No. 24-427

In the Supreme Court of the United States

RONALD HITTLE,

Petitioner,

v.

CITY OF STOCKTON, ET AL.,

Respondents.

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

BRIEF OF THE MUSLIM PUBLIC AFFAIRS COUNCIL AS AMICUS CURIAE SUPPORTING PETITIONER

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INTEREST OF AMICUS CURIAE[1]

The Muslim Public Affairs Council is a nonprofit public affairs organization that has worked since its founding in 1988 to enhance American pluralism, improve understanding, and speak out on policies that affect American Muslims. Through engaging our government, media, and communities, MPAC leads the way in bolstering more nuanced portrayals of Muslims in American society and partnering with diverse communities to encourage civic responsibility.

MPAC submits this brief to highlight the importance of applying the correct summary judgment standard in Title VII cases. Religious minorities rely on Title VII to protect them from discrimination in the workplace. As now applied by many lower courts, the *McDonnell Douglas* test undermines Title VII's legal protections, preventing meritorious claims from reaching juries and divesting plaintiffs of the protections Title VII affords. As MPAC's brief explains, that approach strays from *McDonnell Douglas*'s original intent, which was to benefit plaintiffs who lack direct prima facie evidence of discriminatory intent. This Court should grant certiorari to correct the lower

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[1] No party's counsel authored this brief in whole or in part, no party or party's counsel contributed money intended to fund preparing or submitting this brief, and no person other than amicus curiae or its counsel contributed money intended to fund preparing or submitting this brief. All parties' counsel of record were notified of amicus's intent to file this brief at least ten days before the filing deadline.

courts' misapplication of *McDonnell Douglas* and ensure that lower courts apply Title VII as written.

INTRODUCTION AND SUMMARY OF ARGUEMENT

In *McDonnell Douglas Corp.* v. *Green*, this Court outlined a three-step framework for courts deciding Title VII employment discrimination claims. 411 U.S. 792 (1973). As originally applied, that framework was meant as a helpful tool for victims of employment discrimination. It ensured that even those with little direct evidence of discriminatory intent had the opportunity to rebut their employer's excuses.

At the time, the framework made sense. Disproving an employer's alternative reasons comported with Title VII's causation requirement, and Title VII cases were decided by judges in bench trials, so judges needed a tool to ensure they considered all relevant facts bearing on the causation question. But the legal context for deciding such cases evolved. Congress relaxed Title VII's causation standard and authorized jury trials. The legal conditions in which *McDonnell Douglas* originated disappeared. Yet the test stayed, and courts transplanted the *McDonnell Douglas* test to the very different context of ruling on motions for summary judgment.

As a result of its overstay, *McDonnell Douglas* has mutated far from its original form and become increasingly at odds with Title VII's text. Despite the amendment that relaxed Title VII's causation standard, many circuits interpret *McDonnell Douglas* as requiring claimants to disprove any reason the employer claims motivated its decision. What's more, lower courts use *McDonnell Douglas* to dispense with Title

VII claims at summary judgment, even though contestable claims should now reach juries. As a result, *McDonnell Douglas* is often used in a way that blatantly contradicts the summary judgment standard.

Once designed to help plaintiffs, *McDonnell Douglas* now hurts them. Under the Ninth Circuit's approach, a plaintiff can enter the courtroom armed with evidence of overt discriminatory animus and yet still leave the courtroom empty-handed. Muslims and other religious minorities have suffered from this warped application of *McDonnell Douglas*.

Title VII claimants should not be forced to prove elements not found in the statute. A proper approach to Title VII summary judgment motions would not require claimants to run the *McDonnell Douglas* gauntlet. Instead, courts should simply require claimants to provide enough evidence from which a reasonable jury could find that their protected characteristic was a motivating factor in the employer's decision. That is all Title VII asks, so that is all the summary judgment stage should require. This Court should grant certiorari to restore to victims of employment discrimination the protection that Congress has provided to them.

ARGUMENT

I. The *McDonnell Douglas* test arose in a very different context and was originally intended to benefit plaintiffs.

As applied by the Ninth Circuit and other lower courts in cases like Hittle's, the *McDonnell Douglas* burden-shifting framework operates as a formidable hurdle that plaintiffs must clear to survive summary judgment. According to these courts, plaintiffs' Title VII claims cannot even go to trial unless plaintiffs can

show that their employers' asserted reasons for taking adverse employment action against them are mere pretexts for discrimination. As originally applied, however, *McDonnell Douglas* burden shifting was never meant to prevent claims from going to trial. Rather, the framework was meant to help plaintiffs prove discrimination at trial when their employer attempts to rebut their prima facie case by asserting nondiscriminatory reasons for its actions.

A. *McDonnell Douglas* burden shifting emerged to help plaintiffs make their case.

In *McDonnell Douglas Corp.* v. *Green*, this Court sought to ensure that plaintiffs with "subtle" evidence of discrimination got a fair hearing. 411 U.S. at 801. It did so by setting out a three-step burden-shifting framework. *Id.* at 802. If a plaintiff can make a "prima facia case" of discrimination (which, in Green's case, required only that he show that he belonged to a racial minority and that, despite being qualified, he was passed over for a job for which the employer continued to seek applicants), the burden shifts to the employer to "articulate some legitimate, nondiscriminatory reason" for its actions. *Id.* at 801–03. If the employer offers such evidence, the burden shifts back to the plaintiff who then has the chance to show that the employer's reason was mere "pretext." *Id.* at 803–04. The test was designed to guarantee Title VII claimants "a full and fair opportunity" to show that their employer's assertions were nothing more than a "coverup" for discrimination. *Id.* at 805.

That purpose is illustrated by the *McDonnell Douglas* case itself. Former McDonnell Douglas employee Percy Green believed the firm had

discriminated against him because of his race. *Green* v. *McDonnell Douglas Corp.*, 318 F. Supp. 846, 847 (E.D. Mo. 1970). Green was laid off in the course of a general reduction in the size of McDonnell Douglas's workforce. *McDonnell Douglas*, 411 U.S. at 794. He staged a protest by blocking access to McDonnell Douglas factory, was arrested, pleaded guilty, and received a fine. *Green*, 318 F. Supp. at 849. McDonnell Douglas said it refused to rehire Green because he had staged an "illegal" protest in front of a company plant. *McDonnell Douglas*, 411 U.S. at 797.

Green's prima facia case of discrimination was thin. He showed only that he belonged to a racial minority, that he was qualified for the job, and that he was denied the position while McDonnell Douglas continued to seek new employees. *Id.* at 802. Meanwhile, this Court acknowledged that McDonnell Douglas's proffered reason was "justifiabl[e]." *Ibid.* Even so, the Court held that Green's allegations, squared against McDonnell Douglas's proffered reason, merely constituted "opposing factual contentions." *Ibid.* Given that dispute, the Court thought Title VII's "abundantly clear" text mandated that Green be allowed the opportunity to respond to the company's explanation with proof that the decision was still discriminatory. *Id.* at 800–01.

Thus, as originally intended, *McDonnell Douglas*'s burden-shifting framework was meant to ensure Green a fair hearing on remand despite his lack of direct evidence of discriminatory intent. The Court crafted the framework as a "procedural device" meant to "establish an order of proof and production," not set out rigid "legal rules." *St. Mary's Honor Ctr.* v. *Hicks*, 509 U.S. 502, 521 (1993). Far from seeking to add to

plaintiffs' burden, the framework was "no doubt motivated" by the goal of helping plaintiffs thwarted by "judicial reluctance" to rule against employers. *McNellis* v. *Douglas Cnty. Sch. Dist.*, 116 F.4th 1122, 1144 (10th Cir. 2024) (Hartz, J., concurring).

In subsequent cases, this Court has repeatedly confirmed that *McDonnell Douglas* burden shifting was "designed to assure that the plaintiff [has] his day in court," even when smoking-gun evidence was absent. See *Trans World Airlines, Inc.* v. *Thurston*, 469 U.S. 111, 121 (1985) (alteration in original) (internal quotation marks and citation omitted). As the Court has explained, the three-step test was not meant to be invoked by a defendant-employer seeking to use it as a liability shield. Nor was it "intended to be rigid, mechanized, or ritualistic." *U.S. Postal Serv. Bd. of Governors* v. *Aikens*, 460 U.S. 711, 715 (1983) (citation omitted). "Rather, it is merely a sensible, orderly way to evaluate the evidence in light of common experience as it bears on the critical question of discrimination." *Ibid.* (citation omitted).

Many lower courts, too, recognize the *McDonnell Dougals* framework's "plaintiff-friendly" design. *Wells* v. *Colo. Dept. of Transp.*, 325 F.3d 1205, 1224 (10th Cir. 2003) (Hartz, J., concurring). In contrast to the Ninth Circuit's approach in Hittle's case, some courts apply *McDonnell Douglas* to render "the plaintiff's task somewhat easier" by making the employer's proffered reasons available to rebut. *Wright* v. *Southland Corp.*, 187 F.3d 1287, 1291 (11th Cir. 1999). Those courts do not impose *McDonnell Douglas* as a legal hurdle that Title VII religious discrimination claims must surpass. Rather, if a plaintiff shows a genuine issue of material fact, the trier of fact must decide the

ultimate factual question: "whether the [defendant's action] was discriminatory." *Aikens*, 460 U.S. at 714–15.

B. Since *McDonnell Douglas* was decided, Title VII has been amended to make even clearer that the case's burden-shifting framework should not be turned against plaintiffs.

As originally enacted, Title VII provided that employers would be liable when they discharge an employee "because of" a protected characteristic. 42 U.S.C. § 2000(e)-2(a)(1). That language established a but-for causation test: that is, the causation standard would be met if, but for the employee's protected characteristic, such as religion, the employee would still have a job. See *University of Tex. Southwestern Medical Center* v. *Nassar*, 570 U.S. 338, 350 (2013). This causation standard is not difficult to satisfy. There can be multiple but-for causes, and an illegitimate factor need be only one. For example, if an employer sets a stricter performance standard for women and fires a female employee for failing to meet that goal, she would still have a job if she had performed better or if she had not been a woman. Both factors are but-for causes, so the employer would be in violation of Title VII under this "sweeping standard." *Bostock* v. *Clayton County*, 590 U.S. 644, 656 (2020).

In 1991, nearly two decades after *McDonnell Douglas*, Congress amended Title VII, further "strengthen[ing] existing protections and remedies" for victims of discrimination. H.R. Rep. No. 40(I), 102d

Cong., 1st Sess. 4 (1991). The amendment expanded protections for plaintiffs in two key ways.

First, Congress added a right to jury trial for plaintiffs seeking damages. Doing so allowed plaintiffs to avail themselves of the "cornerstone" of our civil justice system in employment discrimination cases, *id.* at 72, and to avoid "judicial reluctance" to find employers were intentionally discriminating. *McNellis*, 116 F.4th at 1144 (Hartz, J., concurring). It also meant religious discrimination claims would no longer typically be resolved by judges in bench trials, as in *McDonnell Douglas*. Instead, cases would need to go to the jury unless, applying traditional summary judgment standards, the court concludes that, taking all evidence "in the light most favorable to the nonmoving party," *Scott* v. *Harris*, 550 U.S. 372, 380 (2007), no "reasonable jury could return a verdict for the nonmoving party." *Anderson* v. *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

Second, acknowledging that almost every antidiscrimination action would involve multiple motives, Congress relaxed the causation standard, providing that a protected characteristic need be only "a motivating factor" for an adverse employment action, "even though other factors also motivated the practice." 42 U.S.C. § 2000e-2(m). With this amendment, Title VII no longer requires "plaintiffs to establish more than mixed motives." *Walton* v. *Powell*, 821 F.3d 1204, 1211 (10th Cir. 2016) (Gorsuch, J.).

Under this "more forgiving standard," employees need not show their protected characteristic was the sole but-for cause or even the primary motivation for their dismissal; if it motivated the decision even partly, the employer is liable. *Bostock*, 590 U.S. at 657. Thus, if an employer offers permissible reasons that it

claims motivated its decision, the upshot of the 1991 amendment is that it shouldn't be the employee's burden to negate those reasons. Even if the employer's proffered reasons are credited, the jury must still decide whether the adverse employment action was *also* motivated by discrimination.

No provision of Title VII suggests that summary judgment should be conducted differently from the standard approach. This Court should "construe Title VII's silence as exactly that: silence." *EEOC* v. *Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 774 (2015). Nor do the origins of *McDonnell Douglas* or the history of Title VII suggest that plaintiffs should face a higher burden at summary judgment. Both suggest quite the opposite. When an employer moves for summary judgment on a Title VII claim, employees should have a clear path to trial. Title VII's text establishes a low causation bar for liability, and the norms of summary judgment further lower that bar. Employees need not definitively prove causation but only show that a reasonable jury could agree.

II. *McDonnell Douglas* burden shifting has strayed from its plaintiff-friendly origins and Title VII's text.

As now applied by the Ninth Circuit and other lower courts, *McDonnell Douglas* is a far cry from its original plaintiff-friendly rule. After nearly 50 years of doctrinal developments, statutory amendments, and judicial reconstructions, what began as a procedure intended to assist plaintiffs in bench trials became "a collection of distinct doctrinal pigeonholes" that prevent plaintiffs from reaching a jury. *Tynes* v. *Florida Dep't*

of Juv. Just., 88 F.4th 939, 952–53 (2023) (Newsom, J., concurring).

When *McDonnell Douglas* was decided, its burden-shifting framework applied only in a narrow context: "trial court judges sitting as finders of fact" were its sole users. See Sandra F. Sperino, *Beyond* McDonnell Douglas, 34 Berkeley J. Emp. & Lab. L. 257, 262 (2013). Because the three-step framework was not designed for summary judgment, it "disregards" the rules that govern summary judgment and "obscures" the ultimate question: "whether an employer discriminated against its employee because of a protected characteristic." *Tynes*, 88 F.4th at 954 (Newsom, J., concurring) (internal quotation marks omitted).

To begin, the *McDonnell Douglas* framework wrongly grants credence to the allegedly "legitimate, nondiscriminatory reason" for the adverse employment practice. *McDonnell Douglas*, 411 U.S. at 802. After the plaintiff makes his prima facie case, the burden-shifting framework asks the employer to "articulate" a proper reason for the termination. *Ibid.* A reasonable jury might find that the proffered reason isn't credible. After all, credibility determinations "are jury functions, not those of a judge." *Anderson*, 477 U.S. at 255. But *McDonnell Douglas* "does not allow a judge at summary judgment to completely discount the employer's reason in most cases, even if" a reasonable jury would. Sandra F. Sperino, *Irreconcilable:* McDonnell Douglas *and Summary Judgment*, 102 N. Car. L. Rev. 459, 472 (2024). Rather, the burden-shifting test requires judges to give the employer's proffered reasons "the legal meaning of rebutting" the employee's prima facie case. *Id.* at 472. Granting automatic credibility to the moving party's version of the facts flouts

Rule 56's instruction to view the facts in "the light most favorable to the nonmoving party." *Scott*, 550 U.S. at 380. Worse yet, it makes the "error" of deferring "to the views of an alleged discriminator." *Students for Fair Admissions, Inc.* v. *President & Fellows of Harvard Coll.*, 600 U.S. 181, 256 (2023) (Thomas, J., concurring).

McDonnell Douglas then compounds this error, requiring employees to disprove something that the employer has not even proven. To survive *McDonnell Douglas* burden shifting, employees bear the burden of showing that the "stated reason" for their injury "was in fact pretext." *McDonnell Douglas*, 411 U.S. at 804. But Title VII nowhere requires plaintiffs to prove that their protected characteristic is the only reason for the termination. To the contrary, Title VII expressly recognizes that "other factors" may have "motivated the practice," and holds the employer liable so long as intent to discriminate was a motivating factor. 42 U.S.C. § 2000(e)-2(m). The mere fact that an employer has asserted one legitimate motivating reason does not preclude some other illegitimate reason from also motivating the decision. Both can be motivating, as the text of Title VII explicitly states, so the employer "cannot avoid liability just by citing some *other* factor that contributed." *Bostock*, 590 U.S. at 656 (emphasis in original). As applied by the Ninth Circuit, *McDonnell Douglas*'s pretext step thus "impose[s] a new requirement on a Title VII claimant, so that the law as applied demands something more of her than the law as written." *Muldrow* v. *City of St. Louis*, 601 U.S. 346, 355 (2024).

A proper summary judgment analysis of a Title VII status-based discrimination claim should simply ask

whether a reasonable jury could agree with the employee's explanation and find that the employee's protected status even partially motivated the employer's decision. If the answer is yes, the issue should be for the jury to decide. The Ninth Circuit's application of *McDonnell Douglas* instead asks if the employee has disproved what the employer has not even proved. What this Court designed as a "tool for assessing claims" has morphed into a shield for employers that finds no basis in Title VII's text. *Comcast Corp.* v. *Nat'l Ass'n of African Am.-Owned Media*, 589 U.S. 327, 340 (2020).

III. This Court's precedents make clear that the Ninth Circuit's *McDonnell Douglas* analysis is wrong.

As the legal landscape has shifted, this Court and others have repeatedly flagged how *McDonnell Douglas*'s framework has gone awry, but to no avail. As early as 1983, in *U.S. Postal Service Board of Governors* v. *Aikens*, this Court held that when an employer offers a nondiscriminatory reason after failing to persuade the court to dismiss the action for lack of a prima facie case, the *McDonnell Douglas* framework "drops from the case," leaving only the ultimate factual question of whether the employer in fact discriminated. *Aikens*, 460 U.S. at 715. Burden shifting was being overused to such an extent that the *Aikens* court specifically warned courts against "evad[ing] the ultimate question of discrimination *vel non*." *Id.* at 714. Hittle's case and many others show that the Court's holding in *Aikens* has not been heeded.

Likewise, this Court has also noted the mismatch that arises from applying *McDonnell Douglas* after the changes to Title VII's causation standards.

See *Comcast*, 589 U.S. at 340 ("Because *McDonnell Douglas* arose in a context where but-for causation was the undisputed test, it did not address causation standards."). Despite this major statutory shift, courts continue to apply *McDonnell Douglas* in much the same way they did before Congress amended Title VII. See Hon. Timothy M. Tymkovich, *The Problem with Pretext*, 85 Denv. L. Rev. 503, 510–11 (2008).

Again and again, this Court has reiterated that adhering to the text of Title VII is essential. See *Groff* v. *DeJoy*, 600 U.S. 447, 468 (2023) (holding that the Court's interpretation must "ultimately heed[] what [Title VII] actually says"); *Bostock*, 590 U.S. at 653 (holding that "only the written word" of Title VII "is the law"); *Muldrow*, 601 U.S. at 358 (holding that "policy objections cannot override Title VII's text"); *Abercrombie*, 575 U.S. at 774 (holding that the Court will not "add words to" Title VII to achieve a "desirable result"). Judicially crafted extra-textual tests have all too commonly undercut Title VII's protections. These judicial creations "lead[] courts to pay insufficient attention to what the actual text of Title VII means." *Groff*, 600 U.S. at 471. Here, too, courts have "compel[led] workers to make a showing that the statutory text does not require." *Muldrow*, 601 U.S. at 356. Only this Court can correct the lower courts' rewriting of Title VII.

IV. The Ninth Circuit's misapplication of *McDonnell Douglas* especially harms religious minority claimants.

Despite *McDonnell Douglas*'s plaintiff-friendly beginning, many lower courts' rigid application of its framework has come at great cost to plaintiffs—particularly religious minority plaintiffs. In contrast to tort

cases and contract cases, where summary judgment is granted in sixty-one and fifty-nine percent of cases, summary judgment is granted in employment discrimination cases seventy-seven percent of the time. Taylor Gamm, *The Straw That Breaks the Camel's Back: A Final Argument for the Demise of the* McDonnell Douglas *Framework*, 86 U. Cin. L. Rev. 287, 296 (2018). Muslims and other religious minorities are among the groups most burdened by courts' misapplication of *McDonnell Douglas*, both because they are among those who most rely on Title VII's protections and because the framework is an especially odd fit for religious discrimination cases.

In practice, the Ninth Circuit's approach to the *McDonnell Douglas* framework results in courts deferring to employers' business judgment rather than applying Title VII as written. As a result, lower courts following that approach routinely overlook or shrug off clear evidence of religious animus.

Take the case of Mohammad Sattar. Sattar was denied a promotion by his employer. *Sattar* v. *Johnson*, 129 F. Supp. 3d 123, 127–29 (S.D.N.Y. 2015), aff'd *sub nom. Sattar* v. *U.S. Dep't of Homeland Sec.*, 669 Fed. Appx. 1 (2d Cir. 2016). A practicing Muslim, Sattar faced pervasive discrimination at work. *Id.* at 128–29. A supervisor of his group asked him if "those terrorists [are] your cousins?" *Ibid.* Another supervisor mimicked shooting Sattar with an imaginary rifle. *Ibid.* When Sattar alleged discrimination, his employer claimed that it hadn't promoted him because he was less qualified than the chosen candidate. *Id.* at 138.

Brushing all of Sattar's evidence aside, the district court characterized the case as a dispute over job

qualifications, emphasizing that courts "afford employers a great deal of discretion in assessing the credentials and qualifications of applicants and in determining the criteria for positions." *Id.* at 139 (quoting *Milano* v. *Astrue*, No. 05 Civ. 6527, 2008 WL 4410131, at *32 (S.D.N.Y. Sept. 26, 2008) (collecting cases), aff'd, 382 Fed. Appx. 4 (2d Cir. 2010)). Even though the supervisors who maligned Sattar were not responsible for job decisions, *Id.* at 141, the court took pains to point out that for Sattar to survive summary judgment his credentials would have to be "so superior" to the person promoted that "no reasonable person, in the exercise of impartial judgment" could have chosen the other candidate. *Id.* at 139 (quoting *Byrnie* v. *Town of Cromwell, Bd. of Educ.*, 243 F.3d 93, 103 (2d Cir. 2001)). Even when an interviewer for the position scored Sattar higher than the successful applicant and indicated that the successful applicant was not the most qualified for the position, the court still refused to question the employer's business judgment. *Ibid.*

Sattar exemplifies how *McDonnell Douglas* has led courts to elevate business decisions over respect for religion. But this turns Title VII on its head. As this court held in *EEOC* v. *Abercrombie & Fitch Stores, Inc.*, "Title VII does not demand mere neutrality with regard to religious practices"; "it gives them favored treatment, affirmatively obligating employers" to not engage in discriminatory behavior against religion. 575 U.S. at 775. Likewise in *Groff* v. *DeJoy*, this Court made clear that courts should not allow business interests to undercut protected religious exercise. See 600 U.S. 447 (2023). These cases appropriately ordered

respect for religion and business decisions, but all too often *McDonnell Douglas* reverses that order.

In other cases, as in *Sattar*, business judgment repeatedly prevails over the Title VII rights of religious minority plaintiffs. In *Maarouf* v. *Walker Mfg. Co.*, Jamal Maarouf, an Arab Muslim sued his employer, alleging violation of his rights under Title VII by failing to train or promote him and eventually terminating him. 210 F.3d 750, 752 (7th Cir. 2000). The court noted that Maarouf "presented significant evidence of discriminatory remarks" by a supervisor, including "numerous statements" that "belittled the Muslim religion and disparaged Arab people." *Id.* at 754.

Despite clear evidence of discriminatory remarks, the court rejected Maarouf's allegations, holding that the remarks were not sufficient to establish pretext because supervisors had also identified problems with Maarouf's job performance. The court credited those reasons over discrimination especially because they came from multiple supervisors—even though at least one of the supervisor's opinions was "clouded by her discriminatory animus," and even though her performance evaluation factored into Maarouf's termination. See *id.* at 754–55.

Following 9/11, members of the Muslim faith faced increased stigmatization, which reverberated in employment decisions. For example, in *Lahrichi* v. *Lumera Corp.*, a Muslim man alleged religious discrimination after he was terminated following incidents reflecting post-9/11 religious animus. No. C04-2124C, 2006 WL 521659, at *1–4 (W.D. Wash. Mar. 2, 2006), aff'd, 433 Fed. Appx. 519 (9th Cir. 2011). The incidents included a supervisor's insinuation that Muslim men keep their wives as slaves in sweatshops, the same

supervisor "grill[ing]" the claimant about Osama Bin Laden and the World Trade Center, and a Valentine's Day incident where the supervisor told the claimant that "in America, you kiss and date, but you don't know that in your world." *Id.* at *5–6. The court rejected these comments in the pretext analysis, finding them either too attenuated to religion to constitute religious discrimination or insufficiently substantial. *Id.* at 15–16.

Similarly, the First Circuit in *Azimi* v. *Jordan's Meats, Inc.* found that summary judgment was warranted even when a Muslim man was fired within nine months of filing a human rights complaint and within two months of 9/11. 456 F.3d 228, 231, 248–49 (1st Cir. 2006) (applying *McDonnell Douglas* outside the Title VII context). The court determined that nine months was "too long a time lapse to support an inference of retaliatory animus." *Ibid.*

Other minority religions face similar challenges under *McDonnell Douglas*. In *Yoselovsky* v. *Associated Press*, the court granted summary judgment against a Jewish claimant even though there was something "suspicious in the timing" between when he took off work for religious holidays and the adverse employment decision. 917 F. Supp. 2d 262, 282–83 (S.D.N.Y. 2013). The court rejected the claimant's evidence of pretext despite an absence of negative job performance reviews prior to the time-off request. *Ibid.*

In another case, ultimately affirmed by the Second Circuit, the court granted summary judgment despite evidence of the claimant being called a "thug" for wearing a patka (a small cloth head covering worn by some Sikhs in lieu of or beneath the full Sikh turban), in accordance with his Sikh faith, and being told it looked

unprofessional. *Bassi* v. *New York Med. Coll.*, No. 19 Civ. 7542, 2023 WL 2330478, at *3 (S.D.N.Y. Mar. 2, 2023), aff'd, No. 23-278, 2024 WL 3717317 (2d Cir. Aug. 8, 2024). Again, the court rejected the pretext arguments offered by the claimant despite positive feedback and test scores for his job performance. *Id.* at 11.

In case after case, religious claimants—especially religious minorities—bear the brunt of lower courts' misguided *McDonnell Douglas* analysis. In doing so, lower courts ignore not only the text of Title VII but this Court's efforts—both in *McDonnell Douglas* itself and more recent Title VII cases—to ensure that Title VII's broad text is enforced and that religious claimants benefit from the full sweep of its protections.

CONCLUSION

The *McDonnell Douglas* burden-shifting framework was created to ensure that Title VII claimants receive a fair hearing at trial. Yet the Ninth Circuit has joined a growing number of circuits in using that test to dismiss a plaintiff's claim at summary judgment when the plaintiff fails to negate his employer's proffered reason for firing him. Reading such a requirement into Title VII ignores its text, history, and purpose, as well as the original intent of *McDonnell Douglas* itself, imposing unique burdens on the religious claimants Title VII seeks to protect. This Court should grant the petition and reverse the decision below.

Respectfully submitted,

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