No.

In the Supreme Court of the United States

JOSHUA F. YOUNG

Petitioner,

v.

COLORADO DEPARTMENT OF CORRECTIONS; MOSES "ANDRE" STANCIL; JILL HUNSAKER RYAN,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

A racially hostile work environment violates Title VII when discriminatory conduct is "severe or pervasive" enough to alter the conditions of employment. *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993). An isolated incident may satisfy that standard if it is sufficiently severe.

The question presented is:

Whether employer-mandated training that communicates derogatory racial stereotypes and directs race-conscious workplace conduct may be sufficiently severe to create a racially hostile work environment absent repetition or additional race-based misconduct.

PARTIES TO THE PROCEEDING

Petitioner Joshua F. Young was the plaintiff in the district court and plaintiff-appellant in the court of appeals.

Respondents Colorado Department of Corrections, Moses “Andre” Stancil, and Jill Hunsaker Ryan were defendants in the district court and defendants-appellees in the court of appeals.

STATEMENT OF RELATED CASES

These proceedings are directly related to the above-captioned case under Rule 14.1(b)(iii):

Young v. Colorado Department of Corrections, No. 25-1068, 174 F.4th 1283 (10th Cir. 2026) ("*Young II*") (judgment entered May 11, 2026).

Young v. Colorado Department of Corrections, No. 1:23-cv-01688-NYW-SBP (D. Colo.) (judgment of dismissal entered January 27, 2025).

Young v. Colorado Department of Corrections, No. 23-1063, 94 F.4th 1242 (10th Cir. 2024) ("*Young I*") (judgment entered March 11, 2024).

Young v. Colorado Department of Corrections, No. 1:22-cv-00145-NYW-KLM (D. Colo.) (judgment of dismissal entered February 1, 2023).

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PETITION FOR WRIT OF CERTIORARI

Petitioner Joshua F. Young respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit.

OPINIONS BELOW

The opinion of the Tenth Circuit ("*Young II*") is reported at 174 F.4th 1283 (10th Cir. 2026) and reprinted at App. 1a. The order of the United States District Court for the District of Colorado dismissing the action with prejudice is unreported and reprinted at App. 18a. The prior opinion of the court of appeals affirming dismissal of petitioner's first complaint ("*Young I*") is reported at 94 F.4th 1242 (10th Cir. 2024) and reprinted at App. 95a.

JURISDICTION

The Tenth Circuit entered its order and judgment on May 11, 2026. App. 16a-17a. On July 16, 2026, Justice Gorsuch extended the time within which to file a petition for a writ of certiorari to and including September 8, 2026. This petition is timely filed. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS

Section 703(a) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a), provides in relevant part:

> It shall be an unlawful employment practice for an employer—
>
> (1) . . . to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin[.]

42 U.S.C. § 1981 provides:

> (a) All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens . . . .
>
> (b) For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

INTRODUCTION AND SUMMARY OF REASONS TO GRANT THE PETITION

Title VII prohibits workplace harassment that is "severe or pervasive." Those are alternative routes to liability. Under the "severe" prong, an isolated incident may create a hostile work environment when it is exceptionally serious. To prevent workplace discrimination, employers routinely—and lawfully—sponsor mandatory training. But recently, courts increasingly confront a different question when employer-mandated training itself communicates derogatory racial stereotypes and directs employees to put race-conscious principles into practice.

Several courts of appeals have recognized that even an isolated episode of racial harassment may be sufficiently severe to alter the conditions of employment. The Tenth Circuit decision below took a different approach. Although it had described Colorado's employer-mandated racial messaging as "troubling on many levels" and "[i]f not already at the destination, . . . well on the way to arriving at objectively and subjectively harassing messaging," App. 97a, 109a, the court repeatedly relied on the fact that Petitioner experienced only a "single incident of training" and did not allege individualized follow-on harassment. App. 13a. In doing so, the court effectively treated repetition or subsequent racial misconduct as necessary to state a claim, even one that relies on severity.

Joshua Young was a sergeant with the Colorado Department of Corrections (CDOC). CDOC required him to complete employer-sponsored Equity, Diversity, and Inclusion (EDI) training. The training supplied an official "common language" that associated white people with oppression and the perpetuation of white supremacy; characterized discomfort and defensiveness as "white fragility"; and directed employees to "operationalize racial equity" in routine workplace decisions. App. 56a-60a, 63a. It also instructed employees to implement specified equity practices and tied racial equity to "measurement[] and accountability." App. 64a-65a.

Young, who is white, alleged that those directives were not merely offensive, but affected his core duties in a prison environment where accusations of racial bias were common. The training deterred him from seeking promotion; made contraband-search decisions more difficult; and on several occasions, caused him to second-guess otherwise justified uses of force. He complained internally, CDOC declined to investigate the complaint, and he resigned shortly thereafter.

The Tenth Circuit twice rejected Young's claim at the pleading stage. *Young I* stressed that "the training [had not] occurred more than once" and stated that "the single training session here is not enough." App. 97a, 110a-111a & n.2. *Young II* reiterated that Young "experienced only a single training session," held that "the training program alone was not enough to trigger liability," and summarized *Young I* as holding that "the single incident of training wasn't enough." App. 6a, 9a, 13a. In both decisions, the absence of repetition or subsequent individualized harassment was decisive.

Other courts of appeals give independent force to severity, recognizing that an isolated episode of racial harassment may be actionable without repetition or additional misconduct. The Fifth Circuit reversed dismissal in *Woods v. Cantrell* based on a supervisor's single egregious racial slur. 29 F.4th 284, 285 (5th

Cir. 2022) (per curiam). The Third, Fourth, and D.C. Circuits have likewise held that one concentrated episode of racial messaging may be sufficiently severe without a longer pattern of misconduct. *Castleberry v. STI Grp.*, 863 F.3d 259, 264-65 (3d Cir. 2017); *Boyer-Liberto v. Fontainebleau Corp.*, 786 F.3d 264, 278-80 (4th Cir. 2015) (en banc); *Ayissi-Etoh v. Fannie Mae*, 712 F.3d 572, 577 (D.C. Cir. 2013). And the Seventh Circuit has rejected any "magic number" of racial slurs, recognizing that "a sufficiently severe episode may occur as rarely as once." *Cerros v. Steel Technologies, Inc.*, 398 F.3d 944, 950-51 (7th Cir. 2005) (quotations omitted).

The issue has already arisen in the context of employer-mandated antidiscrimination training. In *Chislett v. New York City Department of Education*, 157 F.4th 172 (2d Cir. 2025), the Second Circuit treated racist statements against white employees during mandatory bias trainings as harassing conduct. It rejected the contention that the sessions' antidiscrimination purpose insulated their content. *Id.* at 189 n.8. Although *Chislett* involved multiple trainings and other workplace incidents, the court treated the employer-sponsored training as part of the hostile environment, not merely a prelude to actionable harassment. It confirms that discriminatory statements do not cease to be workplace harassment simply because an employer delivers them through mandatory antidiscrimination training.

The question is exceptionally consequential. In a 2023 Pew survey, 52% of U.S. workers reported that their workplace offered DEI trainings or meetings, and 38% reported participating in a DEI training during the preceding year. Rachel Minkin, *Diversity, Equity and Inclusion in the Workplace* 4, 15 (Pew Rsch.

Ctr., May 17, 2023).[1] And the U.S. Equal Employment Opportunity Commission (EEOC) itself has recognized that such trainings can cross the line. It advises employees that a DEI-related training may contribute to a hostile work environment depending on its "content, application, or context." EEOC, *What You Should Know About DEI-Related Discrimination at Work*, Question 10 (Mar. 19, 2025).[2]

This case is a strong vehicle. It comes from a final Rule 12(b)(6) dismissal, so Young's allegations must be taken as true. The Court need not decide whether this particular training was actionable as a matter of law, nor hold that DEI training is inherently suspect. It need only decide whether an employer-mandated training that allegedly communicates derogatory racial stereotypes and directs race-conscious workplace conduct may be sufficiently severe to create a hostile work environment absent repetition or additional race-based misconduct.

STATEMENT OF THE CASE

I. Hostile Work Environment Claims

Title VII of the Civil Rights Act of 1964 makes it "an unlawful employment practice for an employer . . . to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1). This prohibition is "not limited to 'economic' or 'tangible' discrimination." *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 64 (1986). Rather, the

[1] https://tinyurl.com/bdhkxhjf.

[2] https://tinyurl.com/ycxsb6kx.

prohibition reflects Congress's intent "to strike at the entire spectrum of disparate treatment" in employment, including situations that "requir[e] people to work in a discriminatorily hostile or abusive environment." *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993) (citations and internal quotation marks omitted).

Accordingly, this Court has held that workplace harassment constitutes an unlawful employment practice under Title VII "[w]hen the workplace is permeated with 'discriminatory intimidation, ridicule, and insult,' that is 'sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment . . . .'" *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 116 (2002) (quoting *Harris*, 510 U.S. at 21). This standard "takes a middle path between making actionable any conduct that is merely offensive and requiring the conduct to cause a tangible psychological injury." *Harris*, 510 U.S. at 21. Critically, the standard is disjunctive: harassment may create a hostile work environment if it is sufficiently severe *or* if it is sufficiently pervasive. *Ibid.*

The hostile-environment inquiry has both objective and subjective components: the environment must be one "that a reasonable person would find hostile or abusive," and one that the plaintiff in fact perceived as abusive. *Harris*, 510 U.S. at 21-22. Whether the objective standard is satisfied requires "looking at all the circumstances." *Id.* at 23. There is no "mathematically precise test," *id.* at 22, and relevant considerations may include "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Ibid.* None is dispositive. And the objective inquiry must account for context: severity is judged "from the perspective of a reasonable person in the plaintiff's position, considering all the circumstances." *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 81 (1998) (quotation omitted). Under this test, "'simple teasing,' offhand comments, and isolated incidents" ordinarily are not enough, but even a single incident may create an actionable hostile work environment if it is "extremely serious." *Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998) (citation omitted).

Like Title VII, Section 1981 also protects employees against a hostile work environment. It guarantees all persons "the same right . . . to make and enforce contracts . . . as is enjoyed by white citizens." 42 U.S.C. § 1981(a). In *Jones v. R.R. Donnelley & Sons Co.*, the Court recognized that the addition of subsection (b) "made possible" hostile work environment claims by clarifying that the term "make and enforce contracts" includes "the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship." 541 U.S. 369, 382-83 (2004) (quoting 42 U.S.C. § 1981(b)).

The courts of appeals apply the same substantive standard to hostile-work-environment claims under Title VII and Section 1981. *See, e.g.*, *Freeman v. Dal-Tile Corp.*, 750 F.3d 413, 424 n.7 (4th Cir. 2014) ("The standard used to evaluate a racial hostile work environment claim under § 1981 is the same as the standard used under Title VII."); *Lounds v. Lincare, Inc.*, 812 F.3d 1208, 1221 (10th Cir. 2015); *Paschall v. Tube Processing Corp.*, 28 F.4th 805, 814 (7th Cir. 2022); *Williams v. CSX Transp. Co.*, 643 F.3d 502, 511 n.4 (6th Cir. 2011).

II. Young's Allegations Of A Hostile Work Environment[3]

Petitioner Joshua Young joined the Colorado Department of Corrections (CDOC) as a corrections officer in 2017 and quickly advanced through its ranks. App. 51a. He was promoted to Housing Sergeant in 2019, where he ran a close-custody unit in one of the most challenging prisons in Colorado. App. 51a. In 2020, he was promoted to Visiting Sergeant, where he was responsible for the safety of prisoners, visitors, and fellow officers during visitation—including screening visitors for contraband. App. 51a.

A. CDOC required Young to complete and implement race-based EDI training

In 2021, CDOC announced that its employees were required to complete Equity, Diversity, and Inclusion (EDI) training provided by the state. App. 52a, 55a. Young completed the computer-based training in March 2021. App. 55a. Like all other CDOC-assigned training, the EDI training was not merely informational; it was expected to be used in employees' daily work. App. 55a, 58a. Training materials expressly stated that "[t]he intention of this course is to bring awareness to EDI and how it can be applied to the work that you do as a state employee." App. 63a.

The training extended well beyond awareness. Its explicit goal was "transformation of government to advance racial equity." App. 65a. To accomplish that

[3] Because this case was resolved at the motion to dismiss stage, the alleged facts must be taken as true, *Tyler v. Hennepin Cnty.*, 598 U.S. 631, 636 (2023), and reasonable inferences drawn in Petitioner's favor, *Nat'l Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175, 194-95 (2024).

goal, Young and his colleagues were told they must "operationalize racial equity" and "integrat[e] racial equity into [their] routine decision-making processes." App. 63a. The training explained that pursuing racial equity required both "measurement[] and accountability." App. 64a.

The EDI training began with a glossary of equity terms assembled by the Colorado Department of Public Health and Environment.[4] App. 55a. The glossary was intended to establish a "common language" for CDOC employees and to supply definitions they would use in understanding and applying the remainder of the training. App. 56a-59a. Employees were expected to use and adopt the glossary's terms in their daily work. App. 58a. These terms were not up for debate: if an employee disagreed with a term, the glossary directed him to "browse the internet for additional articles, blogs, etc." so that his "opinions and beliefs may . . . evolve." App. 57a-58a.

The glossary repeatedly defined racial concepts in terms assigning responsibility to "white people" as a group. App. 58a-61a. It defined "race," for example, as a construct "created and used to justify social and economic oppression of people of color by white people." App. 59a. It defined "white supremacy" as a "system of exploitation and oppression of nations and people of color by white peoples of European descent." App. 60a-61a. And it defined "white exceptionalism" as occurring when white people believe themselves to be "the exception to white racism," while ignoring "the

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[4] Although Respondents disputed below that the glossary was part of the training, the court of appeals credited Petitioner's allegation, as the posture requires. App. 7a n.3.

implicit ways in which they perpetuate white supremacy." App. 59a-60a.

The glossary also instructed employees how to understand resistance to racial concepts. When a white person is "confronted by 'information about racial inequality and injustice,'" it stated, he or she will experience "[d]iscomfort and defensiveness, often triggered by fear or guilt"—a response it labeled "white fragility." App. 60a. And it defined "BIPOC"—an acronym for "Black, Indigenous People, and People of Color"—as a term "used to acknowledge that Indigenous and Black people have been most impacted by whiteness, both historically and in the present day." App. 58a. The glossary instructed employees to capitalize the racial term "Black" but not "white," explaining that capitalizing the latter would be a "symbolic nod to white supremacy." App. 61a.

Far from merely describing race and racial concepts, the EDI training instructed employees to change how they interacted with colleagues based on race. The training directed Young to provide "microaffirmations" to those perceived as lacking "the same privilege as all of their counterparts" due to their race. App. 65a. And he was instructed that "members of historically marginalized [racial] groups" should be invited to "speak first" in group settings and that this preference should be "share[d] . . . out loud at the beginning of meetings to serve as guidelines and equip your staff to be more equitable and inclusive." App. 66a. He was directed to "immediately implement" these strategies and to review them with his team "until they become a habit." App. 67a. Another slide presented an "equity continuum" under which "[s]uccess" was "defined by treating groups/people differently based on historic injustices and present-day barriers." App. 67a-68a.

As part of the training, CDOC directed employees to additional EDI materials under the heading "Other Tools and Resources." App. 68a. Although an employee could complete the computer training modules without reviewing every linked resource, they were not labeled optional, and employees were emphatically encouraged to use these tools and resources to "continue [their] journey" and "deepen[] their awareness." App. 69a. Where a resource listed in the training was *not* endorsed by Colorado, the training said so expressly; the "Other Tools and Resources" carried no such disclaimer. App. 69a-70a.

These additional materials continued the training's racial themes. One linked video included an interviewee who characterized the accomplishments of white Americans as the product of "generations of affirmative action for whites," which they either are unaware of or refuse to accept, leading them to embrace a "false . . . narrative" that their successes are due to merit and individual effort. App. 72a. Another interviewee used the unredacted N-word to describe how white people supposedly view black families: "The concept of a middle-class black only exists in the mind of a middle class black. Everywhere else in the suburbs, you were that n---- family on the corner . . . ." App. 71a. Other linked materials discussed "white norms" and "white talk" and instructed white employees to "acknowledg[e] that your skin tone . . . grants you opportunity, power, or privilege that others do not experience." App. 74a-75a.

Employees were not free to disregard the concepts in the EDI training. As with all mandatory trainings, employees were expected to take it seriously and apply it on the job, regardless of any personal resistance. App. 77a. As the training put it: "You'll be held to the expectations outlined in this policy." App. 78a. Refusing assigned training could result in discipline, and Young's supervisors repeatedly emphasized the importance of following assigned training on the job. App. 77a-78a, 82a. Young was assured that the EDI training—and how well he incorporated its principles into his work—factored into quarterly performance reviews used for promotion decisions. App. 82a-83a.

B. The training changed Young's workplace and how he performed his job

The directives in the EDI training had concrete consequences in Young's workplace, which was already a racially charged prison environment. Prisoners regularly made race-based accusations against officers, including Young. App. 79a. Visitors also commonly claimed that searches or other security measures were motivated by race. App. 80a.

Against that backdrop, the EDI training classified people by race; instructed employees to analyze workplace interactions in terms of race, privilege, and status; and directed them to incorporate racial equity into routine decisions—including treating others differently based on their race. Young knew that his colleagues and supervisors were receiving the same training and were expected to apply it. App. 78a-81a. The result was increased suspicion and distrust within the prison. App. 79a.

As an employee who is white and has never been a white supremacist, Young experienced personal stress, offense, and isolation from the EDI training, knowing that his employer expected him and his colleagues to internalize and apply its concepts. App. 59a, 76a-82a. He knew that objecting to the training would potentially lead to discipline, and he was concerned that even expressing skepticism about it would cause him to be accused of racism. App. 78a. He also became concerned that colleagues who accepted the training would interpret his actions through the racial framework prescribed in the training. App. 78a-80a.

These concerns affected Young's performance of his work duties. The training made him hesitant to use force against prisoners when doing so was otherwise justified, and there were several occasions when he needed to use force but second-guessed himself because of the training's race-based implications, leading to an unsafe environment. App. 81a. A similar problem arose when Young searched prison visitors for contraband. App. 80a. Given CDOC's instruction that employees analyze workplace decisions through a racial-equity framework, Young understood that his superiors would be more likely to credit accusations of racism against him—making his assigned job significantly harder. *Ibid.*

The training also changed Young's career plans. He had previously advanced rapidly and sought greater responsibility, but the EDI training undermined his sense of purpose in the CDOC. App. 51a, 81a. Because managers were required to enforce concepts and principles in assigned training, including the EDI training, he lost the desire to seek promotion since that would require him to implement practices he regarded as discriminatory. App. 81a-82a.

Young eventually filed an internal discrimination complaint about the EDI training. App. 85a. CDOC responded by informing him that the Office of the Inspector General would not even investigate his complaint because, although it recognized the training was "required," it concluded there was not reasonable cause to indicate the presence of discrimination or discriminatory harassment. *Ibid.* Two days later, Young resigned. *Ibid.*

III. Proceedings Below

A. The first lawsuit and *Young I*

Young filed suit, alleging a Title VII hostile-work-environment claim and an equal protection claim under 42 U.S.C. § 1983. The district court dismissed without prejudice but did not grant leave to amend the complaint. *See* App. 52a-53a. Young appealed the dismissal, and the Tenth Circuit affirmed. App. 95a-121a (*Young I*). The panel recognized that the training's content was "troubling on many levels" and observed that "[t]o the extent diversity programs generate . . . animus, they are equally subject to the prohibitions of Title VII." App. 96a-97a. It concluded further: "If not already at the destination, this type of race-based rhetoric is well on the way to arriving at objectively and subjectively harassing messaging." App. 109a.

The panel nonetheless relied on circuit precedent to concluded that Young failed to state a claim because "he does not allege that the training occurred more than once, that his supervisors threatened to punish or otherwise discipline employees who failed to complete or agree with the materials, or that coworkers engaged in specific acts of insult or ridicule aimed at him because of the training." App. 110a. In the panel's view, Young needed to allege an "ongoing, continuing commitment" to similar trainings; a requirement that employees "endorse a particular race-based ideological platform or risk losing their jobs"; or specific instances of "racial animus manifesting itself" in Young's day-to-day work environment. App. 111a n.2, 116a.

B. The second lawsuit and the decision below

While *Young I* was pending at the Tenth Circuit, Young filed a second action bringing similar claims under Title VII and 42 U.S.C. § 1981.[5] After *Young I* was decided, he amended his complaint with new allegations tracking the categories the *Young I* panel had identified. *See* App. 54a. The district court nonetheless granted Respondents' Rule 12(b)(6) motion to dismiss the amended complaint, this time with prejudice. App. 18a-50a.

Young again appealed, and the Tenth Circuit affirmed. App. 1a-15a (*Young II*). Citing circuit precedent, the panel held that Young's burden was "extremely high," requiring allegations that the workplace was "overtly hostile." App. 5a (quoting *Iweha v. Kansas*, 121 F.4th 1208, 1224-25 (10th Cir. 2024)). Because "discriminatory behavior is actionable only if it permeates the workplace," the panel held that Young "needed to allege 'more than a few isolated incidents of racial enmity'" to state a claim. App. 6a (quoting *Bolden v. PRC, Inc.*, 43 F.3d 545, 551 (10th Cir. 1994)).

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[5] Young filed the second action to avoid a potential statute of limitations problem. The district court initially closed the second case, but reopened it after the Tenth Circuit decided *Young I*. *See* App. 23a.

The *Young II* panel also interpreted *Young I* as having "held that the [EDI] training program alone was not enough to trigger liability." App. 6a; *see also* App. 13a ("We previously held [in *Young I*] that the single incident of training wasn't enough to allege a hostile work environment . . . .") (bullet omitted); App. 9a ("Young hasn't alleged that the training occurred more than once."). And because Young "experienced only a single training session," the panel concluded that his allegations were insufficient to show that the training "rendered the workplace permeated with abuse." App. 8a-9a.

REASONS FOR GRANTING THE PETITION

The decision below conflicts with other courts of appeals as to whether an isolated episode of racial harassment may be actionable based on severity alone. That conflict has immediate practical importance in the growing category of mandatory employer-sponsored training. Such training is common and ordinarily lawful, but when its content is alleged to be discriminatory, courts need a consistent rule for determining whether it can itself create a hostile work environment. This case squarely presents that question.

I. Review Is Warranted To Resolve A Circuit Split Over The Treatment Of Isolated Racial Harassment

This Court has repeatedly described actionable harassment as conduct that is "severe or pervasive." *Harris*, 510 U.S. at 21; *see also Faragher*, 524 U.S. at 788. The circuits agree in the abstract that severity can operate independently of pervasiveness. The conflict arises in application. Many circuits allow even a single instance of racial harassment to satisfy the severity prong. But under the Tenth Circuit decision below, a single episode of employer-mandated racial messaging is insufficient on its own unless it is repeated or accompanied by separate race-based harassment.

A. Other circuits apply the severity standard to isolated racial harassment

The Fifth Circuit's decision in *Woods v. Cantrell* is illustrative of the way many courts approach the question. There, a supervisor directed a single egregious racial slur at the plaintiff in front of coworkers. 29 F.4th at 285. The Fifth Circuit reversed Rule 12(b)(6) dismissal, holding that this single incident could be sufficiently severe to create a hostile work environment. *Ibid.* The Third Circuit reached a similar conclusion and reversed dismissal in *Castleberry v. STI Group*, 863 F.3d at 262. Although there were allegations of additional workplace racism, the court specifically held that one racial epithet coupled with a supervisor's threat of termination could itself satisfy the severity route because "severe" and "pervasive" are "alternative possibilities." 863 F.3d at 264-65.

The Fourth Circuit reached the same conclusion in *Boyer-Liberto v. Fontainebleau Corp.*, 786 F.3d at 280. That case involved two uses of a racial epithet within roughly twenty-four hours, coupled with supervisory authority and a threat. *Id.* at 268-69, 278-80. Reversing the grant of summary judgment, the court held that "an isolated incident of harassment, if extremely serious, can create a hostile work environment" and emphasized that the authority of the speaker—in that case, a supervisor—bears on severity. *Id.* at 268, 278.

The episode therefore could support liability without a longer course of harassment. *Id.* at 280.

The D.C. and Seventh Circuits supply the same rule. In *Ayissi-Etoh v. Fannie Mae*, the D.C. Circuit stated that one supervisor's use of the N-word as a racial epithet "might well" suffice by itself. 712 F.3d at 577. Then-Judge Kavanaugh concluded expressly that it was sufficient. *Id.* at 580-81 (Kavanaugh, J., concurring). And although *Cerros v. Steel Technologies, Inc.*, involved a longer period of racial comments and graffiti directed at a Hispanic employee, the Seventh Circuit rejected any "magic number" and reiterated that "a sufficiently severe episode may occur as rarely as once." 398 F.3d at 950-51 (quotations omitted).[6]

Although these cases generally involved egregious racial slurs rather than training modules, that factual distinction does not eliminate the conflict. It may affect the ultimate severity determination, but not the threshold rule.

Taken together, these decisions give independent operative force to severity: an isolated episode is not categorically excluded merely because it lacks repetition. Frequency remains relevant, but the court must still assess whether the alleged conduct itself was sufficiently severe in context—considering content, source, and authority.

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[6] *See also Howley v. Town of Stratford*, 217 F.3d 141, 154 (2d Cir. 2000) (holding that a single verbal tirade by a coworker could support a sex-based hostile-work-environment claim).

B. The Second Circuit treats an employer's own training as workplace harassment, not merely background

In *Chislett v. New York City Department of Education*, a white employee alleged that the employer's bias trainings repeatedly described white culture in pejorative and essentialist terms. The evidence included statements that the "values of White culture are supremacist," that there was "white toxicity in the air," and that traits such as perfectionism reflected white-supremacy culture. 157 F.4th at 188-89. Instructors even attributed the plaintiff's "interest in excellence" to white supremacy. *Ibid.*

Reversing summary judgment, the Second Circuit held that a rational jury could treat those statements as racial harassment. It expressly referred to "racist comments . . . expressed during bias trainings" and rejected the argument that the sessions' antidiscrimination purpose took them outside hostile-environment law. *Id.* at 188-89 & n.8. The question was "the way the trainings were conducted": when workplace trainings discuss a particular race with "a constant drumbeat of essentialist, deterministic, and negative language," they "risk liability under federal law." *Id.* at 191 (quotation omitted).

Naturally, there are factual differences between *Chislett* and this case: there, the plaintiff was exposed to multiple trainings and additional racialized workplace encounters, such that the Second Circuit considered the harassment both severe *and* pervasive. *Id.* at 188-90. But *Chislett* is nonetheless instructive because the court treated allegedly discriminatory content communicated through employer-sponsored bias training as workplace harassment in its own right.[7]

C. The Tenth Circuit requires separate accompanying harassment to state a claim

The Tenth Circuit formally recognizes that severity and pervasiveness are distinct. *See Young I*, App. 107a (recognizing that "a single event, if extraordinarily severe, can alter the conditions of a working environment"); *Young II*, App. 6a. The problem is what the court actually requires in order to plead a severity claim.

In *Young I*, the court acknowledged that the mandatory EDI training's content was "troubling on many levels" and at the very least "well on the way" to objectively harassing messaging. App. 97a, 109a. Yet it rejected Young's claim at the pleading stage because he had not alleged that "the training occurred more than once" or that there was subsequent harassing conduct from supervisors or coworkers. App. 97a. The panel made its operative rule explicit: "the single training session here is not enough." App. 111a n.2.

Young responded to the *Young I* decision with dozens of additional allegations: that all CDOC training was expected to be followed on the job; that the EDI

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[7] Petitioner does not contend that DEI training is *per se* unlawful. *Chislett* itself declined to go that far. 157 F.4th at 191 (citing *Vavra v. Honeywell Int'l, Inc.*, 106 F.4th 702 (7th Cir. 2024)). The point is narrower: when a training allegedly communicates discriminatory racial messages, its content, employer sponsorship, mandatory character, and workplace consequences are relevant to severity just as they would be for other workplace conduct.

materials directed immediate implementation of race-conscious practices; that adherence was tied to workplace expectations and performance; that Young was deterred from seeking promotion; that his use-of-force and search decisions were affected; that a racial complaint altered another officer's discipline; and that CDOC refused to investigate Young's complaint. App. 51a-94a. But *Young II* again made the absence of repetition and individualized aftermath decisive. It concluded *Young I* had already "held that the training program alone was not enough to trigger liability," App. 6a, and emphasized that Young "experienced only a single training session." App. 8a. And it summarized the prior holding in terms of frequency: "the single incident of training wasn't enough to allege a hostile working environment." App. 13a.

Taken together, *Young I* and *Young II* did not merely conclude that this particular EDI training fell short on severity. They repeatedly treated the absence of repetition or individualized spillover as decisive. Most revealingly, when Young argued that the employer's official role heightened the severity of its racial messaging, *Young I* responded that he needed to combine the policy with a "pattern of race-based intimidation, ridicule, or insult that *accompanied* his employer's official acts." App. 112a (emphasis added). Thus, in assessing this employer-mandated racial messaging, the Tenth Circuit required the very additional course of conduct that other circuits do not treat as a prerequisite to a severity theory.

Whether Young ultimately can prove severity is a merits question. Whether his claim may be rejected at the pleading stage for lack of repetition or additional harassment is the question that divides the lower courts.[8]

II. The Widespread Use Of Mandatory DEI Training Makes The Question Important And Recurring

Mandatory workplace trainings addressing race, diversity, equity, and inclusion are common in both public and private employment. In a nationally representative 2023 survey, 52% of U.S. workers reported that their workplace had DEI trainings or meetings, and 38% said they had participated in a DEI training during the preceding year. Minkin, *supra*, at 4, 15. Because such training is widespread, the legal standard governing training alleged to be discriminatory affects a substantial share of the national workforce—including governments, universities, corporations, and millions of employees required to complete workplace training as a condition of employment.

The federal government has specifically recognized the issue. In March 2025, the EEOC advised that "a diversity or other DEI-related training" can, depending on "content, application, or context," contribute to a hostile work environment if it is discriminatory.

[8] The later Tenth Circuit decision in *Sharpe-Miller v. Walmart, Inc.*, 181 F.4th 1037 (10th Cir. 2026), does not eliminate the issue. Although that sexual-orientation harassment case stated that "[a] sufficiently severe episode may occur as rarely as once," it relied on a series of discriminatory acts that the court found sufficient in the aggregate. *Id.* at 1063-64 (quotation omitted). It neither cited *Young I* and *Young II* nor addressed whether employer-mandated racial messaging may qualify as sufficiently severe.

EEOC, *supra*, Question 10. That formulation underscores the importance of assessing what an employer-mandated training actually says and what it requires, rather than treating frequency alone as dispositive.[9]

The issue is generating substantial litigation across the country. As noted above, *Chislett* has already produced a published Second Circuit decision. Additionally, in *De Piero v. Pennsylvania State University*, a district court held that allegations involving repeated anti-racism programming and related workplace communications stated a hostile-environment claim, 711 F. Supp. 3d 410, 423-24 (E.D. Pa. 2024), before later granting summary judgment to the university, 769 F. Supp. 3d 329 (E.D. Pa. 2025). The appeal is pending after argument in the Third Circuit. *De Piero v. Pennsylvania State University*, No. 25-1952 (3d Cir.). Similarly, *Diemert v. City of Seattle* involved mandatory "race and social justice" training that allegedly created a hostile workplace environment. The district court refused to dismiss the case at the pleading stage, 689 F. Supp. 3d 956, 960-63 (W.D. Wash. 2023), but later entered summary judgment for the City, 776 F. Supp. 3d 922 (W.D. Wash. 2025). The appeal is pending in the Ninth Circuit. *Diemert v. City of Seattle*, No. 25-1188 (9th Cir.). And in *Johnson v. Oregon Department of Environmental Quality*, the district court declined to dismiss hostile-environment claims alleging mandatory trainings and other workplace communications that ascribed negative traits to white employees, concluding that the allegations

[9] *See also* Attorney General Memorandum, *Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination*, https://tinyurl.com/ya868s9p (July 29, 2025).

plausibly stated a claim. No. 3:24-cv-00279-JR, 2024 WL 5038803, at *5 (D. Or. Dec. 9, 2024).[10]

This Court's recent decision in *Ames v. Ohio Department of Youth Services* reinforces that ordinary Title VII rules apply evenhandedly. 605 U.S. 303, 309 (2025). Young seeks no special rule for white employees or for DEI training, nor does he ask the Court to prescribe acceptable views about race or hold any category of workplace training unlawful. He asks only that allegedly discriminatory racial messaging delivered through an employer's official program be assessed under the same severe-or-pervasive standard that governs comparable racial harassment in any other form—including the principle that a single incident may suffice if it is sufficiently severe. That framing accords with *Ames*'s insistence that Title VII's rules apply evenhandedly without regard to the plaintiff's race.

III. This Case Is An Excellent Vehicle

The issue is cleanly presented on a Rule 12(b)(6) record. The operative allegations are fixed and must be credited, with reasonable inferences drawn in Young's favor. The Court can decide whether those allegations may proceed without resolving credibility, weighing evidence, or deciding whether Young's claims ultimately should prevail. The Title VII claim against CDOC independently presents the question,

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[10] *Cf. Henderson v. Springfield R-12 Sch. Dist.*, 163 F.4th 478 (8th Cir. 2025) (en banc) (reviving First Amendment claims arising from mandatory district-wide equity training), *cert. petition filed*, No. 26-156 (July 30, 2026); *Norgren v. Minn. Dep't of Human Servs.*, 96 F.4th 1048 (8th Cir. 2024) (reviving discrimination and retaliation claims by an employee who objected to mandatory antiracism trainings).

so resolution does not depend on any separate issue concerning § 1981 or the individual defendants.

The question presented was also pressed and passed upon twice. In affirming dismissal without prejudice, *Young I* identified the "single training session" issue and explained what additional allegations it believed necessary. App. 111a & n.2. Young's amended complaint expressly addressed those categories. *Young II* then reaffirmed that the "single incident of training wasn't enough." App. 13a. Few cases could present more clearly whether one employer-sponsored training may be evaluated for severity on its own.

IV. The Decision Below Is Wrong

A. Frequency cannot displace the independent severity inquiry

Harris directs courts to consider "all the circumstances," including both the frequency and severity of discriminatory conduct, whether it is threatening or humiliating, and whether it interferes with work. 510 U.S. at 23. Frequency therefore matters, but it is one factor—not an independent prerequisite that displaces severity when the plaintiff relies on an isolated episode.

Faragher confirms the point: isolated incidents ordinarily do not alter employment conditions unless "extremely serious." 524 U.S. at 788. That rule has operative meaning only if plaintiffs are allowed to press the claim that an isolated episode itself is sufficiently grave. The Tenth Circuit here instead repeatedly returned to the absence of another training or later individualized harassment—the considerations most naturally associated with pervasiveness—to dismiss Young's case at the pleading stage.

B. The official and mandatory nature of the training can heighten severity

Adding to the circumstances that should be considered, the alleged conduct here did not come from a rogue coworker or supervisor. Colorado agencies created or promulgated the challenged materials, and CDOC required its employees to complete the course. The EDI materials themselves directed employees to "immediately implement" specified strategies, integrate racial equity into routine decisionmaking, and expect "measurement[] and accountability." App. 63a-67a.

Authority matters to severity. This Court has recognized, in the context of supervisory harassment, that conduct backed by workplace authority carries a "particular threatening character." *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 763 (1998). The courts of appeals likewise consider the speaker's authority when evaluating whether verbal harassment is severe. *See Boyer-Liberto*, 786 F.3d at 278; *Castleberry*, 863 F.3d at 265; *Woods*, 29 F.4th at 285. That reasoning is relevant here: an employee subjected to required employer training cannot treat it as the private opinion of a coworker.

The Tenth Circuit treated the State's authorship and mandate of the EDI training as insufficient unless followed by separate acts of ridicule or harassment. But that gets the direction of the inference backward. Where the alleged racial message and workplace directives are themselves official acts, the factfinder should be permitted to consider that authority in deciding severity.

C. The training altered Young's working conditions

This case is not about an employee who merely took offense at a training discussing racism. The complaint alleges substantially more. The EDI training presented an official glossary that associated whiteness with oppression and white supremacy; characterized disagreement or defensiveness as "white fragility"; and told employees to make routine workplace decisions through a racial-equity framework. App. 56a-67a. It instructed employees to intervene based on perceived power and privilege, to invite members of historically marginalized racial groups to speak first in work meetings, and to implement such strategies until they became habitual. App. 65a-67a.

Those allegations matter because a hostile environment concerns conditions of employment, not merely offensive vocabulary. Young alleged that the CDOC training was expected to be applied; that noncompliance could lead to discipline; that performance reviews and advancement considered compliance with training expectations; and that managers were expected to enforce training. App. 76a-84a. He further alleged actual interference with his workplace conditions and core duties: he altered his career plans because a promotion would require him to promote ideas he considered discriminatory, he second-guessed otherwise justified uses of force because of the training's racial implications, and visitor searches became more difficult because he expected race-based complaints to be evaluated through the new framework. App. 80a-82a.

The panel characterized these allegations as "only hesitation—not alteration of the job." App. 12a. But

Harris expressly makes interference with work relevant to severity, 510 U.S. at 23, and *Oncale* requires attention to "social context," 523 U.S. at 81. Second-guessing otherwise justified use-of-force and security-search decisions is relevant in a prison setting where such judgments directly bear on safety. Whether those effects ultimately prove sufficiently serious is for the merits; they should not be disregarded at the pleading stage because the racial message was delivered in a single training.

Young II relied on the fact that the training contained statements that employees did not need to change their personal values or beliefs. App. 10a. But the glossary told disagreeing employees to "browse the internet for additional articles, blogs, etc." so their "opinions and beliefs may . . . evolve." App. 57a-58a. Moreover, freedom to retain a private belief is not freedom to disregard an employer's workplace directives. Young was required to complete the training, expected to apply it in his work, and directed to "operationalize" and implement its race-conscious strategies. The relevant condition of employment is what the employer required employees to do at work, not whether it purported to regulate their private consciences.

The Tenth Circuit applied a threshold rule: one training, without repetition or later individualized harassment, was "not enough." That approach gives frequency dispositive weight precisely where Petitioner invokes severity. If the fact that a training course occurred only once prevents a severity claim, an employer can avoid liability by concentrating extensive racial messaging and workplace directives into a single mandatory program. Nothing in Title VII suggests that such packaging should control the availability of relief.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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