 F.3d 840, 847 (9th Cir. 2004). If the plaintiff establishes a prima facie case, the "burden then must shift to the employer to articulate some legitimate, nondiscriminatory reason for the employee's rejection." *McDonnell Douglas*, 411 U.S. at 802. If the employer satisfies that burden, then the burden shifts back to the plaintiff to show that the "proffered reason was a pretext for discrimination." *Bergene v. Salt River Project Agr. Imp. & Power Dist.*, 272 F.3d 1136, 1141 (9th Cir. 2001).

As evidence of a similarly situated employee who was treated more favorably, Cross points to Brown, a non-Muslim bus operator at CCCTA who also had an occurrence with a bicyclist. But there were "significant differences between" Cross and Brown. First, the Police Department found that Brown was "not at fault" for her accident, whereas Cross was found "100% at fault by the Police Department." Second, Brown's occurrence was deemed "non-preventable," whereas Cross's occurrence was deemed "preventable." Finally, Brown had been

a “25+ year veteran,” whereas Cross had been driving with CCCTA for less than a year. *See Tyson v. Gannett Co.*, 538 F.3d 781, 784 (7th Cir. 2008) (citation omitted) (“[D]ifferences in seniority will tend to make two employees dissimilar for purposes of the plaintiff’s prima facie case.”). Thus, because of these differences, Brown is not similarly situated “in all material respects,” *Moran v. Selig*, 447 F.3d 748, 755 (9th Cir. 2006), and Cross failed to establish a prima facie case of discrimination under *McDonnell Douglas*.

2. The district court did not err in granting summary judgment to CCCTA on Cross’s retaliation claims under Title VII and FEHA. Cross argues that a reasonable jury could find that she was unlawfully terminated in retaliation “because of” her request to wear a hijab or her complaints of harassment. To determine retaliation claims brought under Title VII and FEHA, courts apply the *McDonnell Douglas* burden-shifting framework. *See Porter v. Cal. Dep’t of Corrs.*, 419 F.3d 885, 894 (9th Cir. 2004); *Loggins v. Kaiser Permanente Int’l*, 151 Cal. App. 4th 1102, 1108–09 (2007). An employee may establish a prima facie case of retaliation by showing: (1) she engaged in a protected activity; (2) her employer subjected her to an adverse employment action; and (3) a causal link exists between the protected activity and the adverse action. *Ray v. Henderson*, 217 F.3d 1234, 1240 (9th Cir. 2000). If the plaintiff establishes a prima facie case, “the burden shifts to the defendant to articulate a legitimate nondiscriminatory

reason for its decision.” *Id.* If the employer satisfies that burden, then the burden shifts back to the plaintiff to show that the “proffered reason was a pretext for unlawful discrimination.” *Noyes v. Kelly Servs.*, 488 F.3d 1163, 1168 (9th Cir. 2007).

At issue is the district court’s analysis in the third step. Cross has not shown that CCCTA’s termination was pretextual. CCCTA terminated Cross because Cross violated California Vehicle Code § 21760(b) when she hit a bicyclist. Cross “acknowledged that she was ‘at complete fault’” for the accident. As part of the investigation on Cross’s termination, a human resources director observed that Cross had “violated several other serious rules and traffic laws, including running stop signs and red lights, using her cell phone while in revenue service, and failing to stop at BART crosswalks.” The director concluded that Cross “repeatedly drives unsafely.” Finally, contrary to Cross’s argument, CCCTA did not violate its own policy and procedure, which allowed CCCTA to initiate “termination” for reasons including “poor job performance” and “violation of law.” Because Cross did not demonstrate that CCCTA’s reasons for her termination were pretextual, she fails to meet her burden on her retaliation claims, and CCCTA is entitled to summary judgment.

3. The district court did not err in granting summary judgment to CCCTA on Cross’s harassment claims alleging hostile work environment under Title VII

and FEHA. To allege a prima facie hostile work environment based on religion, Cross needed to plead: “(1) that [s]he was subjected to verbal or physical conduct of a harassing nature [based on her religion]; (2) that this conduct was unwelcome; and (3) that the conduct was sufficiently severe or pervasive to alter the conditions of [her] employment and create an abusive working environment.” *Kortan v. California Youth Auth.*, 217 F.3d 1104, 1110 (9th Cir. 2000); *Lyle v. Warner Bros. Television Prods.*, 38 Cal. 4th 264, 279 (2006). “[W]hether an environment is ‘hostile’ or ‘abusive’ can be determined only by looking at all the circumstances.” *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 23 (1993). But “that conduct must be extreme to amount to a change in the terms and conditions of employment.” *Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998).

Cross testified that there was never religious insult directed towards her, and based her harassment claim on three statements: Supervisor Morris telling Cross “you can’t wear that” hijab; Supervisor Carroll telling Cross she could not wear “that thing” on her head; and an unidentified bus operator remarking to Cross “now I’m going to wear my hat for religious purposes” after Morris announced that the uniform policy for unauthorized headwear would be enforced. But three allegedly offensive comments over the course of nearly a year are not sufficiently severe or pervasive to constitute a hostile work environment. *See Vasquez v. Cnty. of Los Angeles*, 349 F.3d 634, 643–44 (9th Cir. 2003) (holding that “[t]wo isolated

offensive remarks” combined with “other complaints about unfair treatment” were “not severe or pervasive enough to create a hostile work environment”). Because these “offhand comments[] and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the ‘terms and conditions of employment,’” *Faragher*, 524 U.S. at 788, the district court did not err in granting summary judgment for CCCTA’s motion on her harassment claim.¹

AFFIRMED.

¹ Cross urges the Ninth Circuit to recognize the theory of *quid pro quo* harassment in the context of religious discrimination, which essentially occurs when “a supervisor demands that an employee alter or renounce some religious belief in exchange for job benefits.” *Weiss v. United States*, 595 F. Supp. 1050, 1056 (E.D. Va. 1984) (citing *Katz v. Dole*, 709 F.2d 251 (4th Cir. 1983)). But even assuming such a theory applies here, Cross does not present sufficient evidence to support it.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

FEB 20 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

SHANNON CROSS,

Plaintiff - Appellant,

v.

CENTRAL CONTRA COSTA TRANSIT
AUTHORITY,

Defendant - Appellee.

No. 24-6068

D.C. No.

4:21-cv-01312-JST

Northern District of California,
Oakland

ORDER

Before: NGUYEN and BENNETT, Circuit Judges, and MATSUMOTO, District Judge.*

The panel has voted to deny the petition for panel rehearing.

The panel has voted to deny the petition for rehearing en banc, and Judge Matsumoto has so recommended. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 40.

The petition for panel rehearing and rehearing en banc, Dkt. No. 61, is
DENIED.

* The Honorable Kiyoo A. Matsumoto, United States District Judge for the Eastern District of New York, sitting by designation.