

No. \_\_\_\_\_

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**In the  
Supreme Court of the United States**

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RENETE BARNETT-MORGAN,

*Petitioner,*

v.

INVERNESS TECHNOLOGIES, INC.,

*Respondent.*

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On Petition for Writ of Certiorari to the  
United States Court of Appeals for the Sixth Circuit

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**PETITION FOR WRIT OF CERTIORARI**

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ROBYN SMITH  
*Counsel of Record*  
LAW OFFICE OF  
ROBYN SMITH  
4350 Brownsboro Road  
Suite 110  
Louisville, KY 40207  
(502) 893-4569  
firm@robysmithlaw.com

J. GREGORY TROUTMAN  
TROUTMAN LAW OFFICE, PLLC  
4205 Springhurst Boulevard,  
Suite 201  
Louisville, KY 40241  
(502) 412-9179  
jgtatty@yahoo.com

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## QUESTIONS PRESENTED

In *Muldrow v. City of St. Louis*, this Court held that Title VII plaintiffs challenging a discriminatory job action need show only “some harm” respecting an identifiable term or condition of employment, and that the harm “need not be significant.” 601 U.S. 346, 354–55 (2024). The Sixth Circuit acknowledged below that *Muldrow* “does not neatly answer” whether the Petitioner suffered from an adverse employment action which “arguably le[ft]” her “worse off respecting employment terms or conditions.” App. 12a–13a (quoting *Muldrow*, 601 U.S. at 355). The panel, however, declined to decide the question; assumed the Petitioner had proven a *prima facie* case; and affirmed at the third *McDonnell Douglas* framework step—the judge-made framework two Members of this Court have twice opined is ripe for reconsideration, and whose operation at summary judgment this Court expressly reserved in *Ames v. Ohio Department of Youth Services*, 605 U.S. 303, 308 n.2 (2025). The panel separately held that Petitioner’s retaliation claim was unexhausted because she omitted to check a preprinted box on an EEOC-drafted charge form.

The questions presented are:

Whether the involuntary removal of an employee from a supervisory role—stripping her of authority to set schedules, to monitor co-workers, and to initiate discipline—is an adverse employment action under Title VII when her compensation, formal title, and benefits are unchanged.

Whether the *McDonnell Douglas* burden-shifting framework governs the summary disposition of Title VII disparate-treatment claims—the question this Court assumed without deciding in *Ames* and that two Justices have twice urged the Court to answer.

Whether a Title VII retaliation claim is administratively exhausted where the charging party's EEOC submissions, of which the employer was on notice, describe retaliation, but omits to check the preprinted "retaliation" box on the EEOC-prepared charge form.

### **PARTIES TO THE PROCEEDING**

Petitioner is Renete Barnett-Morgan. She was the Plaintiff-Appellant below.

Respondent is Inverness Technologies, Inc. It was the Defendant-Appellee below.

### **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Rule 29.6, Petitioner states that she is an individual and therefore has no parent corporation, and no publicly held company owns 10% or more of her stock.

### **STATEMENT OF RELATED PROCEEDINGS**

The proceedings directly related to this case under Rule 14.1(b)(iii) are:

*Barnett-Morgan v. Inverness Technologies, Inc.*, No. 25-5669, United States Court of Appeals for the Sixth Circuit. Judgment entered June 8, 2026.

*Barnett-Morgan v. Inverness Technologies, Inc.*, No. 3:22-cv-00301-DJH-CHL, United States District Court for the Western District of Kentucky. Judgment entered June 27, 2025.

There are no other proceedings in any court that are directly related to this case.

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On Petition for Writ of Certiorari to the  
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**PETITION FOR WRIT OF CERTIORARI**

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Petitioner, Renete Barnett-Morgan (Barnett-Morgan), respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit upon its June 8, 2026 memorandum opinion.

**OPINIONS BELOW**

The opinion of the court of appeals (App. 1a–22a) is not recommended for publication and is available electronically. The memorandum opinion and order of the district court (App. 25a–66a) is not published but is available electronically.

## **JURISDICTION**

The court of appeals entered its judgment on June 8, 2026. App. 23a–24a. No petition for rehearing was filed. This petition is filed within 90 days of the entry of judgment. *See* SUP. CT. R. 13.1. This Court has jurisdiction under 28 U.S.C. § 1254(1).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

Section 703(a)(1) of Title VII, 42 U.S.C. § 2000e-2(a)(1), makes it an unlawful employment practice for an employer “to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.” Section 704(a), 42 U.S.C. § 2000e-3(a), makes it an unlawful employment practice for an employer “to discriminate against any of his employees . . . because he has opposed any practice made an unlawful employment practice by this subchapter.” These and other pertinent provisions are reproduced in the appendix at App. 84a–86a.

## **STATEMENT OF THE CASE**

This Title VII case reaches the Court on a grant of summary judgment that rests entirely on an untenable judge-made doctrine. The Sixth Circuit identified the controlling question—whether stripping an employee of supervisory authority is an adverse employment action after *Muldrow v. City of St. Louis*, 601 U.S. 346 (2024)—

conceded that *Muldrow* “does not neatly answer” it, and then refused to decide it. App. 12a. The panel instead assumed that Barnett-Morgan established a prima facie case and made the dispositive jump to the third step of the *McDonnell Douglas* framework, App. 13a–18a. This Court in *Ames v. Ohio Department of Youth Services* expressly reserved such application at summary judgment. 605 U.S. 303, 308 n.2 (2025). The panel acknowledged that reservation in a footnote but applied the *McDonnell Douglas* framework anyway, App. 10a n.1. It also held Barnett-Morgan’s retaliation claim was unexhausted because she omitted to check a preprinted box on an EEOC-drafted form—even though the agency and the employer both received her written account of retaliatory targeting months before she sued. App. 19a–22a.

#### A. FACTUAL BACKGROUND

Inverness Technologies, Inc., holds a contract with the United States Army to provide transition-assistance services to soldiers leaving active duty. App. 2a, 26a. Inverness employs career counselors, who work around the clock at call centers, supervised by a contract installation manager. App. 2a, 26a–27a. Because the installation manager cannot always be present, she designates one counselor on each shift to serve as “shift lead”—management’s “eyes and ears” on that shift. App. 2a.

The shift-lead role carried real supervisory or quasi-supervisory authority over other employees. The record establishes that a shift lead had the

power to set the work schedule, to monitor co-employees' breaks, and to report behavioral concerns to management—reports that could trigger an investigation. App. 13a (citing Croft Dep. at 57-58).<sup>1</sup> Inverness required every counselor to confer with the shift lead as the “first point of contact” before reporting an issue about another employee or a company policy. *IBID*. The shift lead's schedule was required to obey. App. 48a; Vega Dep. at 50-53.<sup>2</sup>

Barnett-Morgan, who is a Black woman, began working for Inverness as a career counselor in July 2017. App. 3a, 25a, 71a. In 2018, when the third-shift lead departed, she volunteered to fill the role and did so for the next three years. *Ibid*. When she was hired, both the second- and third-shift leads at the facility were African American. App. 27a. Barnett-Morgan's predecessor as second-shift lead, Felicia Ingram, who is also a Black woman, was removed from the lead role after she enforced company policy and was labeled a “bully.” App. 72a ¶ 7.

In the summer of 2021, Inverness installed a new contract installation manager, Kelley Jeans. App. 3a, 28a. On August 3, 2021—while Barnett-Morgan was on vacation—Jeans announced by email that Tammy Croft, a white woman, would take over as third-shift lead. App. 4a, 28a–29a. Barnett-Morgan was returned to the line-

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<sup>1</sup> See District Court Record at R.39-4, PageID 456–57).

<sup>2</sup> See District Court Record at D.N. 39-6, PageID 533.

counselor role and lost the supervisory authority the position carried. App. 12a-13a, 48a. Jeans left the company the next day. App. 29a.

Three days later, on August 6, Barnett-Morgan had a confrontation with a white co-worker, Francis Schirmacher. App. 4a, 30a. She emailed Inverness's human-resources department directly, reporting that Schirmacher had "created a hostile work environment," that the incident was "not the first time" she "had to encounter this type of behavior," and that she was "left in the position of having to worry about retaliation" because of "questionable relationship boundaries" between Schirmacher and the people running daily operations. App. 4a-5a, 30a-32a. Human resources asked for more detail, and when Barnett-Morgan did not supply it, closed the matter. App. 5a, 32a.

On August 11, Croft—exercising the reporting authority that had until eight days earlier been Barnett-Morgan's—sent a written statement to management complaining about Barnett-Morgan and two white third-shift counselors, Sheila Newman and Kenneisha Walker. App. 4a, 32a. On August 26, Program Manager Crystal Vega issued written warnings to all three counselors. App. 5a, 32a. Barnett-Morgan's warning was for insubordination: she had allowed Newman to cover a pre-separation briefing without the shift lead's prior approval. App. 32a. Vega testified that the warning issued because Barnett-Morgan "disobeyed the person she was supposed to obey—the person who made the schedule." Vega Dep. at

50-53.<sup>3</sup> Croft testified that she was that person. Croft Dep. at 33.<sup>4</sup> For Title VII purposes, the authority Inverness took from Barnett-Morgan on August 3 was thus the very authority under which it disciplined her on August 26.

Barnett-Morgan declined to sign the counseling form, said “I’m done,” and left the meeting. App. 5a, 32a–33a. What happened next is sharply disputed. Inverness’s information-technology liaison, Randy Trombley, testified that Barnett-Morgan cursed at him, threw her access card to the ground, and shoved him aside. App. 5a, 33a–34a. Barnett-Morgan testified that Trombley demanded her card without asking whether she was resigning, that she handed it to him and it fell, and that she never touched him; she asked, “so I’m f\*\*\*ing fired?” App. 6a, 34a. Walker, who witnessed the exchange, corroborated Barnett-Morgan’s account. App. 34a–35a (citing Walker Aff., at ¶¶17-32).<sup>5</sup> Of the three counselors written up that day, only Barnett-Morgan—the only one who is Black—had her access card taken, was walked out, and was placed on Inverness’s “Do Not Hire” list. App. 7a, 36a; Walker Aff. at ¶¶28-29.<sup>6</sup> Hours later, Barnett-Morgan emailed human resources asking, “[W]hat are the grounds of my

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<sup>3</sup> See D.N. 39-6, PageID 546–47.

<sup>4</sup> See D.N. 39-4, PageID 450.

<sup>5</sup> See D.N. 39-3, PageID 436 ¶¶ 17–32.

<sup>6</sup> *IBID.* at ¶¶ 28–29.

termination?” App. 6a, 35a. Inverness has since maintained that she quit.

Barnett-Morgan contacted the EEOC’s Louisville office and submitted an online inquiry in which she identified retaliation as a basis for her complaint. App. 21a, 74a ¶ 17. EEOC intake staff then prepared her formal charge; she reviewed it, added information collaboratively with the staff, and signed it on December 3, 2021. *IBID*. Neither Barnett-Morgan nor the EEOC intake staff checked the preprinted “retaliation” box. *IBID*. The charge reads, in its entirety:

I was hired by Inverness Technologies, located in Fort Knox, KY, on or about July 31, 2017, as a Transitioning Counselor.

On or about August 2, 2021, while on vacation, I became aware that I was demoted from a Shift Lead to a Counselor. On or about August 21, 2021, I was terminated.

I believe I was discriminated against because of my race, Black, in violation of Title VII of the Civil Rights Act of 1964, as amended.

App. 68a.

Inverness received notice of the charge on December 6, 2021, and filed a position statement that addressed the demotion and the termination as separate adverse actions. App. 8a. Barnett-Morgan reviewed that statement and responded in writing to the EEOC investigator on January 24,

2022: “Immediately after I filed my hostile work environment claim is when Tammy [Croft] began to target me.” *See* Barnett-Morgan response to EEOC.<sup>7</sup> That response was uploaded to the EEOC portal on February 2, 2022, and Inverness downloaded it on February 16, 2022—more than two months before the EEOC issued a right-to-sue letter on April 27, 2022. App. 8a, 37a; EEOC Activity Log, D.N. 39-11. Inverness never disputed the targeting allegation before the agency.

## **B. PROCEEDINGS BELOW**

Barnett-Morgan sued in Kentucky state court; Inverness removed. She amended her complaint to assert Title VII race-discrimination and retaliation claims. App. 9a, 37a. After discovery, the district court granted summary judgment to Inverness on both claims. App. 2a, 64a.

On the discrimination claim, the district court began by reciting the pre-*Muldrow* rule that an adverse employment action is “a materially adverse change in the terms or conditions of employment,” *Kuhn v. Washtenaw County*, 709 F.3d 612, 625 (6th Cir. 2013), and that “reassignments without changes in salary, benefits, title, or work hours usually do not constitute adverse employment actions,” *PolICASTRO v. Northwest Airlines, Inc.*, 297 F.3d 535, 539 (6th Cir. 2002). App. 46a. The court then observed that this standard “has been modified somewhat” by *Muldrow*. *IBID*. Applying it, the court held that because Barnett-Morgan had

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<sup>7</sup> *See* D.N. 39-13, PageID 650.

volunteered for the shift-lead role, had received no pay or title change when she took it, and had performed the same underlying counseling duties throughout, her removal “was not an adverse employment action as a matter of law.” App. 49. It dismissed her view of the role’s value as an irrelevant “subjective impression[.]” *IBID*.

The district court alternatively held that Barnett-Morgan had not shown replacement or disparate treatment, App. 57a, and that she had not rebutted Inverness’s proffered reasons as pretextual, App. 57a–62a. On the central factual question, however, the court found the opposite: “the parties strongly dispute what occurred on August 26, 2021,” and there was “evidence sufficient to create a genuine factual dispute over whether [Barnett-Morgan] left the job voluntarily.” App. 51a. Summary judgment issued notwithstanding that finding.

On the retaliation claim, the district court held the claim unexhausted because the charge did not mention retaliation and the box was unchecked. App. 63a–64a. It separately denied Barnett-Morgan leave to place her EEOC inquiry form in the record at all, reasoning that a form which does not “ask the EEOC to act or demand damages” is “purely informational.” App. 64a.

The Sixth Circuit affirmed. App. 22a. On the discrimination claim, the panel framed the question as “whether [Barnett-Morgan’s] reassignment from the shift-lead role was an adverse employment action for purposes of Title VII,” recognized that the “issue implicates

*Muldrow*,” and recited the record evidence that the role carried the supervisor-like power to set schedules, monitor breaks, trigger investigations, and serve as the mandatory first point of contact. App. 13a. It then acknowledged that “[s]hifting such authority away from Barnett-Morgan and to someone else would arguably leave [her] ‘worse off respecting employment terms or conditions.’” App. 13a. But *Muldrow*, the panel said, “does not neatly answer how to characterize” the reassignment, and “[g]iven the posture of this case, we need not resolve how *Muldrow* maps onto” it. App. 10a. The panel assumed the existence of a prima facie case and moved to pretext question.

As to the reassignment, the panel affirmed on a ground the district court had expressly declined to reach—that Croft’s superior experience was a legitimate, nondiscriminatory reason that Barnett-Morgan had failed to show was pretextual. App. 14a–15a (invoking *Patterson v. Kent State University*, 155 F.4th 635, 644 (6th Cir. 2025), to “affirm on any ground apparent in the record”). As to the termination, the panel held that Inverness’s rationale had not “shifted,” because its explanation “has instead depended on the events of August 26, 2021,” whether those events are “framed as a resignation or termination.” App. 18a. The panel applied *McDonnell Douglas* throughout, noting the *Ames* question only in a footnote. App. 10a n.1.

On retaliation, the panel held the claim unexhausted. Barnett-Morgan “did not check the box for retaliation, made no mention of retaliation,

and did not use ‘any language’ that ‘would prompt the EEOC to investigate’ an ‘uncharged’ claim of retaliation.” App. 19a (quoting *Younis v. Pinnacle Airlines, Inc.*, 610 F.3d 359, 362–63 (6th Cir. 2010)). Putting procedure over reality, the panel declined to consider the substance of Barnett-Morgan’s EEOC inquiry *vis-à-vis* retaliation or her January 2022 submission to the investigator, holding that neither qualified as a “charge” under the three-part test of *Williams v. CSX Transportation Co.*, 643 F.3d 502, 509 (6th Cir. 2011), principally because neither was verified. App. 20a–22a.

#### **REASONS FOR GRANTING THE PETITION**

This petition presents three recurring and important questions of Title VII law, each squarely presented on a developed record and each outcome-determinative below.

*First*, the Sixth Circuit identified the question *Muldrow* left open—whether losing supervisory authority, unaccompanied by a change in pay or title, is an adverse employment action. The panel conceded that the record would “arguably” satisfy *Muldrow*’s standard but then declined to answer. App. 12a–13a. Meanwhile the Fourth Circuit has answered the question one way, the courts below answered it the other, and the Sixth Circuit’s own precedent by another panel points in a third direction. Employees who lose real workplace authority thus have enforceable rights in some courthouses and none in others.

*Second*, having declined to decide the threshold question, the panel rested the entire

judgment on the third step of the *McDonnell Douglas* framework. That is the framework Justice Thomas, joined by Justice Gorsuch, has twice asked this Court to reconsider the continued viability of the framework this Court assumed without deciding in *Ames*. Review is warranted because the courts of appeals are openly dismantling and deconstructing the *McDonnell Douglas* framework on their own. Within the last eighteen months, judges of the Fourth, Fifth, Tenth, and Eleventh Circuits have written that *McDonnell Douglas* should be scrapped, revisited, or confined. This case supplies what those separate writings have lacked: a judgment that depends on the framework and on nothing else.

*Third*, the panel held Barnett-Morgan's retaliation claim unexhausted for ministerial reasons—she omitted to check the “retaliation” box on the EEOC charge form that the agency itself prepared—notwithstanding that she identified retaliation in her intake inquiry, described retaliatory targeting in writing to the EEOC investigator, and put Inverness on notice of those allegations when it downloaded that description from the EEOC's filing portal months before suit. Four circuits would look to the substance of what the agency and the employer received. The Sixth and Fifth look to the box. The exhaustion requirement was designed to secure notice; it has unfortunately become a trap for unrepresented employees. Title VII serves a remedial purpose. *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 417–18 (1975). Its charge-filing process must be construed liberally, because it is a

“scheme in which laymen, unassisted by trained lawyers, initiate the process.” *Love v. Pullman Co.*, 404 U.S. 522, 527 (1972); see *Federal Express Corp. v. Holowecki*, 552 U.S. 389, 406 (2008) (“Documents filed by an employee with the EEOC should be construed, to the extent consistent with permissible rules of interpretation, to protect the employee’s rights and statutory remedies.”). A liberal application means that the substance of the facts Barnett-Morgan presented to the EEOC, of which Inverness was on notice, must tip the balance her way in any exhaustion inquiry.

Each question which Barnett-Morgan presents is the subject of an entrenched division of authority that only this Court can resolve. Resolving them would restore Title VII litigation to the statute Congress wrote and the Rule the Federal Rules prescribe.

**I. THE SIXTH CIRCUIT IDENTIFIED—AND THEN REFUSED TO ANSWER—THE QUESTION *MULDROW* LEFT OPEN, LEAVING THE THRESHOLD ELEMENT OF TITLE VII LIABILITY UNSETTLED.**

In *Muldrow*, this Court swept away the “materiality” and “significant disadvantage” glosses many circuits had grafted onto Title VII’s text. 601 U.S. at 355. A plaintiff challenging a discriminatory job action need show only “some harm” respecting “an identifiable term or condition of employment,” and that harm “need not be significant.” *IBID.* at 354–55. The question is simply whether the action left the employee

“worse off respecting employment terms or conditions.” *IBID.* at 355.

The work environment to which Barnett-Morgan was returned—stripped of the authority she had exercised for three years—was itself one of those terms and conditions. Moving a supervisor or quasi-supervisor back to a subordinate role supports any number of inferences about how that change affects the terms and conditions of employment. Rule 56 gives Barnett-Morgan the benefit of those inferences; the *McDonnell Douglas* framework does not properly account for them.

*Muldrow* is illustrative—involving the lateral transfer of a female police sergeant which stripped her of prestige and responsibility without altering her rank or pay. *ID.* at 359. That is the configuration of harm Barnett-Morgan presented below. But *Muldrow* did not say how lower courts should apply the “some harm” standard to analyzing and adjudicating reassignment-and-diminished-responsibility cases, and in the two years since, the lower courts have divided over it.

**A. THE PANEL ACKNOWLEDGED THE QUESTION WAS OUTCOME-RELEVANT AND SQUARELY PRESENTED, THEN DECLINED TO DECIDE IT.**

Here, the Sixth Circuit did not overlook the question. It framed it, canvassed the record bearing on it, and came within a sentence of answering it. The panel recited that the shift-lead role carried supervisory or quasi-supervisory “power to set schedules, monitor co-employees’ breaks, report behavioral concerns to management

(which could trigger investigation), and require all employees to confer with the shift lead as the ‘first point of contact’ prior to reporting issues with another employee or policy.” App. 13a. It then acknowledged that “[s]hifting such authority away from Barnett-Morgan and to someone else would arguably leave [her] ‘worse off respecting employment terms or conditions.’” App. 13a (quoting *Muldrow*, 601 U.S. at 355).

Having said that much, the panel stopped. *Muldrow*, it held, “does not neatly answer how to characterize” the reassignment, and “we need not resolve how *Muldrow* maps onto” it. App. 12a–13a. That deliberate avoidance itself is a reason for review.<sup>8</sup> The adverse-action element is the threshold requirement of every disparate-treatment claim and the most frequently litigated question in Title VII practice. The court that recognized the need to settle the rule declined to settle it, leaving the district courts of the Sixth Circuit to apply whichever pre- or post-*Muldrow* formulation they happen to reach for. The district court here reached for the pre-*Muldrow* formulation—holding categorically that the reassignment “was not an adverse employment action as a matter of law” after reciting *Kuhn*’s “materially adverse change” standard and *PolICASTRO*’s rule that reassignments without pay or title changes “usually do not” qualify. App. 46a. Those are precisely the glosses *Muldrow*

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<sup>8</sup> The Sixth Circuit did not elaborate on why it believed *Muldrow* did not neatly resolve Barnett-Morgan’s discrimination claim.

abrogated. The panel’s refusal to decide left that ruling standing.

The avoidance also produced an intra-circuit conflict. Two months after *Muldrow*, another Sixth Circuit panel held in *McNeal v. City of Blue Ash* that *Muldrow* “abrogated circuit court cases across the country that required plaintiffs to show a high level of harm,” and that an adverse action need not be “significant” or “serious, or substantial, or any similar adjective.” 117 F.4th 887, 900 (6th Cir. 2024). The panel below did not cite *McNeal*, let alone reconcile it. Whether a Sixth Circuit plaintiff who loses supervisory authority has stated a cognizable harm now turns on the randomness of a panel draw.

The record forecloses any suggestion that the authority Barnett-Morgan lost was nominal. Inverness’s own program manager testified that its August 26 discipline was issued because Barnett-Morgan “disobeyed the person she was supposed to obey—the person who made the schedule,” Vega Dep. at 50-53,<sup>9</sup> and Croft testified that she was that person, Croft Dep. at 33.<sup>10</sup> Inverness entrusted that authority to a Black employee for approximately three years with no record of discipline or complaint. It transferred that authority to a white employee on August 3, and three weeks later that same authority was invoked against Barnett-Morgan in the write-up Vega issued on August 26. The supervisory power

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<sup>9</sup> See D.N. 39-6, PageID 546–47.

<sup>10</sup> See D.N. 39-4, PageID 442–43.

attendant to the shift-lead role is a term of employment under Title VII—a term of employment that can be used to discipline you is a term of employment.

**B. THE COURTS OF APPEALS HAVE GIVEN  
IRRECONCILABLE ANSWERS TO THE  
QUESTION THE PANEL AVOIDED.**

Since *Muldrow*, the courts of appeals have uniformly abandoned the heightened-harm tests *Muldrow* condemned. See *Peifer v. Pennsylvania Board of Probation & Parole*, 106 F.4th 270, 277 (3d Cir. 2024) (abandoning the “serious and tangible” harm requirement); *McNeal*, 117 F.4th at 900 (6th Cir.); *Scheer v. Sisters of Charity of Leavenworth Health System, Inc.*, No. 24-1055 (10th Cir. July 21, 2025) (*Muldrow* “rejected the significance test set forth in our precedents,” abrogating *Sanchez v. Denver Public Schools*, 164 F.3d 527, 532 (10th Cir. 1998)); *Cole v. Group Health Plan, Inc.*, 105 F.4th 1110 (8th Cir. 2024). What they have not done is agree on what the new standard looks like when the diminished term or condition is supervisory authority rather than pay.

The Fourth Circuit has squarely answered the question and answered it in Barnett-Morgan’s favor. In *Herkert v. Bisignano*, an employee was reassigned from a supervisory branch-chief position to a non-supervisory analyst position at the same grade and the same pay. 151 F.4th 157, 164–65 (4th Cir. 2025). The Fourth Circuit held that the loss of supervisory authority was a cognizable “disadvantageous change” that a jury must evaluate, and that nothing more than “some

harm” was required. *IBID*. The court was careful to say that the loss of supervisory responsibility is not “always” disadvantageous—it hypothesized that shedding “burdensome” duties might sometimes be “a welcome development”—but that possibility, it held, is for jurors to decide. *IBID*. The First Circuit has likewise accepted that a reduction in duties “could be an actionable adverse employment action” after *Muldrow*, while insisting that a plaintiff still identify a changed term or condition. *O’Horo v. Boston Medical Center Corp.*, 131 F.4th 1, 12–13 (1st Cir. 2025).

Other courts continue to treat the absence of any change in pay, rank, or title as effectively dispositive—the very harm-magnitude reasoning *Muldrow* rejected. See *Khazin v. City of New York*, No. 24-1236-cv, 2025 WL 1091241 (2d Cir. Apr. 8, 2025) (summary order); *Bennett v. Butler County Board of Education*, No. 23-10186, 2024 WL 2697987 (11th Cir. May 24, 2024) (per curiam) (unpublished). And the decision below expressly leaves standing a district court holding firmly in that camp: because Barnett-Morgan’s pay, title, and benefits did not change, her removal from the supervisory role “was not an adverse employment action as a matter of law.” App. 45a–46a.

The conflict is not academic. On facts materially identical to *Herkert*—a supervisory role was removed, with no change in pay or grade—Barnett-Morgan’s claim was resolved against her as a matter of law, while *Herkert*’s went to a jury. The Sixth Circuit could have resolved that conflict. It chose not to. Only this Court can now.

**C. THIS CASE IS A CLEAN VEHICLE.**

Barnett-Morgan pressed the question at every stage, and both courts below passed upon it. Barnett-Morgan argued below that her removal from the shift-lead role was an adverse action; the district court held it was not, as a matter of law. The parties devoted the bulk of their appellate briefs to the issue, App. 12a, and the panel expressly framed the question before declining to answer it. The record is developed and, on the material point, undisputed: the shift-lead role carried scheduling authority, oversight of co-workers, and the power to initiate discipline, and Barnett-Morgan lost all of it involuntarily while she was on vacation.

Nor does this record present the one complication the Fourth Circuit flagged in *Herkert*. There is no evidence that the shift-lead duties were “burdensome” or that their removal was “a welcome development.” 151 F.4th at 165. Barnett-Morgan had volunteered for the role and held it for three years, and Inverness has never contended she was relieved of an unwanted obligation. The Court can therefore decide the question on a clean record, without the antecedent disputes that attended *Muldrow* itself.

**II. THE COURT SHOULD DECIDE WHETHER THE *MCDONNELL DOUGLAS* FRAMEWORK GOVERNS THE SUMMARY DISPOSITION OF TITLE VII DISPARATE-TREATMENT CLAIMS.**

Because the panel below declined to decide the adverse-action question; its judgment rests

entirely on the third step of *McDonnell Douglas*. App. 13a–18a. That makes this case an unusually clean vehicle for a question this Court has now reserved once, been asked to answer twice, and declined to reach a third time within the last eighteen months—while the courts of appeals dismantle and deconstruct the framework on their own.

**A. MEMBERS OF THIS COURT HAVE  
REPEATEDLY CALLED FOR REVIEW, AND  
THE QUESTION KEEPS RETURNING.**

In *Ames*, this Court expressly “assume[d] without deciding that the *McDonnell Douglas* framework applies at the summary-judgment stage of litigation.” 605 U.S. at 308 n.2. Justice Thomas, joined by Justice Gorsuch, wrote separately to explain why the assumption should not survive. *IBID.* at 313–26 (Thomas, J., concurring). He identified five defects. The framework “lacks any basis in the text of Title VII or any other source of law.” *IBID.* at 320. It is “incompatible with the summary-judgment standard,” because it speaks of proving elements by a preponderance rather than of identifying “genuine dispute[s]” under Rule 56—though “a plaintiff opposing summary judgment need not establish or prove any elements . . . to survive summary judgment.” *IBID.* at 322. It “fails to capture all the ways in which a plaintiff can prove a Title VII claim,” including under the “motivating factor” standard Congress added in 1991. *IBID.* at 323; see 42 U.S.C. § 2000e-2(m). It “requires courts to draw and maintain an artificial distinction

between direct and circumstantial evidence.” 605 U.S. at 324. And it has produced “outsized judicial confusion.” *IBID.* at 326. The post-*Muldrow* disuniformity documented above confirms that confusion.

That concurrence echoed the sentiment and tenor of Justice Thomas’s dissent from denial of certiorari, again joined by Justice Gorsuch, three months earlier in *Hittle v. City of Stockton*, 145 S. Ct. 759, 760–61 (2025). The framework, he explained, was “made . . . out of whole cloth” for bench trials at a time when Title VII cases were tried exclusively to the bench, and its migration into summary judgment has caused “significant confusion” and “troubling outcomes on the ground.” *IBID.*

The question has not gone away but continued to cause inconsistent outcomes. This Court declined a further invitation to take it up in January of this year. *See Licinio v. New York*, No. 25-587, cert. denied (U.S. Jan. 12, 2026). Each denial leaves the lower courts to improvise, which they are openly doing in different directions. The absence of an answer from this Court is now itself a source of dis-uniformity.

**B. JUDGES ACROSS THE CIRCUITS—AND  
ACADEMIA—AGREE THE FRAMEWORK IS  
UN SOUND AT SUMMARY JUDGMENT.**

The criticism of the McDonnell Douglas framework is not confined to this Court, and it is not new. Then-Judge Kavanaugh described the *prima facie* requirement as “a largely unnecessary sideshow” that has “spawn[ed] enormous

confusion and wast[ed] litigant and judicial resources.” *Brady v. Office of Sergeant at Arms*, 520 F.3d 490, 494 (D.C. Cir. 2008). Judge Hartz concluded that the framework “only creates confusion and distracts courts from the ultimate question of discrimination *vel non*,” and that it “has served its purpose and should be abandoned.” *Wells v. Colorado Department of Transportation*, 325 F.3d 1205, 1221 (10th Cir. 2003) (Hartz, J., concurring) (quotation omitted). Judge Wood, joined by two colleagues, described “the snarls and knots” the framework has “inflicted on courts and litigants alike,” likening it to “an allemande worthy of the 16th century.” *Coleman v. Donahoe*, 667 F.3d 835, 863 (7th Cir. 2012) (Wood, J., concurring). Judge Costa called it “the ‘kudzu’ of employment law.” *Nall v. BNSF Railway Co.*, 917 F.3d 335, 351 (5th Cir. 2019) (Costa, J., concurring). Then-Judge Gorsuch observed that “more than a few keen legal minds have questioned whether the *McDonnell Douglas* game is worth the candle.” *Walton v. Powell*, 821 F.3d 1204, 1211 (10th Cir. 2016).

What is new is the pace. The last two years have seen the criticism move from footnotes in opinion or concurrences to actual holdings at every quarter of the federal bench. Judge Newsom urged “relegat[ing] *McDonnell Douglas* to the sidelines,” explaining that its pretext requirement “not only lacks any real footing in the text of Rule 56 but, worse, actually obscures the answer to the only question that matters at summary judgment.” *Tynes v. Florida Department of Juvenile Justice*, 88 F.4th 939, 949, 958 (11th Cir. 2023) (Newsom,

J., concurring). Judge Eid catalogued the “many problems” with the framework, including that it “demands too much of plaintiffs at summary judgment.” *Jenny v. L3Harris Technologies, Inc.*, 144 F.4th 1194, 1202 (10th Cir. 2025) (Eid, J., concurring). A month later Judge Quattlebaum wrote that *McDonnell Douglas* “should be scrapped, or at least revisited” because “it’s counter-textual,” “imposes a higher burden than Federal Rule of Civil Procedure 56 requires at summary judgment,” and “is unnecessarily complex.” *Hollis v. Morgan State University*, 153 F.4th 369, 388, 391 (4th Cir. 2025) (Quattlebaum, J., concurring). And most recently, Judge Ho, joined by Chief Judge Elrod, wrote that the framework “was made out of whole cloth,” that “its contours have no basis in the text of Title VII,” and that it “requires a plaintiff to prove too much at summary judgment”—in short, that “it’s wrong. And in more ways than one.” *Holloway v. Procter & Gamble Manufacturing Co.*, No. 25-30556, slip op. at 1–2 (5th Cir. Aug. 3, 2026) (Ho, J., concurring).

Academia has reached the same conclusion. See Sandra F. Sperino, Irreconcilable: *McDonnell Douglas* and Summary Judgment, 102 N.C. L. REV. 459, 506 (2024) (the framework “is not consistent with the summary judgment standard and . . . significantly distorts the discrimination inquiry in the defendant’s favor”); Sandra F. Sperino, Flying Without a Statutory Basis: Why *McDonnell Douglas* Is Not Justified by Any Statutory Construction Methodology, 43 HOUS. L. REV. 743, 806 (2006); Deborah A. Widiss, Proving

Discrimination by the Text, 106 MINN. L. REV. 353, 396 (2021); Timothy M. Tymkovich, The Problem With Pretext, 85 DENV. U. L. REV. 503, 529 (2008); Kenneth R. Davis, The Stumbling Three-Step, Burden-Shifting Approach in Employment Discrimination Cases, 61 BROOK. L. REV. 703, 761 (1995); Deborah C. Malamud, The Last Minuet: Disparate Treatment After Hicks, 93 MICH. L. REV. 2229, 2320 (1995).

When jurists appointed across multiple decades and nine circuits describe a precedent as atextual, unworkable, and “awfully made up,” *Tynes*, 88 F.4th at 951 (Newsom, J., concurring), the doctrine has reached the end of its useful life. What the lower courts cannot do is fix it. Only this Court can.

### **C. LOWER COURTS NOW APPLY IRRECONCILABLE APPROACHES.**

Unable to abandon the *McDonnell Douglas* framework, the courts of appeals have begun to work around it—with the predictable result that the same evidence produces different outcomes in different circuits.

The Seventh Circuit has discarded the burden-shifting apparatus at summary judgment in favor of a unitary inquiry asking only whether the evidence as a whole would permit a reasonable factfinder to find discrimination; it treats any reversion to “direct” and “indirect” pigeonholes as error, because “all evidence belongs in a single pile and must be evaluated as a whole.” *Ortiz v. Werner Enterprises, Inc.*, 834 F.3d 760, 765–66 (7th Cir. 2016).

The Eleventh Circuit holds that *McDonnell Douglas* is one optional method of proof rather than a required framework, and that a plaintiff may defeat summary judgment with a “convincing mosaic” of circumstantial evidence. *Smith v. Lockheed-Martin Corp.*, 644 F.3d 1321, 1328 (11th Cir. 2011); *Tynes*, 88 F.4th at 946–47. Late last year the Eleventh Circuit devoted an entire published opinion to the problem, taking “one more swing at the *McDonnell Douglas* game of whack-a-mole,” insisting that the framework “is not the only game in town,” and cataloguing the “new and creative ways” in which courts “incorrectly apply the framework as substantive doctrine.” *Ismael v. Roundtree*, 161 F.4th 752 (11th Cir. 2025).

The Sixth Circuit, by contrast, continues to treat *McDonnell Douglas* as the presumptive and effectively exclusive vehicle for resolving circumstantial-evidence claims at summary judgment, as it did here. The consequence is stark: a plaintiff whose evidence would reach a jury under *Ortiz*’s whole-record approach, or under the Eleventh Circuit’s convincing-mosaic path, is turned away at step three in circuits that compartmentalize the proof. Outcomes turn on geography rather than on Title VII’s text or Rule 56.

#### **D. STARE DECISIS DOES NOT PROTECT THE FRAMEWORK.**

Every stare decisis consideration points toward correction. The framework is a judge-made rule that does not find its roots in the statutory

text it purports to apply, and this Court has yet, in more than fifty years, to identify any source of law for it. The framework is unworkable, as more than fifty years of judicial and scholarly criticism attest. It has been progressively undermined by this Court's own decisions and by Congress: it does not apply where a plaintiff offers direct evidence, *Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111, 121 (1985); it does not apply to mixed-motive cases, *Price Waterhouse v. Hopkins*, 490 U.S. 228, 246–47 (1989); it does not apply at the pleading stage, *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 510–11 (2002); it does not apply to post-trial motions, *U.S. Postal Service Board of Governors v. Aikens*, 460 U.S. 711, 715 (1983). Moreover, Congress's 1991 Title VII amendments, which authorized jury trials and adopted a motivating-factor standard, turned the framework into a square peg to be fit into a round hole—stranding it in a procedural posture it was never designed for. 42 U.S.C. §§ 1981a(c), 2000e-2(m). See also *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 99–101 (2003) (Title VII treats direct and circumstantial evidence alike).

Nor are there reliance interests to protect. *McDonnell Douglas* was designed for judges, not for the employers and employees Title VII regulates, and no one orders their workplace conduct around a burden-shifting sequence. Cf. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 407, 410 (2024) (overruling another judicially crafted framework that had outlived its justification). Applying the text of Title VII and the

familiar standard of Rule 56 would ask less of the district courts, not more.

**E. THIS CASE SHOWS PRECISELY HOW THE FRAMEWORK DISPLACES RULE 56.**

The record below illustrates the defect Justice Thomas identified. The district court found—expressly—that “the parties strongly dispute what occurred on August 26, 2021,” and that there was “evidence sufficient to create a genuine factual dispute over whether [Barnett-Morgan] left the job voluntarily.” App. 51a. Under Rule 56, that finding should have ended the summary judgment inquiry: whether Barnett-Morgan quit or was fired is the material fact on which her termination claim turns, and a genuine dispute about it belongs to a jury. FED. R. CIV. P. 56(a). Instead, the case proceeded to *McDonnell Douglas*’s third step, where the question became not whether a genuine dispute existed but whether Barnett-Morgan had produced enough evidence to “prove” that Inverness’s explanation was pretextual. She lost on that reframing, in both courts.

The panel’s reasoning makes the point sharper still. It held Inverness’s rationale had not “shifted” because that rationale “depend[s] on the events of August 26, 2021”—the very events the district court had found genuinely disputed. App. 16a–17a. The fact this remained true “no matter whether the employment action is framed as a resignation or termination.” *Id.* A framework that permits a court to give an employer’s account of contested events dispositive weight while simultaneously acknowledging that the events are contested is not

a tool for identifying genuine disputes. It is a substitute for doing so.

The framework also permitted the panel to affirm on a ground upon which no court had passed. As to the shift-lead reassignment, the district court “declined to specifically address Inverness’s stated justification for selecting Croft.” App. 14a. The panel supplied that justification, found it un rebutted, and affirmed. App. 14a–15a. The pretext inquiry thus decided a question that had never been litigated as a pretext question at all. This verifies the fact that the *McDonnell Douglas* framework forces a pretext showing even where this circumstantial record would let a jury infer discrimination under the “single pile” approach followed in *Ortiz*.

This also verifies the point of the *Ames* concurrence: the framework “fails to capture all the ways” to prove a Title VII case, *Ames*, 605 U.S. at 323 (Thomas, J., concurring), and it fails to account for Barnett-Morgan’s actual evidence—the corroborating witness (Walker), the temporal proximity among her August 3 removal, her August 6 complaint to human resources, and her August 26 discipline, and the disparate treatment of the only Black counselor on the shift. Those circumstances support inferences that would defeat summary judgment in any other civil case. Rule 56 does not vary with the type of case being litigated; the *McDonnell Douglas* framework artificially changes the calculus of Rule 56’s proper application.

Finally, the panel, in a footnote, confirmed that Barnett-Morgan squarely presented the question. The panel noted that Barnett-Morgan had critiqued the framework, App. 10a n.1 (citing Barnett-Morgan Br. 45–47), and stated that she would not prevail “even if we followed her preferred approach and asked only whether she presented sufficient evidence to create a genuine dispute as to whether the employer’s stated non-race-based reasons . . . were pretextual.” *IBID.* (quotation omitted). But that formulation is not the Rule 56 inquiry; it simply relocates the pretext requirement into the language of genuine disputes. The panel’s alternative holding therefore demonstrates how completely the framework has displaced the governing standard: even when a court sets out to apply Rule 56, it applies *McDonnell Douglas*. That is the confusion this Court should end.

**III. THE COURT SHOULD RESOLVE THE  
CONFLICT OVER WHETHER AN  
UNCHECKED BOX ON AN EEOC-  
DRAFTED CHARGE DEFEATS AN  
OTHERWISE FACTUALLY EXHAUSTED  
RETALIATION CLAIM.**

The Sixth Circuit held Barnett-Morgan’s retaliation claim was unexhausted because she “did not check the box for retaliation” and “made no mention of retaliation” in the formal charge. App. 20a. It reached that conclusion in the face of several key facts. First, Barnett-Morgan identified retaliation in her EEOC intake inquiry. App. 21a. Second, it was EEOC staff who drafted the charge

and who likewise left the “retaliation” box unchecked. App. 74a ¶ 17. Third, Barnett-Morgan told the EEOC investigator in writing that “[i]mmediately after I filed my hostile work environment claim is when Tammy [Croft] began to target me.”<sup>11</sup> Finally, Inverness was on notice of Barnett-Morgan’s retaliation claim because it downloaded her submission from the EEOC’s portal on February 16, 2022, months before the right-to-sue letter issued and more than two months before suit was filed.

The Sixth Circuit’s holding deepens an acknowledged and longstanding conflict over how the exhaustion requirement applies to EEOC charges drafted by, and for, laypersons, especially when notice of the underlying facts are seasonably known to the employer.

**A. THIS COURT’S PRECEDENTS COMMAND  
A LIBERAL, FUNCTION-DRIVEN  
CONSTRUCTION.**

Title VII’s charge-filing requirement is a mandatory but non-jurisdictional claim-processing rule. *Fort Bend County v. Davis*, 587 U.S. 541, 551 (2019). Its purpose is functional: to give the employer notice of the conduct complained of, and to give the agency an opportunity to investigate and conciliate. *See Younis*, 610 F.3d at 361. Because the filings are made by “laypersons rather than lawyers,” this Court has instructed that they be construed by reference to what they convey and what they ask the agency to do, not by reference to

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<sup>11</sup> See D.N. 39-13, PageID 650.

their form. *Federal Express Corp. v. Holowecki*, 552 U.S. 389, 402–06 (2008) (holding, in the ADEA context, that an intake questionnaire accompanied by a supporting statement constituted a “charge” where it could “be reasonably construed as a request for the agency to take remedial action”). The EEOC’s own regulations point the same way, permitting amendments that cure technical defects or omissions and relate back to the original filing. 29 C.F.R. § 1601.12(b).

Those principles are not served by the rule applied below. Barnett-Morgan did not draft the document on which her retaliation claim foundered. EEOC intake staff prepared it; she reviewed and supplemented it collaboratively with them; and the box neither she nor the agency checked is a printed convenience on an agency form. App. 74a ¶ 17. Treating that omission as a forfeiture converts a notice requirement into a pleading trap enforced against the pro se employees least able to avoid it.

The notice rationale is absent here in any event. Inverness had the substance of Barnett-Morgan’s retaliation allegation, in her own words, in a document it downloaded from the EEOC’s portal on February 16, 2022. App. 21a–22a. It never disputed the allegation before the agency. Whatever the rule should be where an employer is genuinely surprised, this is not that case.

**B. THE CIRCUITS ARE DIVIDED OVER  
WHETHER THE SUBSTANCE OF THE  
CHARGE CONTROLS.**

A substantial body of authority holds that a retaliation claim is exhausted whenever the facts before the agency would reasonably prompt an investigation of retaliation, regardless of which box is checked. The First Circuit holds that retaliation claims “growing out of” an earlier charge need not be separately exhausted. *Clockedile v. New Hampshire Department of Corrections*, 245 F.3d 1, 6 (1st Cir. 2001). The Second Circuit asks whether the claim is “reasonably related” to the charge’s allegations, emphasizing that “precise pleading is not required for Title VII exhaustion purposes.” *Deravin v. Keri*, 335 F.3d 195, 201 (2d Cir. 2003). The Ninth Circuit construes the charge by its substance, crediting allegations in the complainant’s intake materials. *B.K.B. v. Maui Police Department*, 276 F.3d 1091, 1100 (9th Cir. 2002). The Fourth Circuit has permitted a retaliatory-discharge claim where the charge described a pattern of retaliatory conduct although the discharge was not separately charged. *Jones v. Calvert Group, Ltd.*, 551 F.3d 297, 304 (4th Cir. 2009), abrogated on other grounds by *Fort Bend County, supra*.

The Sixth Circuit and the Fifth Circuit take the opposite approach, treating the unchecked box and the absence of the word “retaliation” as effectively dispositive. See *Younis*, 610 F.3d at 362–63; *Abeita v. TransAmerica Mailings, Inc.*, 159 F.3d 246, 254 (6th Cir. 1998); *Ernst v.*

*Methodist Hospital System*, 1 F.4th 333, 337–38 (5th Cir. 2021) (intake questionnaire that “is not verified as required by EEOC regulations . . . cannot be deemed a charge”). The Sixth Circuit recited the liberal-construction principle, see *Milczak v. General Motors, LLC*, 102 F.4th 772, 782 (6th Cir. 2024), but applied the three-part “charge” test of *Williams v. CSX Transportation Co.*, 643 F.3d 502, 509 (6th Cir. 2011), forecloses reliance on the very intake materials *Holowecki* instructs courts to read. App. 20a–22a. Under the decision below, an unverified intake inquiry cannot supply notice even where it in fact did, and even where the employer received it.

The tension with *Holowecki* is direct. *Holowecki* asked whether a filing could “reasonably be construed as a request for the agency to take remedial action.” 552 U.S. at 402. The Sixth Circuit asks first whether the filing was sworn. The two inquiries will frequently diverge, and they diverged here.

**C. THE CONFLICT IS OUTCOME-  
DETERMINATIVE AND FALLS HARDEST  
ON THE UNREPRESENTED.**

Barnett-Morgan’s charge stated that she was demoted and then terminated. Her intake inquiry identified retaliation. Her submission to the investigator described retaliatory targeting in terms no reader could mistake. Under the substance-and-scope approach of the First, Second, Fourth, and Ninth Circuits, that record exhausts a retaliation claim. Under the rule applied below, it does not. The same worker, filing

the same papers with the same agency, has a claim in Boston, New York, Richmond, and San Francisco and no claim in Cincinnati or New Orleans.

The stakes are not confined to this case. Unrepresented workers file the overwhelming majority of EEOC charges, and the Sixth Circuit itself has recognized that charges must be construed liberally “because aggrieved employees—and not attorneys—usually file charges.” *Younis*, 610 F.3d at 362 (quotation omitted). A rule that turns on which preprinted box an intake worker marked cannot be reconciled with that recognition. Nor can it be reconciled with this Court’s instruction that Title VII’s procedural requirements are claim-processing rules serving a notice function, *Fort Bend County*, 587 U.S. at 550–51, rather than technical conditions on the right to sue.

This Court’s intervention is needed to ensure that the exhaustion requirement performs the function Congress gave it—notice and an opportunity to conciliate—without becoming a forfeiture rule administered against the people the statute was written to protect.

Each of the three questions presented is recurring, important, and squarely presented on a clean record. Together they make this case an unusually efficient vehicle for clarifying three of the most consequential and unsettled features of modern Title VII practice.

**CONCLUSION**

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

J. GREGORY TROUTMAN  
TROUTMAN LAW  
OFFICE, PLLC  
4205 Springhurst  
Boulevard, Suite 201  
Louisville, KY 40241  
(502) 412-9179  
jgtatty@yahoo.com

ROBYN SMITH  
*Counsel of Record*  
LAW OFFICE OF  
ROBYN SMITH  
4350 Brownsboro Road  
Suite 110  
Louisville, KY 40207  
(502) 893-4569  
firm@robysmithlaw.com  
*Co-counsel for Petitioner*

September 2026

# APPENDIX

**APPENDIX A**  
**Opinion of the United States Court of**  
**Appeals for the Sixth Circuit**

**No. 25-5669**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE SIXTH CIRCUIT**  
Filed June 8, 2026  
Kelly L. Stephens, Clerk

|                               |   |
|-------------------------------|---|
| RENETE BARNETT-MORGAN,        | ) |
|                               | ) |
| Plaintiff-Appellant,          | ) |
|                               | ) |
| v.                            | ) |
|                               | ) |
| INVERNESS TECHNOLOGIES, INC., | ) |
|                               | ) |
| Defendant-Appellee.           | ) |

**ON APPEAL FROM THE**  
**UNITED STATES DISTRICT COURT FOR THE**  
**WESTERN DISTRICT OF KENTUCKY**

**OPINION**

Before: GIBBONS, MURPHY, and  
HERMANDORFER, Circuit Judges.

HERMANDORFER, Circuit Judge. Renete Barnett-Morgan started having trouble at work after her employer, Inverness Technologies, Inc., hired a new office manager. Following reported

problems with Barnett-Morgan's conduct on the job, her supervisors called her in for an employee-counseling session. Rather than accept management's feedback, Barnett-Morgan walked out of the meeting, said she was done, cursed at another employee, and left the premises without her access card. Her employment at Inverness ended that day. From these events came the present Title VII suit, in which Barnett-Morgan asserts claims based on racial discrimination and retaliation. The district court granted summary judgment to Inverness on both claims. We affirm.

## I

Inverness Technologies, Inc., has a contract with the United States Army to provide transition services to soldiers through the Soldier for Life Transition Assistance Program. To that end, Inverness employs career counselors to advise and assist veterans, conduct briefings, provide counseling, and otherwise "[f]acilitate" soldiers' "transition from the military environment to the civilian environment." Career Counselor Position Description, R.32-4, PageID 229.

Career counselors work at call centers and provide around-the-clock service to veterans. A contract installation manager (installation manager) supervises the career counselors. The installation manager, in turn, reports up a chain of command to a program manager who oversees the entire contract.

Because the installation manager cannot always be physically present to supervise the career counselors, the installation manager chooses one counselor per shift to act as the “shift lead”—management’s “eyes and ears” on any given shift. Barnett-Morgan Dep., R.32-5, PageID 242-43. Serving as shift lead does not change a career counselor’s formal job description or pay. Shift leads do “everything the exact same” as the other career counselors, but they have the “added responsibility of letting [management] know if something happened or is not happening on their shift.” Vega Dep., R.39-6, PageID 527. That responsibility also includes maintaining schedules, ensuring compliance with policies and procedures, and informing the installation manager if a counselor deviates from the code of conduct. Shift leads, however, have no disciplinary or enforcement authority over their peer counselors.

Barnett-Morgan, a black woman, began working as a career counselor for Inverness at its call center in Fort Knox, Kentucky in 2017. In 2018, the lead for the third shift at Fort Knox departed. Barnett-Morgan volunteered to step in as third-shift lead and did so without interviewing or formally applying.

A few years later, in 2021, Inverness hired Kelley Jeans to be the new installation manager at the call center. In order to make the call center “the model for all other sites,” Jeans sought to ensure that the career counselors under her

supervision were “on the same page” about “what [was] expected” of them. Jeans Expectations Email, R.32-7, PageID 274. To that end, Jeans emailed all the career counselors a form outlining an updated set of job “expectations.” *Id.* Those expectations included, for example, that a counselor must work her “shift as it is scheduled.” *Id.* at PageID 276. Jeans requested that each counselor read, sign, and return the form “to indicate understanding” of the expectations. *Id.* at PageID 274. Barnett-Morgan signed and returned the form on June 23, 2021.

On August 3, 2021, Jeans announced several employee additions to the call center. Among them was Tammy Croft, a white woman, who was rejoining the call center as a counselor. Croft had over eight years of experience working as a career counselor; she had also served as a financial counselor and an interim installation manager at several stations overseas. The email noted that Croft would serve as the new third-shift lead—the role that Barnett-Morgan had previously occupied. Jeans explained that Croft’s “wide breadth of experience across the [Transition Assistance Program] and in all roles represented at the [call center]” was the reason Croft was selected as the new third-shift lead. Jeans Staffing-Changes Email, R.39-2, PageID 431.

A few days later, on August 6, Barnett-Morgan found herself in a “heated discussion” with another third-shift counselor, Francis Schirmacher. Croft Dep., R.39-4, PageID 455. Consistent with protocol, Barnett-Morgan and Schirmacher each

prepared a written statement about the incident for Croft to share with management.

Barnett-Morgan also emailed Inverness's human-resources department (HR) directly about the incident. In her correspondence, Barnett-Morgan claimed that Schirrmacher had "created a hostile work environment" and that the August 6 incident was "not the first time" that Barnett-Morgan "had to encounter this type of behavior" from Schirrmacher. Barnett-Morgan Emails with HR, R.39-9, PageID 613. As evidence, Barnett-Morgan claimed that in March 2020 Schirrmacher "sprayed Lysol in the face of another counselor." *Id.* In response to Barnett-Morgan's email, HR employees repeatedly asked Barnett-Morgan to provide more details or examples to substantiate her complaint. But Barnett-Morgan never provided that information, instead stating only that she "worr[ied] about retaliation" because Schirrmacher was supposedly dating the supervisor for another shift. *Id.* at PageID 612. Without any additional information corroborating Barnett-Morgan's allegation regarding a hostile work environment, the HR employees replied that they would have no choice but to consider the matter closed. Barnett-Morgan never responded with the requested information.

On August 11, Croft sent a written statement to management regarding issues that she was having with Barnett-Morgan and two other third-shift counselors, both of whom are white. Croft explained that the three counselors had, among other issues, swapped schedules without obtaining

the required prior approval, discussed out-of-office coverage with one another instead of with Croft, responded combatively to Croft's requests, failed to cover one of the call center's virtual- messaging programs, and taken inappropriately timed lunch breaks.

So, on August 26, Program Manager Crystal Vega held an employee-counseling session with Barnett-Morgan. During her meeting with Barnett-Morgan, Vega issued a written disciplinary warning to Barnett-Morgan for switching schedules without her shift lead's approval. Going forward, Vega explained, Barnett-Morgan was to work her schedule as assigned, and any changes would require prior approval from the shift lead. Barnett-Morgan, however, refused to sign the employee-counseling form. She "pushed her chair back" and said, "I'm done." Vega Dep., R.39-6, PageID 539. Vega tried to convince her to sit down and talk things through, but Barnett-Morgan refused. Instead, Barnett-Morgan again said, "I'm done," and walked out of the meeting. Barnett-Morgan Dep., R.32-5, PageID 262.

From Vega's perspective, "it looked like [Barnett-Morgan] was quitting." Vega Dep., R.39-6, PageID 539. It is standard procedure for Inverness staff to collect an employee's access card when they resign, because the card grants the employee access to the job site and work computers. So after Barnett-Morgan left the meeting, Vega told Randy Trombley—the information technology liaison officer—something along the lines of: "If she is quitting, you need to

collect her [access] card.” Trombley Dep., R.39-7, PageID 574.

The parties disagree on what happened next. According to Trombley, he approached Barnett-Morgan’s cubicle to ask her if she was leaving and further stated that if Barnett-Morgan was resigning, he would need to collect her access card. In response, Barnett-Morgan allegedly said, “F\*\*k you, I am tired of you motherf\*\*kers,” before throwing her access card to the ground. *Id.* at PageID 572. Trombley also testified that Barnett-Morgan pushed him “off to the side so she could get through” before heading for the exit. *Id.* at PageID 575.

According to Barnett-Morgan, Trombley did not ask if she was quitting; rather, he just walked up and asked for her access card. She admits that she cursed while speaking to Trombley. But she disputes that she threw the access card—she claims that the access card “fell to the floor” when she tried to hand it to Trombley. Barnett-Morgan Affidavit, R.39-1, PageID 426. And she denies shoving Trombley on her way out of the building.

Based on Barnett-Morgan’s actions and Trombley’s report, Vega believed that Barnett-Morgan had voluntarily resigned. Vega emailed HR to let them know that Barnett-Morgan had “walked out and quit” following her employee-counseling session. Vega Email to HR, R.32-18, PageID 315. She also requested that Barnett-Morgan be placed on a do-not-hire list. Later that day, Barnett-Morgan emailed HR asking for an

explanation of the grounds for her termination. An HR employee responded by explaining that her actions during and after her employee- counseling session led Inverness to believe that she had voluntarily resigned.

On December 3, 2021, Barnett-Morgan filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC). She alleged that she experienced race discrimination at Inverness between August 2 and August 21, 2021. She further alleged that she “was demoted from a Shift Lead to a Counselor” and that she was eventually “terminated.” EEOC Charge, R.32-23, PageID 332. Barnett-Morgan continued, “I believe I was discriminated against because of my race, Black, in violation of Title VII of the Civil Rights Act of 1964.” *Id.* She did not check the box for retaliation or otherwise mention retaliation in her charge.

Inverness received notice of Barnett-Morgan’s EEOC charge on December 6, 2021. In its response, Inverness asserted that Barnett-Morgan was not “demoted” from her role as shift lead because that position “does not include a pay increase for the additional duties[.]” Inverness Response to EEOC Charge, R.39-12, PageID 649. Inverness further stated that Barnett-Morgan was not “terminated” because she voluntarily “walked off the job,” and that “there is absolutely no evidence of racial discrimination by Inverness.” *Id.* The EEOC issued a right-to-sue letter to Barnett-Morgan on April 27, 2022.

Shortly thereafter, Barnett-Morgan filed this lawsuit against Inverness and Vega in state court, bringing claims of race discrimination and retaliation under the Kentucky Civil Rights Act. Inverness timely removed the case to federal court. Barnett-Morgan filed an amended complaint, adding claims of discrimination and retaliation under Title VII. The district court dismissed all claims save for the Title VII race-discrimination and retaliation claims against Inverness.

Following discovery, the district court granted summary judgment to Inverness. Barnett-Morgan timely appealed.

## II

We review the district court's grant of summary judgment de novo. *Briggs v. Univ. of Cincinnati*, 11 F.4th 498, 507 (6th Cir. 2021). "Summary judgment is appropriate when the record, viewed in the light most favorable to the nonmoving party, reveals that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." *Id.*; see Fed. R. Civ. P. 56(c). In conducting this analysis, we must "draw all justifiable inferences" in favor of the nonmoving party. *Briggs*, 11 F.4th at 507 (citation omitted). "However, mere allegations are not enough to show a genuine issue of fact. There must be evidence on which the jury could reasonably find for the plaintiff." *Smith v. City of Toledo*, 13 F.4th 508, 514 (6th Cir. 2021) (cleaned up). "This court can affirm a decision of the district court on any grounds supported by the

record, even if different from those relied on by the district court.” *Brown v. Tidwell*, 169 F.3d 330, 332 (6th Cir. 1999) (per curiam).

### III

Barnett-Morgan asserts claims of racial discrimination and retaliation. We affirm the grant of summary judgment to Inverness on both fronts.

#### A

Title VII prohibits employers from discriminating against employees on the basis of race. 42 U.S.C. § 2000e-2(a)(1). Where, as here, “the record contains no direct evidence of discrimination,” we apply the *McDonnell Douglas* burden-shifting framework. *Levine v. DeJoy*, 64 F.4th 789, 797 (6th Cir. 2023).<sup>1</sup>

That framework “proceeds in three steps.” *Smith*, 13 F.4th at 515. Barnett-Morgan must first establish a prima facie case of discrimination. *Id.* To do so, Barnett-Morgan must show that “(1) [she]

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<sup>1</sup>Though Barnett-Morgan critiques the *McDonnell Douglas* burden-shifting framework, she does not dispute that it continues to govern. Barnett-Morgan Br. 45-47. Regardless, for the reasons below, Barnett-Morgan would not prevail even if we followed her preferred approach and asked only whether she “present[ed] sufficient evidence to create a genuine dispute as to whether the employer’s stated” non-race-based reasons for the challenged employment actions “w[ere] pretextual.” *Ames v. Ohio Dep’t of Youth Servs.*, 605 U.S. 303, 323 (2025) (Thomas, J., concurring) (citations omitted).

is a member of a protected group; (2) [she] was subjected to an adverse employment decision; (3) [she] was qualified for the position; and (4) similarly situated non-protected employees were treated more favorably.” *Id.* (citation omitted). If she makes that threshold showing, the burden shifts to Inverness “to articulate a legitimate, nondiscriminatory reason for” the adverse employment action. *Id.* If Inverness does so, the burden then shifts back to Barnett- Morgan to show “that the reason the employer gave was not its true reason, but merely a pretext for discrimination.” *Id.* (citation omitted).

As the grounds for her race-discrimination claim, Barnett-Morgan challenges her removal from the shift-lead role and her alleged subsequent termination. In granting summary judgment to Inverness, the district court provided alternative bases for its decision. *First*, the district court concluded that Barnett-Morgan’s removal from service as a shift lead did not alter the terms or conditions of her employment and therefore was not an adverse employment action. The district court further determined that Barnett-Morgan failed to establish that she was replaced by someone outside of her protected class or treated differently than similarly situated employees. For those reasons, the district court concluded that Barnett-Morgan failed to establish a prima facie case of discrimination. *Second*, the district court concluded that, in any event, Inverness had provided a legitimate, non-discriminatory rationale for terminating Barnett-Morgan.

Because Barnett- Morgan failed to put forward evidence to demonstrate that Inverness’s cited justification was pretextual, the district court held that her discrimination claim failed on that independent ground.

As discussed below, we may assume *arguendo* that Barnett-Morgan has established a *prima facie* case of employment discrimination. Barnett-Morgan’s race-discrimination claim nonetheless fails because she has not provided evidence to establish that Inverness’s cited, non-discriminatory rationales for its challenged employment decisions were pretextual.

## 1

The parties devote much of their appellate briefs to debating whether Barnett-Morgan made out a *prima facie* case—and in particular, whether her reassignment from the shift-lead role was an adverse employment action for purposes of Title VII. This issue implicates *Muldrow v. City of St. Louis*, 601 U.S. 346 (2024), which clarified the threshold for asserting discriminatory employment actions subject to Title VII review. Relevant here, *Muldrow* instructs that an adverse employment action is something that brings “about some disadvantageous change in an employment term or condition.” *Id.* at 354 (citation omitted).

*Muldrow* does not neatly answer how to characterize Barnett-Morgan’s reassignment from service as a shift lead. As the district court noted, Barnett-Morgan neither applied nor was

interviewed for the shift-lead role; she received it because she volunteered for it. Nor did Barnett-Morgan's reassignment out of the shift-lead role alter her day-to-day job duties, disciplinary authority, formal title, pay, or benefits. Still, there is evidence that serving as a shift lead came with the power to set schedules, monitor co-employees' breaks, report behavioral concerns to management (which could trigger investigation), and require all employees to confer with the shift lead as the "first point of contact" prior to reporting issues with another employee or policy. Croft Dep., R.39-4, PageID 456-57. Shifting such authority away from Barnett-Morgan and to someone else would arguably leave Barnett-Morgan "worse off respecting employment terms or conditions." *Muldrow*, 601 U.S. at 355.

Given the posture of this case, we need not resolve how *Muldrow* maps onto Barnett-Morgan's reassignment from shift lead. Even assuming that Barnett-Morgan suffered an adverse employment action, her race-discrimination claim fails for independent reasons. We therefore assume without deciding that Barnett-Morgan established a prima facie case with respect to her reassignment from shift lead and termination.

## 2

Having accepted that Barnett-Morgan established a prima facie case of racial discrimination, Inverness must "articulate a legitimate, nondiscriminatory reason for" the

adverse employment actions. *Smith*, 13 F.4th at 515. If Inverness does so, the burden shifts back to Barnett-Morgan to put forth sufficient evidence to show that Inverness's cited reasons are a mere pretext "fabricated to conceal an illegal motive." *Chen v. Dow Chemical Co.*, 580 F.3d 394, 400 (6th Cir. 2009). We conclude that Inverness has offered legitimate, nondiscriminatory reasons for reassigning Barnett-Morgan from the shift-lead role and for her later alleged termination. We further conclude that Barnett-Morgan has failed to offer sufficient evidence to demonstrate that Inverness's cited justifications were pretextual. That failure forecloses her race-based discrimination claim.

*Shift-lead reassignment.* We begin by addressing the shift-lead reassignment. At the time of the reassignment, Inverness's then-installation manager, Kelley Jeans, explained that Croft was being selected as third-shift lead "[g]iven" her "wide breadth of experience across the [Transition Assistance Program] and in all roles represented at the [call center]." Jeans Staffing-Changes Email, R.39-2, PageID 431.

The district court concluded that any race-discrimination claim arising from Barnett-Morgan's reassignment from the shift-lead role failed on threshold grounds. So it declined to specifically address Inverness's stated justification for selecting Croft. We may, however, affirm on any ground apparent in the record. *Patterson v. Kent State Univ.*, 155 F.4th 635, 644 (6th Cir. 2025). Inverness has urged—both in the summary

judgment proceedings and on appeal—that Croft’s superior experience and breadth of roles constitute legitimate, nondiscriminatory reasons for replacing Barnett-Morgan as shift lead. We agree. Such reasons, “if believed by the trier of fact, would support a finding that unlawful discrimination was not the cause of the employment action.” *Wright v. Murray Guard, Inc.*, 455 F.3d 702, 707 (6th Cir. 2006) (emphasis omitted) (quoting *St. Mary’s Honor Ctr. v. Hicks*, 509 U.S. 502, 507 (1993)).

To prevail, then, Barnett-Morgan needed to come forward with evidence demonstrating that Inverness’s cited reasons for selecting Croft were pretext for racial discrimination. To make that showing, Barnett-Morgan could have sought to demonstrate that Inverness’s proffered reason “(1) has no basis in fact, (2) was not the actual reason, or (3) is insufficient to explain” Inverness’s actions. *Levine*, 64 F.4th at 798 (citation omitted). So too, “an employer’s shifting termination rationales” can serve as “evidence that the proffered rationale may not have been the true motivation for the employer’s actions.” *Miles v. S. Cent. Hum. Res. Agency, Inc.*, 946 F.3d 883, 890 (6th Cir. 2020). No matter Barnett-Morgan’s chosen approach, she “must produce sufficient evidence from which a jury could reasonably reject [Inverness’s] explanation of why it” replaced her as shift lead. *Chen*, 580 F.3d at 400. “Mere personal beliefs, conjecture and speculation” do not suffice. *Grizzell v. City of Columbus Div. of Police*, 461 F.3d 711, 724 (6th Cir. 2006) (cleaned up).

Barnett-Morgan has not presented any evidence that Inverness's explanation for replacing her as third-shift lead was pretext for discrimination. Indeed, she makes no argument on appeal that Inverness's decision to select Croft as the third-shift lead was motivated by anything other than Croft's resume. Nor did she identify evidence of pretext in the summary judgment proceedings.

At most, Barnett-Morgan takes issue with Inverness's characterization of Croft as more qualified. In her view, Croft was "highly inexperienced." Barnett-Morgan Br. 9. But Barnett-Morgan does not dispute that Croft had over eight years of experience working as a counselor in the Transition Assistance Program, including time spent as a transition counselor on the third shift. Nor does she dispute that Croft had prior managerial experience with Inverness as an interim installation manager at several stations overseas. Thus, whatever Barnett-Morgan's "personal beliefs, conjecture and speculation" about Croft's appointment, *Snyder v. Pierre's French Ice Cream Co.*, 589 F. App'x 767, 771 (6th Cir. 2014) (quoting *Chappell v. GTE Prods. Corp.*, 803 F.2d 261, 268 (6th Cir. 1986)), they "do not refute the undisputed evidence in the record that Croft worked on the Transition Assistance Program for a longer period of time and across a wider variety of roles than Barnett-Morgan," SJ Order, R.63, PageID 880 n.7. Barnett-Morgan has therefore failed to demonstrate that Inverness's

explanation for its decision to substitute Croft as shift lead was pretextual.

*Termination.* Barnett-Morgan also asserts that Inverness terminated her employment based on her race. Barnett-Morgan's employment ended following her August 26, 2021, counseling session with Vega. While some events of that day (like whether Barnett-Morgan threw her access card on the floor or accidentally dropped it) are disputed, others are not. Specifically, all parties agree that Barnett-Morgan (i) prematurely walked out of the counseling session after repeatedly saying "I'm done," (ii) refused to sign the counseling form, (iii) cursed at Trombley, a fellow employee, and (iv) left the call center without her access card. Barnett-Morgan Dep., R.32-5, PageID 262-64; Barnett-Morgan Affidavit, R.39-1, PageID 424-26. Based on those events, Vega informed HR that Barnett-Morgan had "quit" and that her last day was August 26, 2021. Vega Emails with HR, R.32-18, PageID 315. A few hours later, an HR manager cited these same events in response to Barnett-Morgan's email seeking clarification for the grounds of her termination.

Inverness asserts that Barnett-Morgan's behavior on August 26 provided it with a "legitimate, nondiscriminatory" basis for her termination. Inverness Br. 40-41. Barnett-Morgan does not dispute that such behavior would constitute a legitimate basis for terminating an employment relationship. Instead, she asserts on appeal that Inverness's justification was pretextual because Inverness

has maintained that the end of Barnett-Morgan's employment followed her voluntary resignation rather than her termination. From there, Barnett-Morgan claims that Inverness's explanation is conflicting and thus indicative of pretext.

Barnett-Morgan's resignation-versus-termination response misses the point: Inverness has never wavered in its explanation of the underlying conduct that precipitated Barnett-Morgan's departure. In short, Inverness's "rationales" have not "shifted." *Miles*, 946 F.3d at 890. Its explanation has instead depended on the events of August 26, 2021. Those events, according to multiple witnesses, included Barnett-Morgan's unprofessional behavior, unwillingness to participate in counseling, use of disrespectful language towards another employee, and storming out of the office. The day's events reflected a legitimate, non-discriminatory rationale for Barnett-Morgan's employment ceasing on August 26. That remains true no matter whether the employment action is framed as a resignation or termination.

In short, Barnett-Morgan "has not produced evidence from which a reasonable factfinder could doubt that she was fired" or replaced as shift lead for reasons other than race. *Chen*, 580 F.3d at 402; *see also* SJ Order, R.63, PageID 880-83. We thus affirm the district court's grant of summary judgment to Inverness on Barnett-Morgan's race-discrimination claim.

## B

Barnett-Morgan also contends that Inverness retaliated against her because of her complaint that Schirrmacher was creating a hostile work environment. But Barnett-Morgan failed to exhaust administrative remedies with respect to that claim before the EEOC. We therefore affirm the district court’s grant of summary judgment on that claim.

Title VII prohibits employers from retaliating against employees for engaging in Title VII protected activity. 42 U.S.C. § 2000e-3(a). But before an employee can bring a Title VII claim in federal court, she must exhaust her administrative remedies by filing “an administrative charge with the EEOC.” *Younis v. Pinnacle Airlines, Inc.*, 610 F.3d 359, 361 (6th Cir. 2010); *see* 42 U.S.C. § 2000e-5(e)(1). “The charge must be ‘sufficiently precise to identify the parties, and to describe generally the action or practices complained of.’” *Younis*, 610 F.3d at 361 (quoting 29 C.F.R. § 1601.12(b)). “As a general rule, a Title VII plaintiff cannot bring claims in a lawsuit that were not included in [her] EEOC charge.” *Id.*

“Because employees often file EEOC charges *pro se*,” we construe those charges “liberally in favor of the employee when evaluating exhaustion.” *Milczak v. Gen. Motors, LLC*, 102 F.4th 772, 782 (6th Cir. 2024). Even so, the charge must at least “put the EEOC on notice” that the employee may have suffered the claim alleged, “such that the agency can investigate that claim if

it so chooses.” *Id.* (citation omitted). Providing notice gives “the employer information concerning the conduct about which the employee complains,” as well as affords “the EEOC and the employer an opportunity to settle the dispute through conference, conciliation, and persuasion” before a suit is filed. *Younis*, 610 F.3d at 361.

Barnett-Morgan failed to exhaust her administrative remedies for her retaliation claim. In her formal EEOC charge, Barnett-Morgan did not check the box for retaliation, made no mention of retaliation, and did not use “any language” that “would prompt the EEOC to investigate” an “uncharged” claim of retaliation. *Id.* at 362-63 (citation omitted). The charge instead focused exclusively on Barnett-Morgan’s allegation that Inverness discriminated against her based on her race. *See* EEOC Charge, R.32-23, PageID 332 (“I believe I was discriminated against because of my race.”). Even construed liberally, her charge was insufficient to “put the EEOC or the employer on notice” that Barnett-Morgan was separately alleging protected-activity retaliation by Inverness. *Younis*, 610 F.3d. at 363; *see also Abeita v. TransAmerica Mailings, Inc.*, 159 F.3d 246, 254 (6th Cir. 1998).

Barnett-Morgan criticizes the district court for giving “no weight to” her “initial inquiry to the EEOC where she specifically selected retaliation as a basis for her complaint.” Barnett-Morgan Br. 48. Likewise, she argues that the district court failed to “examine the effect” of an email Barnett-Morgan sent to the EEOC. *Id.* Neither document

demonstrates that Barnett-Morgan exhausted her administrative remedies.

When considering whether a plaintiff exhausted her administrative remedies, the district court is required to consider only those communications that constitute a “charge” of discrimination. *Younis*, 610 F.3d at 361. To be sure, our Court has held that “a wide range of documents might be classified as charges.” *Williams v. CSX Transp. Co., Inc.*, 643 F.3d 502, 509 (6th Cir. 2011) (citation omitted). Still, a document or communication sent to the EEOC must meet at least three requirements to qualify as a “charge that is necessary to exhaust an employee’s administrative remedies.” *Id.* (quotation marks omitted). First, it “must be verified—that is, submitted under oath or penalty of perjury”; second, it “must contain information that is sufficiently precise to identify the parties, and to describe generally the action or practices complained of”; and third, “an objective observer must believe that the filing taken as a whole suggests that the employee requests the agency to activate its machinery and remedial processes.” *Id.* (cleaned up).

Barnett-Morgan’s cited communications with EEOC do not satisfy those criteria. Barnett-Morgan notes that she submitted an EEOC inquiry via an online form. There is no evidence that the online form was verified; it does not precisely describe how Inverness allegedly retaliated against Barnett-Morgan; and Barnett-Morgan does not request any intervention or relief

in the document. Inverness further claims that it never received the inquiry and became aware of Barnett-Morgan's allegations only months later when it received a formal notice of the EEOC charge; Barnett-Morgan has cited no contrary evidence in the record. As for the email Barnett-Morgan provided to the EEOC during its investigation, that correspondence was also not verified and it does not seek any particular action by the EEOC on the basis of a separate retaliation claim. The inquiry and email therefore implicate the concern that "allowing a Title VII action to encompass claims outside the reach of the EEOC charges would deprive the charged party of notice and would frustrate the EEOC's investigatory and conciliatory role." *Younis*, 610 F.3d at 362. Because neither the EEOC inquiry nor Barnett-Morgan's email to the EEOC constitutes a "charge," those communications are insufficient to satisfy Barnett-Morgan's obligation to exhaust her administrative remedies with respect to her retaliation claim. *See id.* at 361-62.

\* \* \*

We affirm the judgment of the district court.

**APPENDIX B**  
**Judgment of the United States Court of**  
**Appeals for the Sixth Circuit**

**No. 25-5669**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE SIXTH CIRCUIT**

Filed June 8, 2026  
Kelly L. Stephens, Clerk

|                               |   |
|-------------------------------|---|
| RENETE BARNETT-MORGAN,        | ) |
|                               | ) |
| Plaintiff-Appellant,          | ) |
|                               | ) |
| v.                            | ) |
|                               | ) |
| INVERNESS TECHNOLOGIES, INC., | ) |
|                               | ) |
| Defendant-Appellee.           | ) |

ON APPEAL FROM THE  
UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF KENTUCKY

**JUDGMENT**

THIS CAUSE was heard on the record from the district court and was submitted on the briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

24a

**ENTERED BY ORDER OF THE COURT**

A handwritten signature in black ink, reading "Kelly L. Stephens". The signature is written in a cursive, flowing style. The first name "Kelly" is written with a large, ornate capital "K". The last name "Stephens" is written in a more standard cursive. The signature is positioned above a horizontal line.

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**Kelly L. Stephens, Clerk**

**APPENDIX C**

**Opinion of the United States District Court  
for the Western District of Kentucky**

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION**

**RENETE BARNETT-MORGAN**

Plaintiff

v. Civil Action No. 3:22-cv-301-DJH-CHL

**INVERNESS TECHNOLOGIES, INC**

Defendant

\* \* \* \* \*

**MEMORANDUM OPINION & ORDER**

Plaintiff Renete Barnett-Morgan sued her former employer, Defendant Inverness Technologies, Inc., and her former supervisor, Crystal Vega, alleging race discrimination and retaliation under the Kentucky Civil Rights Act (KCRA) and Title VII of the Civil Rights Act of 1964. (Docket No. 4) Inverness moved to dismiss Barnett-Morgan's state-law claims and all claims against Vega (D.N. 10), which the Court granted on October 6, 2022. (D.N. 15) Now, Inverness moves for summary judgment as to Barnett-Morgan's remaining claims. (D.N. 32) Barnett-

Morgan opposes the motion. (D.N. 39) After the motion for summary judgment was fully briefed, Barnett filed a notice of supplemental authority (D.N. 45), which Inverness moves the Court to disregard. (D.N. 46) Finally, Barnett-Morgan moves for leave to submit further supplemental materials (D.N. 54), and Inverness opposes the motion. (D.N. 57) After careful consideration, the Court will grant Inverness's motion for summary judgment (D.N. 32), deny Inverness's motion to disregard (D.N. 46), and deny Barnett-Morgan's motion for leave to submit supplemental materials (D.N. 54) for the reasons set out below.

## **I. BACKGROUND**

### **A. Inverness's Business**

In 2016, Inverness was awarded a contract with the U.S. Army at Fort Knox to provide a Transition Assistance Program (TAP) for soldiers transitioning from active duty to civilian life. (D.N. 32-1, PageID.169; D.N. 32-3, PageID.214) To satisfy this contract, Inverness employs Career Counselors to advise transitioning service members and conduct pre-separation briefings, courses, and workshops. (D.N. 32-1, PageID.169; D.N. 32-3, PageID.214; D.N. 32-4, PageID.229) Inverness also employs a Contract Installation Manager (CIM) to supervise and manage the various Career Counselors. (D.N. 32-3, PageID.214–15; D.N. 32-4, PageID.229) The CIM is responsible for “outlining performance expectations and holding [Career C]ounselors accountable with performance feedback via

coaching and counseling, verbal warnings, written warnings, and performance improvement plans.” (D.N. 32-1, PageID.169–70, (citing D.N. 32-3, PageID.214–15)) Finally, Inverness employs a Program Manager to “[o]versee[] the entire contract.” (D.N. 32-3, PageID.214)

For each work shift, the CIM selects a Career Counselor to act as a shift lead/point of contact. (See D.N. 32-5, PageID.242–43). Shift leads observe employee concerns that arise during a given shift and report them back to management. (*Id.*; D.N. 32-3, PageID.216) Shift leads are also tasked with making sure that other Counselors follow Inverness’s policies and procedures. (*Id.*) But shift leads receive no change in pay, benefits, or official title. (D.N. 32-3, PageID.216; D.N. 32-5, PageID.242) Similarly, shift leads do not have the power to discipline other Counselors. (D.N. 32-3, PageID.216; D.N. 32-2, PageID.201; D.N. 32-5, PageID.253) Instead, shift leads are expected to have “casual conversation[s]” with employees who fail to follow company policy and report up the chain of command to a CIM if the failure persists. (See D.N. 32-5, PageID.253; D.N. 32-3, PageID.216)

### **B. Barnett-Morgan’s Employment**

On July 31, 2017, Barnett-Morgan began working for Inverness as a Career Counselor on third shift. (D.N. 32-5, PageID.233–34) When Barnett-Morgan was hired, she acknowledged receipt of Inverness’s employment Handbook and Code of Conduct and affirmed that she would

comply with the policies set forth therein. (*Id.*, PageID.238–39) Barnett-Morgan initially reported to CIM Robert Blankenship, who is Caucasian. (*Id.*, PageID.238, 249) Blankenship was authorized to select shift leads, and when Barnett-Morgan was hired, both the second- and third-shift leads were African American. (*See id.*, PageID.236, 241, 243, 246, 249) Then, in 2018, Barnett-Morgan volunteered to act as third-shift lead and was granted the position. (*Id.*, PageID.243, 255) Barnett-Morgan was not required to apply or interview to become third-shift lead. (*Id.*, PageID.243) During her time as shift lead, Barnett-Morgan performed the same duties as her peer Counselors, received no pay or benefit increase, and was not permitted to discipline other employees. (*Id.*, PageID.242–43, 255)

In summer 2021, Kelley Jeans replaced Blankenship as CIM. (*See id.*, PageID.269, 251) Jeans emailed all Career Counselors on June 22, 2021, and requested that they review and sign a document outlining the expectations for the position. (*Id.*, PageID.251–52; D.N. 32-7, PageID.274–76) The expectations form noted that “no single employee should be responsible for doing only one specific task, i.e., Pre-separation Counseling” and stressed that employees must follow work “schedules . . . set beforehand” to ensure “consistent coverage for all calls.” (D.N. 32-7, PageID.276) Pursuant to Jeans’s instructions, Barnett-Morgan executed this document on June 23, 2021. (D.N. 32-8, PageID.278) Then, on August 3, 2021, Jeans announced new a shift lead for the

third shift. (D.N. 32-9, PageID.280–82) Specifically, Jeans announced that Tammy Croft, who is Caucasian, would replace Barnett-Morgan as third-shift lead. (D.N. 32-9, PageID.281; D.N. 32-3, PageID.226) Jeans explained that the decision was based on Croft’s “wide breadth of experience across the TAP . . . and in all roles represented at [Inverness].” (D.N. 32-9, PageID.281) Specifically, Croft worked as a Counselor for the prior contractor beginning in 2015 and then transitioned to working for Inverness. (D.N. 32-2, PageID.204, 209–10) Moreover, Croft had experience in a variety of roles, including Financial Counselor and Site Manager, at several different Inverness locations. (*Id.*, PageID.197–98, 209– 10)

Jeans ultimately left her position as CIM on August 4, 2021. (*See* D.N. 32-10, PageID.284–86) To remedy the absence of a CIM, Jeans put into place a temporary reporting structure for Career Counselors to follow for issues or attendance requests. (*Id.*) Under the temporary reporting structure, second-shift Counselors were instructed to report issues to shift lead Michael Stroud, and third-shift Counselors were instructed to report issues to shift lead Croft. (*Id.*; *see* D.N. 32-5, PageID.257) Stroud and Croft were instructed to report to first-shift lead Darrell Gennett who would, in turn, report to Program Manager Crystal Vega. (D.N. 32-10, PageID.285) This structure was intended to last only “until the new CIM onboard[ed].” (*Id.*)

### **C. Barnett-Morgan's Complaints and Termination**

On August 6, 2021, Barnett-Morgan had an altercation with another Counselor on third shift, Francis Shirrmacher, who is Caucasian. (D.N. 32-5, PageID.257–58; D.N. 32-11, PageID.288; D.N. 32-12, PageID.290) Pursuant to the temporary reporting structure put into place by Jeans, Croft asked Barnett-Morgan and Shirrmacher to write statements about the incident and advised that she would report the information to Gennett. (D.N. 32-2, PageID.200–01) Croft was not present during the altercation. (*See id.*) In her statement, Barnett-Morgan alleged that Shirrmacher “yelled” at her, “often g[ot] defensive with [her]” and “[wa]s creating a hostile work environment for [her].” (D.N. 32-11, PageID.288) Barnett-Morgan’s complaint did not mention race. (*Id.*) Meanwhile, Shirrmacher stated that the altercation occurred because Barnett-Morgan was “simply rude.” (D.N. 32-12, PageID.290)

Barnett-Morgan subsequently emailed Inverness’s human resources department (HR) about the altercation and referenced a previous “unpleasant encounter with [Shirrmacher]” in which Shirrmacher allegedly “sprayed Lysol in the face of another [C]ounselor.” (D.N. 32-13, PageID.292) Barnett-Morgan also noted “questionable relationship boundaries between [Shirrmacher] and the people who have been placed in charge of . . . daily operations.” (*Id.*)

Moreover, Barnett-Morgan expressed fears of “a negative influence on [her] employment” due to these “questionable boundaries.”<sup>1</sup> (*Id.*) Like her initial complaint, however, Barnett-Morgan’s email to HR did not mention race. (*Id.*)

In response to Barnett-Morgan’s email, HR asked Barnett-Morgan to “elaborate more on why [she] believe[d] . . . [Shirmacher] [wa]s creating a hostile environment.” (D.N. 32-15, PageID.298) Barnett-Morgan replied that Shirmacher “ha[d] an intimate relationship with . . . Stroud[,] who [wa]s close friends with [Gennett].” (*Id.*) As a result of this situation, Barnett-Morgan stated, she was “left in the position of having to worry about retaliation.” (*Id.*) HR then asked for “some examples of how [Shirmacher] [wa]s creating a hostile work environment,” noting that they had “not received that complaint from anyone else.” (*Id.*, PageID.297) Barnett-Morgan did not provide any additional information. (D.N. 32-5,

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<sup>1</sup> In her deposition testimony, Barnett-Morgan specified that she was concerned because Shirmacher and Croft “were buddy-buddy” and “always went and had smoke breaks together.” (D.N. 32-5, PageID.258) Moreover, Barnett-Morgan noted that Shirmacher and second-shift lead Stroud were dating. (*Id.*, PageID.257) Barnett-Morgan further asserts that Croft had previously heard Barnett-Morgan speak to other Inverness employees about Croft’s appointment, and that Croft “was upset by [Barnett-Morgan’s] feelings about [Croft’s] installation” as a shift lead. (D.N. 39-1, PageID.421 ¶ 15).

PageID.258–59) As a result, HR emailed Barnett-Morgan to advise her that “if no additional information c[ould] be provided,” they would “consider th[e] matter closed.” (D.N. 32-15, PageID.296–97) Again, Barnett-Morgan did not provide additional information. (*See id.*)

Unrelated to the incident with Shirrmacher, Croft informed Gennett that she was having “issues” with Barnett-Morgan and two other third-shift Counselors, Sheila Newman and Kenneisha Walker, both of whom are Caucasian, on August 11, 2021. (D.N. 32-2, PageID.203, 207; D.N. 32-14, PageID.294) In particular, Croft reported that Barnett-Morgan, Newman, and Walker “d[id]n’t want to abide by a schedule” for pre-separation briefings. (D.N. 32-14, PageID.294) Croft also noted that Barnett-Morgan, Newman, and Walker would “get combative” or ignore Croft “anytime [Croft] tr[ied] to tell them that [Croft] need[ed] them to do something.” (*Id.*) According to Croft, she had previously spoken to Barnett-Morgan, Newman, and Walker about these concerns before informing Gennett. (D.N. 39-4, PageID.469) Vega also testified that management had a “verbal discussion” with Barnett-Morgan about the importance of following the pre-separation briefing schedule. (D.N. 32-3, PageID.224)

On August 25, 2021, Barnett-Morgan was scheduled to give a pre-separation briefing but allowed Newman to conduct the briefing without prior approval. (D.N. 32-3, PageID.224; *see* D.N. 32-26, PageID.348) As a result, on August 26, 2021, Vega met with Barnett-Morgan to deliver a

written warning for insubordination, with Acting Deputy Program Manager Nittia Mitchell accompanying Vega as a witness. (D.N. 32-3, PageID.215, 224; *see* D.N. 32-19, PageID.318) On the same day, Vega also delivered written warnings to Newman and Walker. (D.N. 32-3, PageID.215, 224–25; D.N. 39-3, PageID.437 ¶¶ 28–29)

At the meeting with Vega and Mitchell, Barnett-Morgan did not deny switching schedules with Newman. (*Id.*, PageID.224) Rather, Barnett-Morgan expressed that “she thought that the soldiers had received adequate quality of service.” (*Id.*, PageID.222; *see* D.N. 39-1, PageID.424 ¶ 37) Barnett-Morgan then said, “I’m done” and walked out of the room. (D.N. 32- 3, PageID.221; D.N. 32-5, PageID.262; D.N. 39-1, PageID.424–25 ¶¶ 36, 40) Barnett-Morgan also refused to sign the employee counseling form provided by Vega. (D.N. 32-26, PageID.348; D.N. 32-19, PageID.318) Barnett-Morgan testified that she reacted this way because she “got the job done,” did not believe that she was insubordinate, and felt that it was “crazy that when [she] . . . [was] in [the] shift lead position[] and people would not listen or do anything, they weren’t being written up.” (D.N. 32-5, PageID.262) Barnett-Morgan also states that she felt “stunned,” that she “wanted to . . . leave to be alone and have [an] emotional reaction,” and that she had to “try[] not to cry.” (D.N. 39-1, PageID.423–24 ¶¶ 30, 34, 37) According to Vega, Barnett-Morgan was “pissed off” during the meeting. (D.N. 32-3, PageID.221) Barnett-Morgan

rejects Vega's description as "not true" (D.N. 39-1, PageID.423 ¶ 25) and states that she was "outwardly calm and professional." (*Id.*, ¶ 27)

After the meeting, Vega asked IT Liaison Officer Randy Trombley to collect Barnett-Morgan's Computer Access Card (CAC) if Barnett-Morgan intended to resign.<sup>2</sup> (*See* D.N. 32- 16, PageID.303–08; *see also* D.N. 39-6, PageID.547; D.N. 32-17, PageID.313) According to Trombley, he approached Barnett-Morgan and stated that "if [she] [was] resigning, [he] would need to collect [her] CAC." (D.N. 32-17, PageID.313) When Trombley approached Barnett- Morgan, he "assumed that she had already packed . . . up" her personal belongings because "she . . . had her coat on, she had her handbag, and . . . the top of her desk[] had no personal belongings." (D.N. 32-16, PageID.306) Trombley states that Barnett-Morgan then "threw her CAC . . . and said F\*\*k you Mother f\*\*kers" and "pushed [Trombley] to the side." (D.N. 32-17, PageID.313) Vega also testified that Barnett-Morgan cursed at Trombley (*see* D.N. 39-6, PageID.539) and that she saw Barnett-Morgan's CAC fall to the ground. (*Id.*, PageID.540) Inverness's management later asserted that Barnett-Morgan voluntarily cleaned out her desk following these events. (*See* D.N. 32-15, PageID.296)

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<sup>2</sup> According to Vega, Inverness was required to immediately confiscate the CAC of any departing employee for "building security." (D.N. 32-3, PageID.220, 223; *see also* D.N. 32-5, PageID.264).

Barnett-Morgan states that Trombley “came and asked directly for” her CAC, which led her to believe that she was being fired. (D.N. 32-5, PageID.265; D.N. 39-1, PageID.425 ¶¶ 44, 45) She also maintains that she did not shove Trombley or throw her card on the ground. (D.N. 32-5, PageID.265; D.N. 39-1, PageID.426–27 ¶¶ 49) Instead, Barnett-Morgan says that she “handed [Trombley]” her CAC but that the card accidentally “fell to the floor.” (D.N. 39-1, PageID.426 ¶ 49) Moreover, according to Barnett-Morgan, she cursed only by asking “so I’m f\*\*\*ing fired?” in response to Trombley’s demand for her CAC. (D.N. 39-1, PageID.426 ¶ 46) Although Barnett-Morgan acknowledges that she “gathered [her] stuff” before leaving (*id.*, PageID.426 ¶ 49), she disputes that she cleaned out her desk and states that Inverness staff “[took] all of [her] belongings out of the desk” later that day. (D.N. 39-1, PageID.426 ¶ 52) Walker was present during Barnett-Morgan’s interaction with Trombley and agrees with her description of the event. (*See* D.N. 39-3, PageID.436 ¶¶ 17–32).

After interacting with Trombley, Barnett-Morgan “walked out the doorway and took the stairs to leave the building.” (D.N. 39-1, PageID.426 ¶ 49) Based on these events, Vega thought that Barnett-Morgan had voluntarily resigned her position. (D.N. 32-3, PageID.220, 223) Vega subsequently emailed HR and informed them that Barnett-Morgan “walked out and quit” and that her last day would be August 26, 2021.

(D.N. 32-18, PageID.315) Vega also told HR to place Barnett-Morgan on the “Do Not Hire” list based on the way she had seemingly quit. (*Id.*; see also D.N. 32-3, PageID.220) Trombley agreed with Vega’s conclusion based on his own observations of the August 26, 2021, incident. (See D.N. 39-7, PageID.577–79)

A few hours later, however, Barnett-Morgan emailed HR and asked, “[W]hat are the grounds of my termination?” (D.N. 32-20, PageID.321) HR employee Jon Peters responded:

[I]t was brought to our attention that when presented with a written counseling by the Program Manager, you didn’t read the counseling, stood up, and said “forget this.” You also cleaned out your desk leading everyone to believe you quit. Moreover, you told everyone “I’m done.” Mr. Trombley stated that if you are quitting, he needs your CAC at which point you cursed at him, shoved him, and threw you[r] CAC at the ground. Since you responded by throwing your CAC on the ground, the same CAC card that grants you access to the job site as well as the work site computers, this led us to believe you were voluntarily resigning.

(*Id.*) Barnett-Morgan replied that Trombley “asked . . . directly for [her] CAC . . . and stated [h]e was sent to get [her] CAC.” (*Id.*) In a subsequent email, Barnett-Morgan stated, “I

never did such [a] thing and I have witnesses I also never touched anyone [and] [a]s for my desk[,] I never cleaned it out.” (*Id.*, PageID.320).

**D. Barnett-Morgan’s EEOC Charge and the Current Action**

On December 3, 2021, Barnett-Morgan filed an administrative charge with the EEOC alleging race discrimination between August 2, 2021, and August 21, 2021, during her employment with Inverness. (D.N. 32-23, PageID.331–33) Barnett-Morgan’s EEOC charge did not mention retaliation, and the box labeled “discrimination based on . . . retaliation” was not checked. (*Id.*, PageID.331) The EEOC issued Barnett-Morgan a right-to-sue letter on April 27, 2022. (D.N. 32-25, PageID.343–44)

On April 29, 2022, Barnett-Morgan filed this action in Hardin Circuit Court. (D.N. 1) After Inverness removed the case to this Court (*id.*), Barnett-Morgan filed an amended complaint asserting discrimination and retaliation claims against Inverness and Vega under the KCRA and Title VII. (D.N. 4, PageID.40–45) Inverness moved to partially dismiss (D.N. 10), and the Court dismissed Barnett-Morgan’s KCRA claims and claims against Vega. (D.N. 15; D.N. 17) Now, Inverness moves for summary judgment on all remaining claims (D.N. 32), and Barnett-Morgan opposes the motion. (D.N. 39) In addition, Inverness moves the Court to disregard Barnett-Morgan’s notice of supplemental authority filed on April 17, 2024. (D.N. 46; *see* D.N. 45) Finally,

Barnett-Morgan moves for leave to submit her August 3, 2021 inquiry form to the EEOC. (D.N. 54) Inverness opposes the motion. (D.N. 57) Following oral argument on the pending motions, the Court took the matters under advisement. (D.N. 60)

## II. ANALYSIS

Summary judgment is appropriate when a movant shows, using evidence in the record, “that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A factual dispute is “genuine” if a reasonable factfinder could resolve the dispute in favor of either party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In other words, “the mere existence of a scintilla of evidence in support of the plaintiff’s position will be insufficient,” and there must be “evidence on which the jury could reasonably find for the plaintiff.” *Id.* at 252. “Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” *Id.* at 247–48. To survive a motion for summary judgment, the nonmoving party must establish a genuine issue of material fact with respect to each element of each of her claims. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986) (noting that “a complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial”).

As an initial matter, Inverness argues that the Court must strike Barnett-Morgan and Walker's affidavits and should not consider them on summary judgment. (D.N. 43, PageID.705–07) Affidavits may be utilized to defeat summary judgment if they are “made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.” Fed. R. Civ. P. 56(c)(4). Importantly, however, “under the sham affidavit doctrine, after a motion for summary judgment has been made, a party may not file an affidavit that contradicts [her] earlier sworn testimony.” *France v. Lucas*, 836 F.3d 612, 622 (6th Cir. 2016) (citing *Reid v. Sears, Roebuck & Co.*, 790 F.2d 453, 460 (6th Cir. 1986)). The Court will strike such affidavits “unless the party opposing summary judgment provides a persuasive justification for the contradiction.” *Id.* (quoting *Aerel, S.R.L. v. PCC Airfoils, L.L.C.*, 448 F.3d 899, 908 (6th Cir. 2006)). The Court will also strike affidavits that “attempt to create a sham fact issue,” even if they do not directly contradict prior sworn testimony. *Id.* (quotation omitted) The doctrine's rationale is simple: “[i]f a party who has been examined at length [under oath] could raise an issue of fact simply by submitting an affidavit contradicting his own prior testimony, this would greatly diminish the utility of summary judgment as a procedure for screening out sham issues of fact.” *Id.* (quoting *Perma Research & Dev. Co. v. Singer Co.*, 410 F.2d 572, 578 (2d Cir. 1969)).

As to Barnett-Morgan's affidavit, Inverness argues that the following statements contradict her deposition testimony (*see* D.N. 43, PageID.706 n. 4): that Barnett-Morgan "handed Randy [her] CAC" but her CAC "fell to the floor" (D.N. 39-1, PageID.426 ¶ 49), that Barnett-Morgan's August 6, 2021, complaint to HR was based on "a continuation of . . . race bias" (*id.*, PageID.421–22 ¶ 18), that Croft was "very inexperienced" (*id.*, PageID.420 ¶ 9), that HR's explanation of Barnett-Morgan's termination was entirely false (*id.*, PageID.427 ¶ 54), that Barnett-Morgan complained of "a hostile work environment [Croft] fostered" (*id.*, PageID.428 ¶ 58), and that Barnett-Morgan was not permitted to create and enforce expectations for Counselor behavior as a shift lead. (*Id.*, PageID.420 ¶ 11)

Many of these statements do not contradict Barnett-Morgan's deposition testimony, however. For example, Barnett-Morgan's testimony that she did not throw her CAC on the ground (D.N. 32-5, PageID.265) does not contradict her affidavit, which states that her CAC "fell to the floor" when she attempted to hand it to Trombley. (D.N. 39-1, PageID.426 ¶ 49) Similarly, Barnett-Morgan testified that her August 6, 2021 complaint did not mention race. (D.N. 32-5, PageID.258) Her affidavit does not contradict this statement. (*See* D.N. 39-1, PageID.421–22 ¶ 18 (stating that the Shirrmacher incident and Croft's relationship with Shirrmacher "was a continuation of the race bias and favoritism [Barnett-Morgan] had been witnessing and experiencing")) And Barnett-

Morgan's sworn statement that Croft was "very inexperienced" (*id.*, PageID.420 ¶ 9) likewise does not contradict her deposition testimony, where she maintained that Croft "didn't have any experience with the new system and how [Inverness had] changed certain things." (D.N. 43-1, PageID.727) Finally, Barnett-Morgan stated at deposition that she was unable to create and enforce workplace expectations, and that she was not permitted to discipline employees. (See D.N. 32-5, PageID.253–54) This is consistent with Barnett-Morgan's affidavit, which also states that she was unable to create or enforce expectations and could not discipline other Counselors. (D.N. 39-1, PageID.420 ¶ 11)

But Inverness is correct that certain statements in Barnett-Morgan's affidavit contradict her deposition testimony. First, Barnett-Morgan's statement that "none" of HR's report of her termination was true (D.N. 39-1, PageID.427 ¶ 54) is plainly contradicted by her deposition testimony, where she admitted that she walked out of the August 26, 2021 meeting with Vega (D.N. 32-5, PageID.262), said "I'm done" (*id.*), cursed at Trombley (*id.*, PageID.264), and left the building. (*Id.*) The Court will therefore disregard this portion of Barnett-Morgan's affidavit. See *France*, 836 F.3d at 622. Second, the affidavit's statement that Barnett-Morgan "clearly outlined the manner in which [Croft] targeted [Barnett-Morgan] after [Barnett-Morgan] complained of the hostile work environment [Croft] fostered" (D.N. 39-1, PageID.428 ¶ 58) contradicts Barnett-

Morgan’s admission at deposition that she never explicitly complained about Croft’s conduct.<sup>3</sup> (See D.N. 32-5, PageID.266) As a result, the Court will also disregard this portion of the affidavit. See *France*, 836 F.3d at 622.

As to Walker’s affidavit, Inverness first argues that Walker’s affidavit contradicts Barnett-Morgan’s testimony. (D.N. 43, PageID.706) But even if Inverness is correct, such a contradiction would not warrant the striking of Walker’s affidavit. The sham affidavit doctrine does not apply where one witness’s affidavit contradicts *another* witness’s testimony.<sup>4</sup> See *France*, 836 F.3d at 622–23 (“[W]e generally apply the sham affidavit doctrine against a party who attempts to

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<sup>3</sup> This admission is consistent with the record. None of Barnett-Morgan’s internal complaints to Inverness explicitly mention Croft. (See D.N. 32-11, PageID.288 (not mentioning Croft); D.N. 32-13, PageID.292 (same); D.N. 32-15, PageID.296–99 (same)).

<sup>4</sup> In any event, Walker’s affidavit does not contradict Barnett-Morgan’s testimony. Walker’s statement that Inverness “hired Randy Trombley’s daughter, a white woman[,]” following Barnett-Morgan’s departure (D.N. 39-3, PageID.440 ¶ 50) does not contradict Barnett-Morgan’s deposition testimony that she did not personally know who, if anyone, replaced her. (D.N. 43-1, PageID.732) Similarly, Barnett-Morgan’s admission that she cursed at Trombley (D.N. 32-5, PageID.264) does not contradict Walker’s contention that, in general, Barnett-Morgan “spoke respectfully” to all Inverness staff. (D.N. 39-3, PageID.436 ¶ 23).

avoid summary judgment by filing *his own* affidavit that directly contradicts *his own* prior sworn testimony.”). Second, Inverness claims that Walker’s affidavit is “riddled with inadmissible hearsay.” (D.N. 43, PageID.706) But Inverness does not point to a single statement in the affidavit which allegedly constitutes hearsay. (*See generally* D.N. 43) As a result, the Court need not consider Inverness’s conclusory argument. *See McPherson v. Kelsey*, 125 F.3d 989, 995–96 (6th Cir. 1997) (“[I]ssues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived. It is not sufficient for a party to mention a possible argument in the most skeletal way, leaving the court to . . . put flesh on its bones.” (quotation omitted)).

Finally, Inverness argues that the Court must disregard the portions of Walker’s affidavit regarding her observations of Barnett-Morgan’s interaction with Trombley because they were made without “personal knowledge of the events that occurred prior . . . as [Walker] was not present in the conference room.” (D.N. 43, PageID.710) As a result, Inverness contends that Walker’s observations are “completely without context and hence irrelevant.” (*Id.*) But Inverness does not dispute that Walker personally observed the interaction between Barnett- Morgan and Trombley. (*See generally id.*) Because Inverness cited Barnett-Morgan and Trombley’s interaction as a principal reason for Inverness’s belief that Barnett-Morgan voluntarily resigned (*see* D.N. 32-

15, PageID.296), Walker’s observations of that interaction are relevant to the present dispute. *See* Fed. R. Evid. 401.

In sum, the Court will disregard ¶ 54 and ¶ 58 of Barnett-Morgan’s affidavit (D.N. 39-1, PageID.427–28 ¶¶ 54, 58), but otherwise consider Barnett-Morgan and Walker’s affidavits in their entirety. (D.N. 39-1; D.N. 39-3)

#### **A. Race Discrimination**

Under Title VII, employers may not “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). A plaintiff can prove a discrimination claim under Title VII by direct or circumstantial evidence. *Ondricko v. MGM Grand Detroit, LLC*, 689 F.3d 642, 649 (6th Cir. 2012) (citation omitted). Direct evidence is “evidence which, if believed, requires the conclusion that unlawful discrimination was at least a motivating factor in the employer’s actions.” *Id.* (quoting *Jacklyn v. Schering-Plough Healthcare Prods. Sales Corp.*, 176 F.3d 921, 926 (6th Cir. 1999)). Alternatively, circumstantial evidence “is proof that does not on its face establish discriminatory animus[] but does allow a factfinder to draw a reasonable inference that discrimination occurred.” *Id.* (citing *Kline v. Tenn. Valley Auth.*, 128 F.3d 337, 348 (6th Cir.1997)). Where, as here, a plaintiff provides only circumstantial evidence of discrimination, the

Court applies the burden-shifting framework articulated in *McDonnell-Douglas Corp. v. Green*, 411 U.S. 792, 801–05 (1973). *Bruce v. Meharry Med. Coll.*, 692 F. App’x 275, 278 (6th Cir. 2017) (citation omitted).

Under the *McDonnell-Douglas* framework, Barnett-Morgan has the initial burden of establishing a prima facie case of discrimination. *Clark v. Lockheed Martin Energy Sys., Inc.*, 287 F. App’x 502, 502 (6th Cir. 2008) (citation omitted). Then, the burden shifts to Inverness to proffer “a legitimate, nondiscriminatory reason for its decision.” *Id.* If Inverness does so, Barnett-Morgan must finally “prove by a preponderance of the evidence that the reasons offered by the employer are pretextual.” *Id.*

To establish a prima facie case of race discrimination, Barnett-Morgan must show that she “(1) is a member of a protected class; who (2) suffered an adverse employment action; (3) was qualified for the position; and (4) was replaced by someone outside the protected class or was treated differently than similarly situated, non-protected employees.” *Morton v. Greater Cleveland Reg’l Transit Auth.*, No. 23-3660, 2024 WL 2765835, at \*5 (6th Cir. May 30, 2024) (citing *Blount v. Stanley Eng’g Fastening*, 55 F.4th 504, 510 (6th Cir. 2022)). “[T]he prima facie requirement for making a Title VII claim is not onerous, and poses a burden easily met.” *Khamati v. Sec’y of Dep’t of the Treasury*, 557 F. App’x 434, 440 (6th Cir. 2014) (quoting *Cline v. Catholic Diocese of Toledo*, 206 F.3d 651, 660 (6th Cir.

2000)). Here, the parties dispute only the second and fourth elements of Barnett-Morgan’s prima facie case. (See D.N. 39, PageID.399; D.N. 32-1, PageID.182–85) The Court considers each element below.

### 1. Adverse Employment Action

In the discrimination context, an adverse employment action is “a materially adverse change in the terms or conditions of employment because of the employer’s actions.” *Kuhn v. Washtenaw Cnty.*, 709 F.3d 612, 625 (6th Cir. 2013) (quoting *Michael v. Caterpillar Fin. Servs. Corp.*, 496 F.3d 584, 593 (6th Cir. 2007)). Examples of adverse employment actions include “a termination of employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities, or other indices that might be unique to a particular situation.” *Id.* (quoting *Michael*, 496 F.3d at 594). “[R]eassignments without changes in salary, benefits, title, or work hours usually do not constitute adverse employment actions.” *Stewart v. Esper*, 815 F. App’x 8, 17 (6th Cir. 2020) (quoting *Policastro v. Nw. Airlines, Inc.*, 297 F.3d 535, 539 (6th Cir. 2002)).

This standard has been modified somewhat by the Supreme Court’s recent decision in *Muldrow v. City of St. Louis*, 601 U.S. 346 (2024).<sup>5</sup> In *Muldrow*,

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<sup>5</sup> Barnett-Morgan filed a notice of supplemental authority containing the *Muldrow* decision (D.N. 45), which Inverness moves the Court to disregard

the Supreme Court “abrogated circuit court cases across the country that required plaintiffs to show a high level of harm to challenge a discriminatory transfer.” *McNeal v. City of Blue Ash*, 117 F.4th 887, 900 (6th Cir. 2024) (citing *Muldrow*, 601 U.S. at 353 n.1). The Sixth Circuit has since applied *Muldrow* in the general discrimination context, noting that *Muldrow* “made clear that its interpretation stemmed from Title VII’s generally applicable statutory language, . . . which contains no language requiring plaintiffs to show a high level of harm.” *Id.* (applying *Muldrow* in ADEA hostile- work-environment context). The court explained in *McNeal* that adverse employment actions do “not have to be ‘significant’ or ‘serious, or substantial, or any similar adjective suggesting that the disadvantage to the employee must exceed a heightened bar.’” *Id.* (quoting *Muldrow*, 601 U.S. at 355) Instead, an adverse employment action exists if the action left “the employee ‘worse

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as an improper surreply. (D.N. 46) Although surreplies are “highly disfavored,” they are permissible in “appropriate circumstances.” *Walden v. Gen. Elec. Int’l, Inc.*, No. 4:19-CV-159-DJH-HBB, 2024 WL 663484, at \*3 (W.D. Ky. Jan.22, 2024) (quotations omitted). Because Barnett-Morgan’s notice includes no argument, and because the Court is bound by *Muldrow* in any event, the notice does not prejudice Inverness. Accordingly, to the extent that Barnett-Morgan’s notice can be considered a surreply, the Court will deny Inverness’s motion to disregard. *See Dickey v. Rapier*, No. 3:16-CV-P712-RGJ, 2018WL 6671512, at \*1 (W.D. Ky. Dec. 19, 2018).

off respecting employment terms or conditions.” *Id.* In other words, to demonstrate an adverse employment action, a plaintiff must “show ‘some harm respecting an identifiable term or condition of employment.’” *Id.*

Barnett-Morgan asserts that she suffered two adverse employment actions: her removal from the third-shift-lead position and her termination. (D.N. 39, PageID.400–01) Inverness argues that Barnett-Morgan’s removal as shift lead “did not result in a decrease in wage or salary, benefits, or removal of significant job duties” and therefore “was not an adverse employment action as a matter of law.” (D.N. 32-1, PageID.183) Barnett-Morgan responds that her removal from the shift-lead role was a “demotion” and stresses that she “found pride and satisfaction” in the role. (D.N. 39, PageID.377–78) Barnett-Morgan also contends that shift leads had “the authority to require a subordinate to obey, on pain of termination,” and therefore “clearly ha[d] more authority and power than” ordinary Career Counselors. (*Id.*, PageID.400)

The Court agrees with Inverness that Barnett-Morgan’s removal as a shift lead was not an adverse employment action. The undisputed evidence demonstrates that Barnett-Morgan originally obtained the shift-lead position because she volunteered (D.N. 32-5, PageID.243, 255) and that she was not required to apply or interview with management. (*Id.*, PageID.243) Moreover, when Barnett-Morgan became shift lead, she did not receive a change in benefits, pay, or official

title. (D.N. 32-1, PageID.170; D.N. 32-2, PageID.200–01; D.N. 32-3, PageID.216) And other than reporting issues to management as shift lead, Barnett-Morgan performed the exact same job duties in both roles. (*Id.*; *see also* D.N. 32-5, PageID.242–43, 255) Contrary to Barnett-Morgan’s contention, unsupported by citations to the record, that shift leads had “more authority and power” than Career Counselors (D.N. 39, PageID.400), multiple witnesses, including Barnett-Morgan herself, testified that shift leads were not permitted to discipline Career Counselors or set expectations for their behavior. (D.N. 32-2, PageID.199, 203 (Croft); D.N. 32-3, PageID.216 (Vega); D.N. 32-5, PageID.253–54 (Barnett-Morgan); D.N. 39-1, PageID.419 ¶ 6 (same)) Finally, as to Barnett-Morgan’s assertion that she found “pride and satisfaction” in the shift-lead role (D.N. 39, PageID.378), “[a]n employee’s subjective impressions as to the desirability of one position over another are not relevant” to the adverse-employment-action analysis. *Blade v. TJX Cos.*, No. 3:14-CV-396-DJH, 2016 WL 1268297, at \*3 (W.D. Ky. Mar. 31, 2016) (quoting *PolICASTRO*, 297 F.3d at 539); *see also Spees v. James Marine, Inc.*, 617 F.3d 380, 391 (6th Cir. 2010) (explaining that a “bruised ego” is not sufficient). In sum, because there is no evidence to suggest that Barnett-Morgan’s removal from the shift-lead role left her “worse off respecting employment terms or conditions,” the removal was not an adverse employment action as a matter of law. *Cf. McNeal*, 117 F.4th at 900–01 (plaintiff was

assigned to a role requiring “specialized training or expertise” without being provided any “training or direction,” and then routinely disciplined); *cf. Muldrow*, 601 U.S. at 359 (plaintiff was “moved from a plainclothes job in a prestigious specialized division giving her substantial responsibility” to “a uniformed job . . . in which she was less involved in high-visibility matters and primarily performed administrative work”); *see also Morton*, 2024 WL 2765835, at \*5.

Inverness further argues that it “did not request or force [Barnett-Morgan] to leave her employment” and that because Barnett-Morgan made “a personal choice to quit her job,” she “cannot claim that Inverness somehow altered the terms or conditions of her employment.” (D.N. 32-1, PageID.184) Specifically, Inverness claims that Barnett-Morgan voluntarily quit on August 26, 2021. (*Id.*; *see also* D.N. 32-15, PageID.296) “[A]n employee who voluntarily resigns from a job may not bring a claim under Title VII . . . because it is the employee’s, not the employer’s, action that generated the departure.” *Wilson v. Chipotle Mexican Grill, Inc.*, 580 F. App’x 395, 398 (6th Cir. 2014). But the parties strongly dispute what occurred on August 26, 2021, including what Barnett-Morgan said and whether Barnett-Morgan threw her CAC, cleaned out her desk, or shoved Trombley. (*See* D.N. 39, PageID.378–91; D.N. 32-1, PageID.176–78) And there are “[s]everal pieces of evidence” that support the conclusion that Barnett-Morgan was involuntarily terminated, including her deposition testimony,

her affidavit, and Walker's affidavit. *See Wilson*, 580 F. App'x at 398. Thus, there is evidence sufficient to "create a genuine factual dispute over whether [Barnett-Morgan] left the job voluntarily." *Id.*

## **2. Replacement or Disparate Treatment**

Barnett-Morgan must also demonstrate that "she was replaced by someone outside of the protected class" or that she "was treated differently than similarly-situated, non-protected employees." *Blount*, 55 F.4th at 510 (quoting *Wright v. Murray Guard, Inc.*, 455 F.3d 702, 707 (6th Cir. 2006)). Under the replacement theory, "an employee is not replaced when another employee is assigned to perform the plaintiff's duties in addition to other duties, or when the work is redistributed among other existing employees already performing related work." *Stearman v. Ferro Coals, Inc.*, 751 F. App'x 827, 830 (6th Cir. 2018) (applying the replacement standard in the KCRA age-discrimination context) (internal quotation omitted). Instead, "[r]eplacement occurs only when the company hires a new person or reassigns an employee to take over the plaintiff's job." *Id.* at 831.

Barnett-Morgan has failed to demonstrate that she was replaced by someone outside of her protected class. First, Croft's appointment as third-shift lead does not constitute replacement. Croft was already working at Inverness when she became third-shift lead. (*See* D.N. 32-2,

PageID.204, 209–10) Thus, Inverness did not “hire a new person . . . to take over [Barnett- Morgan]’s job.” *See Stearman*, 751 F. App’x at 831. Nor was Croft “reassign[ed] . . . to take over [Barnett-Morgan’s] job.” *Id.* After all, Barnett-Morgan continued to work at Inverness with the same job title, benefits, and pay following her removal as shift lead. (D.N. 32-5, PageID.242–43; *see also* D.N. 39, PageID.376; D.N. 32-3, PageID.216) At most, the record reflects that Croft merely “took over [Barnett-Morgan’s] duties” as third-shift lead “in addition to h[er] own responsibilities.” *See Stearman*, 751 F. App’x at 830. Accordingly, Croft’s appointment cannot constitute replacement as a matter of law.<sup>6</sup> *See id.* at 830–31.

Second, Barnett-Morgan was not replaced after her termination. During her deposition, Barnett-Morgan admitted that she did not know who, if anyone, took over her position on third shift. (D.N. 43-1, PageID.732) Barnett-Morgan now argues that Walker’s affidavit—which states that “after [Barnett-Morgan] stopped working at Inverness, the company hired Randy Trombley’s

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<sup>6</sup> In any event, Croft’s appointment as third-shift lead is largely irrelevant to the replacement analysis because it occurred prior to Barnett-Morgan’s termination. *See, e.g., Shazor v. Prof’l Transit Mgmt.*, 744 F.3d 948, 959 (6th Cir. 2014) (explaining that “the replacement method works especially well when a plaintiff is terminated and the employer hires a single replacement to do the same job”); *see also Foust v. Metro. Sec. Servs.*, 829 F. Supp. 2d 614, 627–28 (E.D. Tenn. 2011).

daughter, a white woman” (D.N. 39-3, PageID.440 ¶ 50)—is sufficient evidence of her replacement. (See D.N. 39, PageID.394) But because Walker’s affidavit does not specify what role Trombley’s daughter was hired to fill, it does not establish that Trombley’s daughter “t[ook] over” Barnett-Morgan’s job. See *Stearman*, 751 F. App’x at 831. Moreover, Barnett-Morgan does not meaningfully dispute that at the time of Plaintiff’s departure from her employment as a Career Counselor at the Virtual Center in August 2021, there were 4 vacancies for the position of Career Counselor that needed to be filled, making it impossible to identify any specific person who replaced Plaintiff since Inverness was in the process of filling multiple Career Counselor positions, not just the vacancy that was created from Plaintiff’s [departure]. (D.N. 43-2, PageID.747; see also D.N. 39, PageID.394) Ultimately, there is no evidence in the record to suggest that Barnett-Morgan “was replaced by someone outside of the protected class” following her termination. *Blount*, 55 F.4th at 510.

Alternatively, Barnett-Morgan can establish this prong of her prima facie case by demonstrating “that for the same or similar conduct [she] was treated differently than similarly situated non-minority employees.” *Mitchell v. Toledo Hosp.*, 964 F.2d 577, 583 (6th Cir. 1992). “[T]o be considered similarly situated, a comparator need not be identical, but should be similarly situated ‘in all *relevant* respects.’” *Blount*, 55 F.4th at 511 (quoting *Wright*, 455 F.3d at 710) (emphasis in original). In other words,

Barnett-Morgan and her proffered comparator employee must “have engaged in the same conduct without such differentiating or mitigating circumstances that would distinguish their conduct or the employer’s treatment of them for it.” *Id.* at 512 (internal quotation omitted). Importantly, “the fact that two employees both received a warning or a negative performance review . . . is not enough to make those employees similarly situated.” *Id.* (citing *Colvin v. Veterans Admin. Med. Ctr.*, 390 F. App’x 454, 458–59 (6th Cir. 2010)).

Barnett-Morgan argues that Walker also “opposed and complained of the hostile work environment” at Inverness and was “admittedly disrespectful” to management but was not terminated. (D.N. 39, PageID.402) In support, Barnett-Morgan points to the portions of Walker’s affidavit describing Walker’s write-up by Vega on August 26, 2021:

I was then called into a meeting by Crystal, and I received my write-up. I asked her when I walked into the meeting, “What are you going to accuse us of today?” I asked that because, when I worked with Renete, I used to get accused of things due to my associations with her. Management didn’t seem as interested in punishing me after they fired Renete.

I was not fired like Renete was. Crystal did not tell Randy to take my CAC card, even after my remark about her

accusing us of things. I believe Renete did not do anything worse than I did, but she was fired[,] and I was not.

(D.N. 39-3, PageID.437 ¶¶ 28–29) Barnett-Morgan also seemingly argues that Croft’s appointment as third-shift lead demonstrates disparate treatment. (See D.N. 39, PageID.402)

Finally, Barnett-Morgan points to *Heard v. Board of Trustees of Jackson Community College* for the proposition that an employer’s portrayal of a plaintiff as “an angry [B]lack woman” constitutes “evidence that . . . adverse employment actions were connected to well-known discriminatory stereotypes, such that the discrimination claim should proceed to a jury.” (D.N. 39, PageID.402–03 (citing *Heard*, No. 11-CV-13051, 2013 WL 142115, at \*12 (E.D. Mich. Jan. 11, 2013))) In doing so, Barnett-Morgan seemingly argues that Inverness’s “unwarranted portrayal of [her] as angry, combative, and even violent” establishes the fourth element of her prima facie case. (See D.N. 39, PageID.403) But in *Heard*, the defendant “concede[d] that [the] Plaintiff c[ould] establish a prima facie case.” *Heard*, 2013 WL 142115, at \*8. Thus, *Heard* is inapposite here.

Barnett-Morgan does not dispute that she walked out of the August 26, 2021 meeting with Vega (D.N. 32-5, PageID.262), said “I’m done” (*id.*), cursed at Trombley, and left the building. (*Id.*, PageID.264; see also D.N. 39-1, PageID.424–26 ¶¶ 36, 40, 49) It is likewise undisputed that neither Newman nor Walker engaged in similar

conduct. (See D.N. 32-3, PageID.224–25; D.N. 39-3, PageID.437 ¶ 28) So even if Walker made a disrespectful comment at the start of her meeting with Vega (D.N. 39-3, PageID.437 ¶ 28), the record does not support a conclusion that Barnett-Morgan and Walker “engaged in acts of *comparable seriousness*.” See *Blount*, 55 F.4th at 512 (internal quotations omitted). And as noted above, the fact that Barnett- Morgan, Newman, and Walker all received “a warning . . . is not enough to make those employees similarly situated.” *Id.* Ultimately, because there are “differentiating or mitigating circumstances that would distinguish [Newman and Walker’s] conduct [and] [Inverness’s] treatment of them for it,” neither Walker nor Newman is an appropriate comparator. See *id.* (quotation omitted).

Nor are Croft and Barnett-Morgan “similarly situated in all relevant respects.” *Id.* at 511 (internal quotation and emphasis omitted). When making this determination, the Court may properly consider “[d]ifferences in job title, responsibilities, experience, and work record.” *Id.* (quoting *Leadbetter v. Gilley*, 385 F.3d 683, 691 (6th Cir. 2004)). Croft had two more years of experience than Barnett-Morgan as a Career Counselor. (Compare D.N. 32-5, PageID.233–34 (explaining that Barnett-Morgan started working for Inverness in July 2017) with D.N. 32-2, PageID.209 (noting that Croft began working as a Counselor in 2015)) Moreover, unlike Barnett-Morgan (see D.N. 32-5, PageID.233), Croft had experience working in other roles at several

locations for Inverness, including Financial Counselor and Site Manager. (See D.N. 32-2, PageID.204, 209–10) Based on these significant differences in experience and work record, Croft and Barnett-Morgan are not similarly situated.<sup>7</sup> See *Blount*, 55 F.4th at 511–13.

In sum, because Barnett-Morgan has not established that she was replaced by someone outside the protected class or treated differently than similarly situated employees, she has failed to demonstrate a prima facie case of race discrimination as a matter of law. See *Morton*, 2024 WL 2765835, at \*5. Accordingly, the Court will grant Inverness’s motion for summary judgment as to Barnett-Morgan’s race-discrimination claim. See *id.*; see also *Celotex*, 477 U.S. at 322–23.

### **3. Legitimate Non-Discriminatory Reasons and Pretext**

Even if Barnett-Morgan had established her prima facie case, however, she is also unable to rebut Inverness’s non-discriminatory explanation

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<sup>7</sup> Barnett-Morgan contends that Croft was “highly inexperienced” (D.N. 39, PageID.377) and that Croft “had not worked as a [C]ounselor for two years” and “did not really know what counseling looked like” when she became third-shift lead. (D.N. 39-1, PageID.420 ¶ 9) But these assertions do not refute the undisputed evidence in the record that Croft worked on the Transition Assistance Program for a longer period of time and across a wider variety of roles than Barnett-Morgan.

for her termination. As discussed above, once a plaintiff demonstrates her prima facie case, the burden shifts to the employer to articulate a legitimate, non-discriminatory reason for the adverse employment action in question. *See, e.g., Carter v. IMI S., LLC*, No. 3:17-CV-04-DJH-CHL, 2018 WL 6268209, at \*3 (W.D. Ky. Nov. 30, 2018); *see also McDonnell Douglas*, 411 U.S. 792. Here, Inverness asserts that Barnett- Morgan’s behavior on August 26, 2021, is sufficient (D.N. 32-1, PageID.185–86) and the Court agrees. It is undisputed that Barnett-Morgan walked out of the August 26, 2021 meeting with Vega (D.N. 32-5, PageID.262), said “I’m done” (*id.*), cursed at Trombley, and left the building. (*Id.*, PageID.264) Multiple Inverness employees testified that these events led Inverness management to believe that Barnett-Morgan had voluntarily resigned. (D.N. 32-3, PageID.220; *see* D.N. 32-17, PageID.313; D.N. 32-19, PageID.318) Thus, Inverness has sufficiently demonstrated a legitimate, non-discriminatory reason for Barnett-Morgan’s termination. *See Upshaw v. Ford Motor Co.*, 576 F.3d 576, 585 (6th Cir. 2009) (noting that “[t]his is merely a burden of production, not of persuasion, and it does not involve a credibility assessment”).

As a result, the burden shifts back to Barnett-Morgan to demonstrate that “[Inverness’s] asserted nondiscriminatory reasons were mere pretext for discrimination.” *Carter*, 2018 WL 6268209, at \*3. “Plaintiffs typically show pretext in one of three ways: ‘(1) that the proffered reasons had no basis in fact, (2) that the proffered reasons

did not actually motivate the employer's action, or (3) that the proffered reasons were insufficient to motivate the employer's action.” *Miles v. S. Cent. Hum. Res. Agency, Inc.*, 946 F.3d 883, 888 (6th Cir. 2020) (quoting *Chen v. Dow Chem. Co.*, 580 F.3d 394, 400 (6th Cir. 2009)). But Barnett-Morgan “remains free to pursue arguments outside these three categories.” *Id.* Regardless of the method chosen, Barnett-Morgan bears the burden of producing “sufficient evidence from which the jury could reasonably reject [Inverness’s] explanation and infer that [Inverness] intentionally discriminated against h[er].” *Imwalle v. Reliance Med. Prod., Inc.*, 515 F.3d 531, 545 (6th Cir. 2008) (quoting *Johnson v. Kroger Co.*, 319 F.3d 858, 866 (6th Cir. 2003)).

Barnett-Morgan first argues that pretext can be inferred from “the ever-shifting testimony, contentions, and statements” of Inverness. (D.N. 39, PageID.405) Specifically, Barnett-Morgan claims that Inverness’s witnesses “contradict themselves, and each other, as to what Plaintiff is alleged to have done that warranted” her termination. (*Id.*) “[A]n employer’s changing rationale for making an adverse employment decision can be evidence of pretext.” *Cicero v. Borg-Warner Auto., Inc.*, 280 F.3d 579, 592 (6th Cir. 2002) (internal quotation omitted). But Inverness has consistently relied on the events of August 26, 2021—that Barnett-Morgan walked out of the meeting with Vega, said “I’m done,” cursed at Trombley, and left the building—to justify Barnett-Morgan’s termination. (*See, e.g.*, D.N. 32-

20, PageID.321; D.N. 39- 12, PageID.646–48) Moreover, Barnett-Morgan has not identified any specific inconsistencies that would support a finding of pretext. (See D.N. 39, PageID.405) Thus, Barnett-Morgan has not demonstrated a “changing rationale” sufficient to establish pretext here. *Cf. Cicero*, 280 F.3d at 592 (6th Cir. 2002) (finding a changing rationale supporting pretext where the employer first stated that it fired the plaintiff due to workplace changes, but then stated the termination was for poor performance).

Barnett-Morgan next contends that Inverness’s failure to investigate her complaints and termination is evidence of pretext. (D.N. 39, PageID.405–06) But the record shows that Inverness fully investigated these matters. For the incident involving Shirrmacher, Inverness required both Barnett-Morgan and Shirrmacher to write statements. (D.N. 32-11, PageID.288; D.N. 32-12, PageID.290) When Barnett-Morgan emailed Inverness’s HR department to make an additional complaint (D.N. 32-13, PageID.299), she was asked to “elaborate more on why [she] believe[d] . . . Shirrmacher [wa]s creating a hostile environment.” (D.N. 32-15, PageID.298) After Barnett-Morgan failed to do so (*id.*), HR again asked for “some examples of how [Shirrmacher] [wa]s creating a hostile work environment” and noted that they “ha[d] not received that complaint from anyone else.” (*Id.*, PageID.297) Barnett-Morgan did not provide any additional information. (D.N. 32-5, PageID.258–59) As a result, HR advised Barnett-Morgan that “if no

additional information c[ould] be provided, [Inverness would] consider th[e] matter closed.” (D.N. 32-15, PageID.296–97) Again, Barnett-Morgan did not provide additional information. (*See id.*) Inverness also investigated Barnett-Morgan’s termination: multiple Inverness employees provided statements during an internal investigation regarding Barnett-Morgan’s departure on August 26, 2021. (D.N. 32-17, PageID.313; D.N. 32-18, PageID.315; D.N. 32-19, PageID.318) In short, the record does not support Barnett-Morgan’s claim that Inverness failed to investigate.

Finally, Barnett-Morgan claims that Inverness “failed to take the steps that the company’s own policies required of it” in response to her alleged resignation, namely, that Inverness did not give an “exit interview” or provide “benefits/pay counseling.” (*See* D.N. 39, PageID.406) Barnett-Morgan also argues that she was written up at the same time as Walker and Newman, but that “only [Barnett-Morgan] was walked out, and only [Barnett-Morgan] was designated” on the “Do Not Hire” list. (*Id.*, PageID.407) But “[a]n employer’s failure to follow self-imposed regulations or procedures is generally insufficient to support a finding of pretext.” *Pelcha v. MW Bancorp, Inc.*, 988 F.3d 318, 329 (6th Cir. 2021) (quoting *Miles*, 946 F.3d at 896). And to show pretext based on disparate treatment, Barnett-Morgan must provide evidence that “employees outside the protected class[] were not disciplined even though they engaged in

substantially identical conduct to that which [Inverness] contends motivated its discipline [of Barnett- Morgan].” *See id.* at 328 (quoting *Miles*, 946 F.3d at 893) (applying standard in ADEA context). As discussed above in Part II.A.2, however, neither Walker nor Newman responded to the write- ups in a “substantially identical” manner as Barnett-Morgan. *See id.*

In sum, Barnett-Morgan has not produced sufficient evidence “from which the jury could reasonably reject [Inverness’s] explanation and infer that [Inverness] intentionally discriminated against h[er].” *Imwalle*, 515 F.3d at 545. As a result, Barnett-Morgan has failed to establish pretext, and summary judgment in favor of Inverness is warranted as to her race-discrimination claim. *See Carter*, 2018 WL 6268209, at \*5.

## **B. Retaliation**

“Before suing an employer under Title VII, an employee must file a charge with the EEOC” to exhaust his or her administrative remedies. *Yanick v. Kroger Co. of Michigan*, No. 23-1439, 2024 WL 1856680, at \*9 (6th Cir. Apr. 29, 2024) (citation omitted); *Younis v. Pinnacle Airlines, Inc.*, 610 F.3d 359, 361–63 (6th Cir. 2010). Generally, “a Title VII plaintiff cannot bring claims in a lawsuit that were not included in h[er] EEOC charge.” *Younis*, 610 F.3d at 361 (citations omitted). Charges must “(1) be verified, (2) sufficiently identify the parties and actions complained of, and (3) suggest that the employee

requests the agency to activate its machinery and remedial processes.” *Yanick*, 2024 WL 1856680, at \*9 (internal quotation omitted). Still, “because aggrieved employees—and not attorneys—usually file charges with the EEOC, their pro se complaints are construed liberally, so that courts may also consider claims that are reasonably related to or grow out of the factual allegations in the EEOC charge.” *Younis*, 610 F.3d at 362 (emphasis and citation omitted). In particular, “whe[n] facts related with respect to the charged claim would prompt the EEOC to investigate a different, uncharged claim, the plaintiff is not precluded from bringing suit on that claim.” *Id.* (quoting *Davis v. Sodexo*, 157 F.3d 460, 463 (6th Cir. 1998)).

Inverness argues that Barnett-Morgan’s retaliation claim fails because Barnett-Morgan’s “EEOC charge . . . [did not] check the box for retaliation[ and] included no mention of retaliation, nor any allegations giving rise to retaliation.” (D.N. 32-1, PageID.187) Barnett-Morgan responds that her retaliation claim “stems from the same underlying facts” as her discrimination charge and that “because all of the facts were presented, there is no harm from the absence of an ‘x’ in the retaliation box.” (D.N. 39, PageID.412) Barnett-Morgan also moves for leave to submit the EEOC’s record of Barnett-Morgan’s August 3, 2021 inquiry form. (D.N. 54) Barnett-Morgan argues that leave is appropriate because the form “inform[s] [Inverness’s] contention . . . that [Barnett-Morgan] did not raise retaliation as

an allegation to the EEOC.”<sup>8</sup> (*Id.*, PageID.814) Inverness opposes the motion, contending that it is untimely, an improper surreply, and that the inquiry form is irrelevant. (D.N. 57)

The Court concludes that Barnett-Morgan has failed to exhaust her administrative remedies for her retaliation claim. As to Barnett-Morgan’s August 3, 2021 inquiry, forms that do not “ask the EEOC to act or demand damages” are “purely informational” and are “prevent[ed] . . . from being a charge.” *Yanick*, 2024 WL 1856680, at \*9. Because Barnett- Morgan’s inquiry form did not ask the EEOC to act or demand damages (*see* D.N. 54-1), it is insufficient to support her retaliation claim. *See Yanick*, 2024 WL 1856680, at \*9. The Court will therefore deny Barnett-Morgan’s motion to supplement. (D.N. 54)

Barnett-Morgan’s EEOC charge is also insufficient. The charge states, in its entirety,

I was hired by Inverness Technologies, located in Fort Knox, KY, on or about July 31, 2017, as a Transitioning Counselor.

On or about August 2, 2021, while on vacation, I became aware that I was demoted from a Shift Lead to a Counselor. On or about August 21, 2021, I was terminated.

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<sup>8</sup> Barnett-Morgan does not argue that the inquiry form is relevant in any other respect. (*See generally* D.N. 54).

I believe I was discriminated against because of my race, Black, in violation of Title VII of the Civil Rights Act of 1964, as amended.

(D.N. 32-23, PageID.332) The charge does not mention that Barnett-Morgan made a complaint or engaged in any protected activity. (*Id.*) Moreover, Barnett-Morgan admits that the retaliation box was not checked on the charge. (See D.N. 39, PageID.412; *see also* D.N. 32-23, PageID.331) The charge therefore provides no basis to “prompt the EEOC to investigate” a retaliation claim. *Younis*, 610 F.3d at 362. Courts routinely dismiss Title VII claims for similar failures. *See, e.g., Pruitt v. Hazelwood Training Facility*, No. 3:17-cv-742-DJH-RSE, 2018 WL 5045213, at \*4 (W.D. Ky. Oct. 16, 2018) (dismissing the plaintiff’s Title VII claim due to her failure to exhaust administrative remedies); *see also Handlon v. Rite Aid Services, LLC*, 513 F. App’x 523, 528 (6th Cir. 2013) (finding that district court properly concluded that the plaintiff failed to exhaust her administrative remedies because she did not mention retaliation in her EEOC charge or amend the charge to include the retaliation claim).

In sum, the Court will grant Inverness’s motion for summary judgment as to Barnett-Morgan’s retaliation claim for failure to exhaust administrative remedies. *See Yanick*, 2024 WL 1856680, at \*9 (finding a failure to exhaust administrative remedies where the plaintiff’s charge “only checked the box for ‘disability’ discrimination,” and did not include “facts that

would put the EEOC . . . on notice that she intended to pursue a retaliation claim”).

### **III. CONCLUSION**

For the reasons set forth above, and the Court being otherwise sufficiently advised, it is hereby

**ORDERED** as follows:

(1) Inverness’s motion for summary judgment (D.N. 32) is **GRANTED**.

(2) Inverness’s motion to disregard (D.N. 46) is **DENIED**.

(3) Barnett-Morgan’s motion for leave to submit supplemental materials (D.N. 54) is **DENIED**.

(4) A separate Judgment will be entered this date.

June 27, 2025

Signed: David J. Hale,  
United States District Judge

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## APPENDIX D

### CHARGE OF DISCRIMINATION AND RELATED EEOC MATERIALS

|                                                                                                                                                                                                                                                                                                                                                                                                                                           |  |                                                                                                                                                   |                   |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|---------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| <small>EEOC Form 5 (11/19)</small><br><b>CHARGE OF DISCRIMINATION</b><br><small>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</small>                                                                                                                                                                                                           |  | Charge Presented To: Agency(ies) Charge No(s):<br><input type="checkbox"/> FEPA<br><input checked="" type="checkbox"/> EEOC <b>474-2021-00972</b> |                   |
| <b>KENTUCKY COMMISSION ON HUMAN RIGHTS</b><br><small>State or local Agency, if any</small> and EEOC                                                                                                                                                                                                                                                                                                                                       |  |                                                                                                                                                   |                   |
| Name (Indicate Mr., Ms., Mrs.):<br><b>MS. RENETE BARNETT-MORGAN</b>                                                                                                                                                                                                                                                                                                                                                                       |  | Home Phone<br><b>270-769-9809</b>                                                                                                                 | Year of Birth     |
| Street Address City, State and ZIP Code<br><b>1931 LAKEWOOD DR, ELIZABETHTOWN, KY 42701</b>                                                                                                                                                                                                                                                                                                                                               |  |                                                                                                                                                   |                   |
| Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)                                                                                                                                                                                                          |  |                                                                                                                                                   |                   |
| Name<br><b>INVERNESS TECHNOLOGIES FORT KNOX TRANSITIONAL ASSISTANCE P</b>                                                                                                                                                                                                                                                                                                                                                                 |  | No. Employees, Members<br><b>101 - 200</b>                                                                                                        | Phone No.         |
| Street Address City, State and ZIP Code<br><b>1600 SPEARHEAD DIV., FORT KNOX, KY 40122</b>                                                                                                                                                                                                                                                                                                                                                |  |                                                                                                                                                   |                   |
| Name<br><br>                                                                                                                                                                                                                                                                                                                                                                                                                              |  | No. Employees, Members<br><br>                                                                                                                    | Phone No.<br><br> |
| Street Address City, State and ZIP Code<br><br>                                                                                                                                                                                                                                                                                                                                                                                           |  |                                                                                                                                                   |                   |
| DISCRIMINATION BASED ON (Check appropriate box(es).)<br><input checked="" type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN<br><input type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION<br><input type="checkbox"/> OTHER (Specify) |  | DATE(S) DISCRIMINATION TOOK PLACE<br>Earliest    Latest<br><b>08-02-2021    08-21-2021</b><br><input type="checkbox"/> CONTINUING ACTION          |                   |
| <small>THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)).</small>                                                                                                                                                                                                                                                                                                                                                |  |                                                                                                                                                   |                   |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                         |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.<br>I declare under penalty of perjury that the above is true and correct.<br><br><div style="text-align: center;"> <b>Digitally signed by Renete Barnett-morgan on 12-03-2021 03:07 PM EST</b> </div> | NOTARY - When necessary for State and Local Agency Requirements<br><br>I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.<br>SIGNATURE OF COMPLAINANT<br><br>SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE<br><small>(month, day, year)</small> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

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|                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                   |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|
| <small>EEOC Form 5 (11/2/9)</small>                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                   |
| <b>CHARGE OF DISCRIMINATION</b><br><small>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</small>                                                                                                                                                                                                                                                                | Charge Presented To: Agency(ies) Charge No(s):<br><input type="checkbox"/> FEPA<br><input checked="" type="checkbox"/> EEOC <b>474-2021-00972</b> |
| <b>KENTUCKY COMMISSION ON HUMAN RIGHTS</b> and EEOC<br><small>State or local Agency, if any</small>                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                   |
| <p>I was hired by Inverness Technologies, located in Fort Knox, KY, on or about July 31, 2017, as a Transitioning Counselor.</p> <p>On or about August 2, 2021, while on vacation, I became aware that I was demoted from a Shift Lead to a Counselor. On or about August 21, 2021, I was terminated.</p> <p>I believe I was discriminated against because of my race, Black, in violation of Title VII of the Civil Rights Act of 1964, as amended.</p> |                                                                                                                                                   |

|                                                                                                                                                                                                                                                                              |                                                                                                                                             |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| <small>I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.</small> | <small>NOTARY - When necessary for State and Local Agency Requirements</small>                                                              |
| <small>I declare under penalty of perjury that the above is true and correct.</small>                                                                                                                                                                                        | <small>I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.</small> |
| <b>Digitally signed by Renete Barnett-morgan on 12-03-2021 03:07 PM EST</b>                                                                                                                                                                                                  | <small>SIGNATURE OF COMPLAINANT</small>                                                                                                     |
|                                                                                                                                                                                                                                                                              | <small>SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE<br/>(month, day, year)</small>                                                           |

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INVERNESS 000328

CP Enclosure with EEOC Form 5 (11/09)

**PRIVACY ACT STATEMENT:** Under the Privacy Act of 1974, Pub. Law 93-579, authority to request personal data and its uses are:

**1. FORM NUMBER/TITLE/DATE.** EEOC Form 5, Charge of Discrimination (11/09).

**2. AUTHORITY.** 42 U.S.C. 2000e-5(b), 29 U.S.C. 211, 29 U.S.C. 626, 42 U.S.C. 12117, 42 U.S.C. 2000ff-6.

**3. PRINCIPAL PURPOSES.** The purposes of a charge, taken on this form or otherwise reduced to writing (whether later recorded on this form or not) are, as applicable under the EEOC anti-discrimination statutes (EEOC statutes), to preserve private suit rights under the EEOC statutes, to invoke the EEOC's jurisdiction and, where dual-filing or referral arrangements exist, to begin state or local proceedings.

**4. ROUTINE USES.** This form is used to provide facts that may establish the existence of matters covered by the EEOC statutes (and as applicable, other federal, state or local laws). Information given will be used by staff to guide its mediation and investigation efforts and, as applicable, to determine, conciliate and litigate claims of unlawful discrimination. This form may be presented to or disclosed to other federal, state or local agencies as appropriate or necessary in carrying out EEOC's functions. A copy of this charge will ordinarily be sent to the respondent organization against which the charge is made.

**5. WHETHER DISCLOSURE IS MANDATORY; EFFECT OF NOT GIVING INFORMATION.** Charges must be reduced to writing and should identify the charging and responding parties and the actions or policies complained of. Without a written charge, EEOC will ordinarily not act on the complaint. Charges under Title VII, the ADA or GINA must be sworn to or affirmed (either by using this form or by presenting a notarized statement or unsworn declaration under penalty of perjury); charges under the ADEA should ordinarily be signed. Charges may be clarified or amplified later by amendment. It is not mandatory that this form be used to make a charge.

#### NOTICE OF RIGHT TO REQUEST SUBSTANTIAL WEIGHT REVIEW

Charges filed at a state or local Fair Employment Practices Agency (FEPA) that dual-files charges with EEOC will ordinarily be handled first by the FEPA. Some charges filed at EEOC may also be first handled by a FEPA under worksharing agreements. You will be told which agency will handle your charge. When the FEPA is the first to handle the charge, it will notify you of its final resolution of the matter. Then, if you wish EEOC to give Substantial Weight Review to the FEPA's final findings, you must ask us in writing to do so within 15 days of your receipt of its findings. Otherwise, we will ordinarily adopt the FEPA's finding and close our file on the charge.

#### NOTICE OF NON-RETALIATION REQUIREMENTS

Please **notify** EEOC or the state or local agency where you filed your charge **if retaliation is taken against you or others** who oppose discrimination or cooperate in any investigation or lawsuit concerning this charge. Under Section 704(a) of Title VII, Section 4(d) of the ADEA, Section 503(a) of the ADA and Section 207(f) of GINA, it is unlawful for an *employer* to discriminate against present or former employees or job applicants, for an *employment agency* to discriminate against anyone, or for a *union* to discriminate against its members or membership applicants, because they have opposed any practice made unlawful by the statutes, or because they have made a charge, testified, assisted, or participated in any manner in an

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investigation, proceeding, or hearing under the laws. The Equal Pay Act has similar provisions and Section 503(b) of the ADA prohibits coercion, intimidation, threats or interference with anyone for exercising or enjoying, or aiding or encouraging others in their exercise or enjoyment of, rights under the Act.

**APPENDIX E**  
**Barnett-Morgan District Court Affidavit**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION  
Case No. 3:22-cv-00301-DJH-CHL

|                              |   |  |
|------------------------------|---|--|
| RENETE BARNETT-MORGAN,       | ) |  |
|                              | ) |  |
| Plaintiff,                   | ) |  |
|                              | ) |  |
|                              | ) |  |
| INVERESS TECHNOLOGIES, INC., | ) |  |
|                              | ) |  |
| Defendant.                   | ) |  |

**AFFIDAVIT OF RENETE BARNETT-**  
**MORGAN**

Affiant Renete Barnett-Morgan, being first duly sworn, testifies as follows:

1. My name is Renete Barnett-Morgan.
2. I have personal knowledge of the matters averred herein.
3. I am a Black woman.
4. I began working for Inverness Technologies, Inc. on July 31, 2017.
5. I started as a Counselor in the Virtual Call center, and eventually rose to the Shift Lead position in 2018. In that role, I was my superior Robert Blankenship's eyes and ears when he was

not physically present. I kept performing the functions of a Counselor while I did this.

6. Robert Blankenship also told me that Shift Leads did not have the authority or freedom to discipline those under them, and that Shift Leads could not provide employees with expectations of behavior. He made it clear that this was pursuant to guidance from management. I also understood that these limits were explained to the other Shift Leads, who were also persons of color.

7. To management's directives, Felicia Ingram – a Black woman in the role of Second Shift Team Lead – was removed for enforcing company policy. Inverness labeled her as a bully and removed her from the Team Lead position.

8. In 2021, I was removed from the Third Shift lead position while I was on vacation, and was replaced by Tammy Croft. Tammy Croft is white. I learned of my demotion when Tara Ferguson – a colleague – texted me while I was on vacation and told me to check my email. I was stunned and hurt by the news of my demotion.

9. Tammy Croft was very inexperienced and had little knowledge of the Third Shift employees at the Virtual Center. She also had not worked as a counselor for two years, which meant she did not really know what counseling looked like at that time. I could not understand how she could effectively lead us when she did not know how we did our jobs.

10. All of these differences between me and Tammy Croft led me to believe that the decision was motivated by my race, leading me to lodge a complaint with the EEOC. I did not hide this from anyone, as I believed I had no reason to hide my complaint of race discrimination.

11. My belief that Tammy replacing me as Shift Lead was discriminatory got even stronger when I found out that Tammy was given full authority to discipline employees, as well as create and enforce expectations for their behavior. This was the opposite of the management directive that I and the other persons of color that held Shift Lead positions in the past had to work within.

12. To make it worse, I had to sign a document that acknowledged that I knew that Tammy Croft had this power.

13. I made the decision to oppose what I believed in good faith to be race discrimination against me and other non-white workers.

14. I was careful to outline my complaints with poise and professionalism, and I shared the concerns with my co-workers, as I believe that they also had an interest in an equitable, fair workplace. I shared these concerns in my workplace with my co-workers, including Kenneisha Walker, a white woman.

15. I am aware that Tammy Croft heard our conversations, and I am aware that she was upset by my feelings about her installation into the job from which I was involuntarily demoted.

16. I am aware that Inverness has alleged that my job duties did not significantly change after my demotion, such that it was a “de minimis” change in work circumstances. This is not true. I had previously been able to assist, guide, and coach other counselors, and I drew a lot of job satisfaction and pride from doing that job well. After my demotion, I was threatened and punished for helping co-workers, as it made Tammy insecure if my co-workers came to me for leadership.

17. Not very long after I alleged discrimination on the basis of race in the workplace and made first contact with the Equal Employment Opportunity Commission – with whom I worked collaboratively on my Charge – on August 6, 2021, Francis Schirmacher, who is a white woman, verbally attacked me for doing my job. I asked her a simple question that was ordinary in my job as a Counselor, and she responded angrily. I immediately reported this to Tammy Croft, my team lead.

18. I knew that Tammy Croft and Francis Schirmacher already had a friendly relationship at the time, and that caused me to be very concerned about the impact that relationship might have on how my complaint was handled. Worried about that, I also made a report to Human Resources. This was a continuation of the race bias and favoritism I had been witnessing and experiencing.

19. When I made my complaint to Human Resources, I explained that Francis Schirrmacher was creating a hostile work environment for me, and that I feared retaliation was a factor in my treatment as well. I made this complaint to Human Resources on August 6, 2021.

20. After several days, Human Resources responded and assured me they were investigating. I waited to see some sort of sign that this was true (such as an indication that they were talking to witnesses or observing communications in the office). I saw no indication of a real investigation.

21. Instead, I eventually got a question from Jon Peters asking for more incidents of hostile work environment. I had already told Human Resources about a very troubling incident, though, and I did not understand whether there was a minimum level of hostilities that had to be reached before the company would do anything. Meanwhile, I was aware that the other members of my work group were not being asked for their information. This enhanced my fear of retaliation, and I told Human Resources so.

22. On August 23, Jon Peters told me that the company was closing my complaint because I did not have more incidents of harassment from Francis to tell him about. I was given no assurances about protection from retaliation.

23. Instead, three days later, I was pulled into a meeting by Crystal Vega and presented with a write-up that warned that I would be terminated

in a month if I continued to be seen as “insubordinate” by Tammy Croft.

24. The write-up confirmed that I had not violated any company policy, and that I was being criticized because I had displeased the person I had complained about to Human Resources.

25. I am aware that Crystal Vega has testified that I had “pissed off” body language and facial expressions in our August 26, 2021 meeting. That is not true.

26. As a third shift worker, I entered the early-morning meeting Crystal required me to attend with very little energy, as it was held at the end of my work day.

27. I was outwardly calm and professional during the meeting.

28. Internally, though, I felt the pain of being wrongfully accused and targeted. By that time, I had been scrutinized, criticized, maligned, and forced to endure workplace bullying and harassment. I had warned management that I believed I was going to be targeted even more, and as the meeting unfolded, I realized that was exactly what was happening.

29. Crystal put the written discipline in my face, and demanded, “Explain this?” I barely had a chance to read it, but I recall that it was accusing me of insubordination for switching some job duties with another counselor and abusing the break policy.

30. I was stunned that Crystal had already drafted the document, given that she was verbally challenging me to explain it. All of my prior supervisors had developed the practice of asking people to explain or justify something before they were written up for it, not after.

31. I found it incredible that, just as I had predicted in my emails to Human Resources, Tammy had ratcheted up her scrutiny and malignment of me, and so soon after I expressed my fears to management.

32. I began to explain to Crystal how it had come to be that we needed to cover all of the job duties, and Tammy had been making the schedule in a way that had some of us working on things that those people could not cover for various reasons, even though we had tried to alert Tammy.

33. Crystal snapped, "That's not true."

34. Crystal tried to get me to sign the document. I wanted to cry, though. All I wanted to do was leave to be alone and have my emotional reaction.

35. Crystal asked me if I had anything else to say. She was watching me very closely, leaning forward a little and staring at me hard.

36. I drew a deep breath, and I said, in the same low, calm voice, in response to her question, "I'm done." I paused and then I stood up.

37. I started to leave the room, but I drew one more breath, trying not to cry. Calmly, and in a

low voice, I said to Crystal, “You are telling me I’m insubordinate and making it like I’m a bad counselor. But everybody that has come through on third shift, I trained. I trained Mike, and you made him the second shift supervisor. And you are making it out like I’m this horrible counselor because of a mishap where I did the pre-separation brief. But we got the job done, and it wasn’t to be insubordinate to Tammy or anything like that. It was just -- she made a schedule that week that she gave the schedule, and we weren’t sure, did she keep it that same way? Because she never sent it back to us. You are making it out like I’m this – I’m being *insubordinate* ... but I’ve trained all of these people who have moved up and who are excellent counselors.” Crystal said nothing.

38. Still trying not to cry, and feeling my face getting warmer with humiliation, I looked at her, and I said, “It’s crazy that when I and Felicia and Melanie were in shift lead positions, and people would not listen or do anything, they weren’t being written up.”

39. Felicia, Melanie, and I are all Black women who have served as shift leads. In my prior years of work for Inverness, they and I had been shift leads, and management let our white subordinates walk all over us.

40. Crystal’s lips tightened, and she did not respond right away. And she finally responded, “Well, if you are so great, why didn’t you apply for the CIM position?” I told her, wearily, “Because I

didn't want that position. And now, I'm done." And I walked out of the room. I went to sit back at my seat to finish what I was doing before she came to get me, wishing it was time to go home so I could have my emotional reaction in privacy.

41. I am a person who cries when I feel frustrated, misunderstood, or helpless. I felt all of those things right then.

42. Kenneisha was sitting at her cubicle, and I considered telling her what they were doing to me, but my thoughts were a little too chaotic to talk with her right away.

43. Within a few seconds, though, Randy Trombley came over to my cubicle.

44. Randy's a man who is much larger than I am. He hung his arms over the cubicle divider and leaned in toward me, and he said, "Crystal told me to come get your CAC card."

45. I was stunned. I had been at that workplace for years at that point, and the only situation where a manager would have told someone to retrieve another employee's CAC card was if they were being fired.

46. My jaw dropped open for a second, and I asked Randy, "So I'm fucking fired?" My voice was even quieter than it had been in my conversation with Crystal, which is an affect I experience when I am scared or shocked.

47. Randy said, "I don't know. She just told me to come get your CAC card."

48. I did not feel as though I had a choice. I was being fired. I felt absolutely awful.

49. I gathered my stuff and as I walked out the door, I handed Randy my CAC card. At the time, the COVID-19 pandemic was still ongoing, so we walked some distance apart. Because of that, my CAC card fell to the floor. Randy then picked it up. I walked out the doorway and took the stairs to leave the building. I was afraid that if I did not, Crystal was going to call the base police and have me arrested.

50. I did not take anything but my purse with me.

51. I did not have a coat with me, let alone on my body. When I was fired, it was August, and it was very hot outside – even in the morning.

52. I contacted Kenneisha to get my stuff out of my desk. Kenneisha later told me that Darrell Gennett had immediately come to my desk and taken all of my belongings out of the desk. As I understand it, Kenneisha had to yell at Darrell to get my stuff back. That made it even clearer to me that I had been fired, as opposed to just being sent home for the rest of my shift. They only collect up your belongings if you are being let go.

53. Kenneisha convinced Darrell to let her take my belongings to a place where I could get them. When people are terminated, they are not allowed back in the building. When people resign, they get to serve out their two weeks. And in that time, their desks are not cleaned out by other people.

54. Afterwards, I waited a while to hear from Inverness whether it had corrected Crystal's decision (as it had seemed impulsive and unwise, in light of how badly our service members needed our services, and in light of the difficulty we had experienced finding good staff). After a short time, I reached out to Jon Peters in Human Resources to ask what the grounds for my termination were. He explained to me that they received reports from employees that I said I was "done," stormed out of the meeting room, cleaned out my desk, cursed at Randy Trombley, threw my CAC card at him, shoved him, and left. None of this was true. Within 24 hours of making this inquiry, I was locked out of my Inverness email account.

55. I am aware that there has been discussion between Liz LeMonds and Jon Peters about the inconsistency of whether I quit or was terminated, and that they believe that someone is lying. I never received any follow up on that, and I never got the impression that anyone at Inverness was trying to figure out who was lying.

56. I am also aware that there has been some suggestion from Inverness that I am able to speak for Kelley Jeans or describe her mindset, attitudes, or reasoning on topics related to Inverness. That is not true. I cannot speak for Kelley Jeans, and I do not have the ability to guess what she would say if she testified. I can only speak for myself and what I can testify to from my first hand experience, including my good faith beliefs that prompted my complaints.

57. In the time after I was ejected from my job, I received no questions, inquiries, or other signs of investigation that would indicate that the company was investigating any of the complaints I transmitted to it.

58. I am aware that Inverness has claimed that it had no notice of the interconnected nature between my complaints of race discrimination and my fear of retaliation. I do not believe that is a genuine claim of ignorance, since I very clearly outlined the manner in which Tammy targeted me after I complained of the hostile work environment she fostered.

59. If anyone had told me that they did not understand what I meant by being “targeted” or fearing “retaliation,” I would have told them in whatever detail was necessary. Inverness never expressed any such confusion to me.

60. I was never contacted to complete an exit interview or to have anyone review with me my employment-ending benefits and pay/time card responsibilities and rights. I am not aware of any exception to the handbook’s policies that justified the company failing to follow its own rules in that regard.

Affiant further sayeth naught.

Renette Barnett-Morgan

83a

COMMONWEALTH OF KENTUCKY )  
 )  
COUNTY OF JEFFERSON )

Subscribed and sworn to before me by  
Renete Barnett-Morgan this 12 day of  
March 2024.

My Commission Expires: 3-6-2027

Robyn Smith  
Notary Public, Commonwealth at Large

SEAL

**APPENDIX F**  
**RELEVANT STATUTORY PROVISIONS**

**42 U.S.C. § 2000e-2(a)**

(a) Employer practices. It shall be an unlawful employment practice for an employer—

\* \* \*

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

**42 U.S.C. § 2000e-2(m)** Impermissible consideration of race, color, religion, sex, or national origin in employment practices

Except as otherwise provided in this subchapter, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.

**42 U.S.C. § 2000e-3(a)** - Discrimination for making charges, testifying, assisting, or participating in enforcement proceedings

It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management

committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

**42 U.S.C. § 2000e-5(e)(1)**

(e) Time for filing charges; time for service of notice of charge on respondent; filing of charge by Commission with State or local agency; seniority system

(1) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the

alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.