

No. 24-1775

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JALEELAH HASSAN AHMED,

Plaintiff-Appellant

v.

HAMTRAMCK PUBLIC SCHOOLS; EVAN MAJOR; SALAH
HADWAN; MOORTADHA OBAID; SHOWCAT CHOWDHURY;
REGAN WATSON; HAMTRAMCK FEDERATION OF TEACHERS,

Defendants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN AT DETROIT

BRIEF OF THE UNITED STATES AS AMICUS CURIAE
IN SUPPORT OF APPELLANT AND URGING REVERSAL

HARMEET K. DHILLON

Assistant Attorney General

JESUS A. OSETE

Principal Deputy Assistant Attorney
General

ANDREW G. BRANIFF

Yael BORTNICK

Attorneys

Department of Justice

Civil Rights Division

Appellate Section

Ben Franklin Station

P.O. Box 14403

Washington, D.C. 20044-4403

(202) 616-8271

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INTEREST OF THE UNITED STATES

The United States has a substantial interest in this appeal, which presents important questions regarding the scope of the anti-discrimination and anti-retaliation protections afforded by Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*, and the pleading standard for Title VII claims. The Attorney General and the Equal Employment Opportunity Commission (EEOC) share enforcement responsibilities under Title VII, *see* 42 U.S.C. 2000e-5(a) and (f)(1), and have a significant interest in the proper interpretation of the statute. The United States files this brief under Federal Rule of Appellate Procedure 29(a).

STATEMENT OF THE ISSUES

Jaleelah Ahmed, a Yemeni-born woman, sued her employer, the School District of the City of Hamtramck, asserting claims for sex and national-origin discrimination and retaliation under Title VII. Ahmed alleged that the School District discriminated and retaliated against her by involuntarily suspending her with pay pending an investigation of purported misconduct but did not suspend or otherwise discipline her immediate predecessor, an American-born man, for comparable conduct.

The district court dismissed Ahmed's operative complaint for failure to state a claim.

The questions presented are:

1. Whether a paid involuntary suspension can constitute an adverse employment action for purposes of a Title VII discrimination claim.

2. Whether a Title VII plaintiff who relies on comparator allegations to support an inference of discrimination at the pleading stage must provide enough details about her comparator to make out a prima facie case.

3. Whether the district court erred by not applying the standard from *Burlington Northern & Santa Fe Railway Co. v. White*, 548 U.S. 53 (2006), to assess whether Ahmed's involuntary suspension was materially adverse for purposes of her Title VII retaliation claim.¹

¹ The United States takes no position on any other issue, nor on Ahmed's claims against any defendants other than the School District.

STATEMENT OF THE CASE

A. Factual Background²

Ahmed is a Yemeni-born woman. Compl., R.1, Page ID #2. The School District initially hired Ahmed as an English Language Development Director and later promoted her to Superintendent of Schools. *Id.* at Page ID #4-5. In Ahmed's first two annual evaluations as Superintendent, the School District rated her "highly effective," the highest possible score. *Id.* at Page ID #5. And the School District renewed her employment contract for an additional three-year period. *Id.* at Page ID #5.

That positive relationship changed during the COVID-19 pandemic. Compl., R.1, Page ID #6. Around that time, Ahmed involuntarily transferred several teachers within the School District to meet school needs. *Id.* at Page ID #6-7. On one occasion, Ahmed transferred nine teachers "to improve the educational opportunities of [the School District's] students." *Id.* at Page ID #6. On another, she

² Because this appeal arises from a dismissal for failure to state a claim, the facts from the operative complaint "are taken as true and construed in the light most favorable to [Ahmed]." *Milman v. Fieger & Fieger, P.C.*, 58 F.4th 860, 862-863 (6th Cir. 2023).

transferred two teachers to address a greater-than-expected enrollment of autistic students at an elementary school. *Id.* at Page ID #6-7. Ahmed's employment contract authorized her to reassign school staff "in a manner that, in her judgment, best served the School District," and she made these transfer decisions in conjunction with the School District's Executive Director of Human Resources. *Id.* at Page ID #5, 7.

Ahmed's transfer choices were met with swift and strenuous backlash from teachers, the teachers' union, and members of the school board. According to Ahmed, the teachers' union, school board members, and the School District itself began a public campaign to intimidate and harass her, including by disparaging her online, feeding negative stories to state and local media, threatening to fire her or not renew her contract, and otherwise undermining her ability to do her job. Compl., R.1, Page ID #8-11. Due to her resulting emotional distress, Ahmed voluntarily took a medical leave of absence. *Id.* at Page ID #11.

When Ahmed told the School District that she planned to return, the School District "notified [her] she was prohibited from returning to work" and that it "was 'investigating' alleged misconduct on her part."

Compl., R.1, Page ID #13.³ Although Ahmed’s immediate predecessor—Thomas Niczay, an American-born man—had also involuntarily transferred several teachers, the School District did not suspend or otherwise discipline him. *Id.* at Page ID #4, 24, 27-28.

In response to her suspension, Ahmed informed the School District that she had filed a charge of discrimination with the EEOC. Compl., R.1, Page ID #13-14. After learning about Ahmed’s charge, the School District publicly announced that it was investigating her, removed her personal items from her workspace, and left them in a box outside her office. *Id.* at Page ID #14.⁴

³ This brief addresses only Ahmed’s leave during the time after the School District prohibited her from returning to work (not the time during which she was on voluntary medical leave).

⁴ The operative complaint does not say how long Ahmed’s suspension lasted or how the School District’s investigation concluded. In her latest proposed amended complaint, Ahmed alleged that the School District reinstated her more than a year after her suspension (while this action was pending) and that it never conducted an investigation. Proposed 4th Am. Compl., R.68, Page ID #1829; *see also* Order, R.105, Page ID #2965 (noting that Ahmed “had been reinstated as Superintendent”).

B. Procedural History

Ahmed filed this action, asserting claims against the School District for sex and national-origin discrimination and retaliation under Title VII (among other claims). Compl., R.1, Page ID #22-25, 27-28. On the School District's motion, the district court dismissed Ahmed's complaint for failure to state a claim. Defs.' Mot. to Dismiss, R.88, Page ID #2450; Order, R.105, Page ID #2997.

First, the district court held categorically that suspending an employee with pay pending a misconduct investigation is not an adverse employment action for purposes of a discrimination claim. Order, R.105, Page ID #2983-2987. The court acknowledged that the Supreme Court's recent decision in *Muldrow v. City of St. Louis*, 601 U.S. 346 (2024), clarified the standard for "deciding whether an employment action was sufficiently adverse," and that *Muldrow* required a Title VII plaintiff to show only "some harm" with respect to an identifiable term, condition, or privilege of employment. Order, R.105, Page ID #2978-2980. But, continuing to rely on pre-*Muldrow* precedent, the court reasoned that "[p]aid administrative leave has not been and is not now a disadvantageous change in a term or condition of employment because

the ability to be *justly* reprimanded by an employer has always been a term or condition of employment.” *Id.* at Page ID #2984 (citing *Jackson v. City of Columbus*, 194 F.3d 737, 752 (6th Cir. 1999)). Thus, the court concluded, Ahmed had not “shown that she suffered ‘some harm’ by being placed on paid administrative leave.” *Id.* at Page ID #2982-2983.

Second, the court held that Ahmed had not provided enough details about her predecessor, Niczay, to show that he was a “true comparator.” Order, R.105, Page ID #2987-2988. Specifically, the court faulted Ahmed for not specifying whether Niczay had been subject to similar contractual terms governing his authority to transfer teachers or whether he had transferred teachers under similar circumstances, namely, “a crisis in similar magnitude as COVID-19.” *Id.* at Page ID #2988. “Without such facts demonstrating similar circumstances and differing treatment,” the court concluded, Ahmed “cannot allege that she was discriminated against.” *Id.* at Page ID #2988.

Finally, the court assumed that because Ahmed’s suspension was not sufficiently adverse for purposes of her *discrimination* claim, it likewise was not materially adverse for purposes of her *retaliation* claim. Order, R.105, Page ID #2976-2978.

Ahmed timely appealed. Notice of Appeal, R.108, Page ID #3001-3002.

SUMMARY OF ARGUMENT

The district court erred in dismissing Ahmed’s Title VII claims for three reasons.

1. Contrary to the district court’s reasoning, an involuntary paid suspension can constitute an adverse employment action for purposes of a Title VII discrimination claim. Under *Muldrow v. City of St. Louis*, 601 U.S. 346, 354-356 (2024), an employer’s discriminatory conduct is an adverse employment action if it (1) “respect[s]” one’s terms, conditions, or privileges of employment and (2) causes “some harm.” Employer-imposed suspensions, which inherently respect the terms or conditions of employment, clear that low bar when—as is often the case—they cause the suspended employee some harm. In holding otherwise, the district court incorrectly relied on precedent that *Muldrow* abrogated, mistakenly conflated adversity (whether an employer’s action was *harmful*) with causation (whether an employer’s action was *based on an unlawful motive*), and improperly resorted to extratextual policy considerations.

2. Although a Title VII plaintiff may rely on comparator allegations to support a discrimination claim at the pleading stage, a plaintiff taking that path does not need to provide enough details about her comparator to establish a *prima facie* case. Instead, a complaint need only contain enough factual matter (taken as true) to raise a *plausible* inference that the plaintiff's employer acted based on a protected trait. In a disparate discipline case, like this one, a plaintiff can generally meet that standard by identifying another employee who fell outside her protected class, engaged in conduct of comparable seriousness, and did not suffer similar consequences. By requiring Ahmed to do more, the district court improperly imposed a heightened pleading requirement that cannot be reconciled with the plausibility standard.

3. The district court did not apply the correct standard in assessing whether Ahmed's involuntary suspension was materially adverse for purposes of her Title VII retaliation claim. Under *Burlington Northern & Santa Fe Railway Co. v. White*, 548 U.S. 53 (2006) (*Burlington Northern*), retaliatory conduct is materially adverse if it might dissuade a reasonable worker from making or supporting a charge of discrimination. An involuntary paid suspension will generally meet that standard. Here,

the district court did not cite *Burlington Northern*, but instead incorrectly assumed that discrimination and retaliation claims are subject to the same adversity standard.

Accordingly, this Court should reverse the district court's dismissal of Ahmed's Title VII discrimination and retaliation claims and remand for further proceedings.

ARGUMENT

I. The district court erred in holding that a paid involuntary suspension cannot constitute an adverse employment action.

A. An employer's conduct is sufficiently adverse if it causes "some harm."

Title VII makes it unlawful for an employer to discriminate against any individual with respect to her "terms, conditions, or privileges of employment" because of sex or national origin. 42 U.S.C. 2000e-2(a)(1). To prevail on a disparate-treatment discrimination claim, a plaintiff must show, among other things, that she suffered an "adverse employment action." *Moore v. Coca-Cola Bottling Co. Consol.*, 113 F.4th 608, 622 (6th Cir. 2024) (citation omitted).

In *Muldrow v. City of St. Louis*, 601 U.S. 346 (2024), the Supreme Court clarified that to establish an adverse employment action, a plaintiff

must show her employer took an action (1) “respecting an identifiable term or condition of employment” that (2) caused “some harm.” *Id.* at 354-355; *see also id.* at 359 (holding that plaintiff “need only show some injury respecting her employment terms or conditions”). Under this “simple injury standard,” the Court explained, a plaintiff “does not have to show . . . that the harm incurred was ‘significant’ . . . [o]r serious, or substantial, or any similar adjective suggesting that the disadvantage to the employee must exceed a heightened bar.” *Id.* at 355-356 & n.2 (citation omitted).

Although the employment action at issue in *Muldrow* was a forced transfer, the decision extends to other employment actions, including involuntary suspensions. As this Court has explained, *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.” *McNeal v. City of Blue Ash*, 117 F.4th 887, 900 (6th Cir. 2024); *see also* Order, R.105, Page ID #2981-2982 (“Nowhere does [*Muldrow*] suggest that employees transferred from one position to another are subject to lower pleading standard than employees alleging employment discrimination of some other form.”).

B. An involuntary suspension inherently regards the terms or conditions of employment and often causes some employment-related harm.

Under *Muldrow*'s "some harm" or "simple injury" standard, placing an employee on an involuntary suspension can constitute an adverse employment action, even when the suspension is paid. *See Blick v. Ann Arbor Pub. Sch. Dist.*, 105 F.4th 868, 885 (6th Cir. 2024) (acknowledging that it is "reasonabl[e]" to "argue that a temporary suspension (even with pay) causes 'some harm' and also concerns a 'term or condition' of the job—all that *Muldrow* now requires under Title VII," but declining to decide issue (citation omitted)); *Yates v. Spring Indep. Sch. Dist.*, 115 F.4th 414, 420 (5th Cir. 2024) (recognizing that placing plaintiff on administrative leave can "constitute [an] adverse employment action[]"), *petition for cert. pending*, No. 24-6725 (filed Oct. 11, 2024); *Russo v. Bryn Mawr Tr. Co.*, No. 22-3235, 2024 WL 3738643, at *4 n.3 (3d Cir. Aug. 9, 2024) (similar).

First, involuntarily suspending an employee—thereby removing her from the workplace and prohibiting her from performing her regular work assignments—inherently "respect[s]" or regards her "terms" or "conditions" of employment even when the employee's "rank and pay

remain[] the same.” *Muldrow*, 601 U.S. at 351. As the Court explained, “[t]he ‘terms [or] conditions’ phrase . . . is not used ‘in the narrow contractual sense’” and “it covers more than the ‘economic or tangible.’” *Id.* at 354 (second alteration in original) (quoting *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 78 (1998), and *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 64 (1986)).

Whether paid or unpaid, a work suspension upends the most fundamental requirement of employment: that an employee report to the workplace to complete job-related tasks. The “when,” “where,” and “what” of a job—when the employee is required to work, at what location, and the position she is assigned and tasks she is required to perform—are all affected by a suspension and fall squarely within the “terms” and “conditions” of employment. *Cf. Threat v. City of Cleveland*, 6 F.4th 672, 677 (6th Cir. 2021) (“How could the *when* of employment not be a *term* of employment?”).

Here, even the district court acknowledged that Ahmed lost “the ability to *do* [her] job for a temporary period.”⁵ Order, R.105, Page ID

⁵ As the district court was aware, the “temporary period” during which Ahmed was prevented from working apparently lasted more than

#2984. It is a near tautology that performing one’s job is a term or condition of employment. *See Chambers v. District of Columbia*, 35 F.4th 870, 874 (D.C. Cir. 2022) (en banc) (“[I]t is difficult to imagine a more fundamental term or condition of employment than the position itself.” (citation omitted)).

Second, involuntarily suspending an employee can cause “some harm.” The “some harm” or “simple injury” standard encompasses a wide range of intangible consequences. *Muldrow*, 601 U.S. at 354-356 & n.2. As Justice Kavanaugh explained in his concurring opinion in *Muldrow*, employment actions that result in even minor reductions in “prestige, status, career prospects, interest level, perks, professional relationships, networking opportunities, effects on family obligations, or the like” all cause “some additional harm.” *Id.* at 363, 365.

Involuntary workplace suspensions, like forced transfers, may often cause harm by “leav[ing] workers worse off respecting employment terms or conditions.” *Muldrow*, 601 U.S. at 355. Just as “a transfer is not usually forced when it leaves the employee better off,” *ibid.*, a leave of

a year. *See* Order, R.105, Page ID #2965, 2984; Order, R.82, Page ID #2315; Am. Compl., R.68, Page ID #1829.

absence also is not usually forced when it benefits an employee. It is not difficult to see why: Forced leave deprives an employee of valuable work experience and opportunities, as well as the daily perks of employment, and it often causes reputational harm. *See Howe v. City of Akron*, 723 F.3d 651, 662 (6th Cir. 2013) (delayed promotions caused irreparable harm where, among other things, they left plaintiffs “unable to gain experience”); *Johnson v. City of Memphis*, 444 F. App’x 856, 860 (6th Cir. 2011) (recognizing “lost work experience and opportunity to compete for promotions” as actual and irreparable injuries); *cf. Muldrow*, 601 U.S. at 351 (forced transfer changed plaintiff’s “perks,” including use of take-home vehicle).

Here, Ahmed specifically alleged that harms flowed from her suspension: she was “replaced with interim superintendents, was prohibited from taking official actions while on leave, lost any other authority associated with her position, and lost access to the School District’s, facilities, employees, and contractors.” Order, R.105, Page ID #2981 (citing Compl., R.1, Page ID #11). Although these effects began with Ahmed’s voluntary medical leave, her involuntary suspension necessarily prolonged them. Further, Ahmed alleged that she suffered

reputational harm because of her involuntary suspension, including by having her personal property removed from her office and placed in a box outside. Compl., R.1, Page ID #14.

For these reasons, Ahmed’s allegation that the School District involuntarily suspended her pending a misconduct investigation—taken as true and viewed in the light most favorable to her—supports a reasonable inference that she suffered an adverse employment action. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007))).

C. The district court did not properly apply *Muldrow*.

In reaching a contrary result, the district court erred in several respects.

1. First, the court incorrectly relied on *Jackson v. City of Columbus*, 194 F.3d 737 (6th Cir. 1999), and its progeny.⁶ Order, R.105, Page ID

⁶ The other decisions on which the district court relied on all ultimately rested on *Jackson*. The most recent case, *Sensabaugh v. Halliburton*, 937 F.3d 621, 629 (6th Cir. 2019), relied on *Peltier v. United*

#2984-2986. Although *Jackson* held that a paid suspension pending a misconduct investigation is not an adverse employment action, it did so only by requiring the plaintiff to show a “*materially* adverse change in the terms of employment.” *Jackson*, 194 F.3d at 752 (emphasis added; citation modified). But *Muldrow* avowedly “change[d] the legal standard used in any circuit that has previously required ‘significant,’ ‘material,’ or ‘serious’ injury,” and “lower[ed] the bar Title VII plaintiffs must meet.” 601 U.S. at 356 n.2. Under this lowered bar, the Court explained, many cases previously decided using heightened materiality standards would now “come out differently.” *Ibid*. Simply put, *Jackson* and its progeny are no longer good law, and they do not control the outcome here. *See Thomas v. JBS Green Bay, Inc.*, 120 F.4th 1335, 1337 (7th Cir. 2024) (“Decisions requiring allegations of ‘significant’ or ‘material’ injury did not survive *Muldrow*.”).

2. The district court also reasoned that suspending an employee does not cause “a disadvantageous change in a term or condition of

States, 388 F.3d 984, 988-989 (6th Cir. 2004), which in turn relied on *White v. Burlington Northern & Santa Fe Railway Co.*, 364 F.3d 789, 803 (6th Cir. 2004), *aff’d*, 548 U.S. 53 (2006), which in final turn relied on *Jackson*, 194 F.3d at 752.

employment because the ability to be *justly* reprimanded by an employer has always been a term or condition of employment.” Order, R.105, Page ID #2984. But that logic assumes that an employer’s reasons for suspending an employee were legitimate and non-discriminatory. The relevant question is whether an employer discriminates with respect to the terms, conditions, or privileges of employment when it suspends an employee not for avowed legitimate reasons but “because of” the employee’s protected trait. 42 U.S.C. 2000e-2(a)(1). “[T]he answer provided by the straightforward meaning of the statute is an emphatic yes.” *Chambers*, 35 F.4th at 874 (addressing race-based transfers).

More fundamentally, the court’s reasoning conflates adversity (whether the employer’s action was *harmful*) with causation (whether the employer’s action was *based on an unlawful motive*), which are two analytically distinct inquiries. An employer’s reasons for suspending an employee are relevant in establishing causation. The fact that an employer had valid reasons for suspending an employee, however, means only that the suspension was not discriminatory, not that it was harmless with respect to her terms or conditions of employment. Indeed, just a few weeks ago this Court overruled a district court’s holding that the

defendant's actions "didn't qualify as materially adverse because the City had good reasons" for its challenged actions as "[t]hat logic conflates the materially adverse inquiry . . . with causation and pretext." *Smith v. City of Union*, No. 24-3498, 2025 WL 2017141, at *4, *8 (6th Cir. July 18, 2025) (addressing an Age Discrimination in Employment Act claim); *see also Brannon v. Finkelstein*, 754 F.3d 1269, 1275 (11th Cir. 2014) (holding similarly in the context of the First Amendment).

The district court below likewise erred in reasoning that paid suspensions should not be considered adverse employment actions because employers need discretion to suspend employees for suspected wrongdoing without risking Title VII liability. Order, R.105, Page ID #2985-2986. Recognizing paid suspensions as adverse employment actions does not diminish an employer's ability to suspend employees.

Adversity is *only one* element of a discrimination claim and, by itself, does not establish liability. Thus, the fact that an involuntary suspension based on a protected trait is actionable as discrimination is entirely consistent with the general rule of at-will employment that an employer can fire or suspend an employee for any non-discriminatory reason. *See EEOC v. EMC Corp. of Mass.*, 205 F.3d 1339 (6th Cir. 2000)

(holding that an employer has “the right to discharge an employee at any time for any reason or for no reason, except because of the employee’s sex”); *Williams v. London Util. Comm’n*, 375 F.3d 424, 428 (6th Cir. 2004) (similar).

The district court’s contrary reasoning, taken to its logical conclusion, would suggest that even termination should not be considered an adverse action because employers need discretion to fire employees who engage in wrongdoing without risking Title VII liability. To merely state such an argument is to refute it.

II. The district court erred in requiring Ahmed to provide enough details about her comparator to make out a prima facie case at the pleading stage.

A. Allegations of disparate discipline are generally sufficient to raise a plausible inference of intentional discrimination at the pleading stage.

To ultimately prevail on a disparate-treatment claim under Title VII, a plaintiff must show that her employer acted *because of* a protected trait. *Huguley v. General Motors Corp.*, 52 F.3d 1364, 1370 (6th Cir. 1995). At the pleading stage, however, a plaintiff need only allege enough factual matter, taken as true, to raise a plausible inference of causation.

Keys v. Humana, Inc., 684 F.3d 605, 610 (6th Cir. 2012) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

One way—but not the only way—for a plaintiff to satisfy that standard is by identifying comparators: similarly situated employees outside her protected class whom the employer treated more favorably. *See Jones v. Johnson*, 707 F. App'x 321, 327-328 (6th Cir. 2017) (holding that the plaintiff “stated a plausible claim of sex discrimination” by alleging that a man “who also had a suspension on his record” and whose prior misconduct was “of comparable severity” to that of the plaintiff’s “received the promotion when [plaintiff] was denied”); *Macy v. Hopkins Cnty. Sch. Bd. of Educ.*, 484 F.3d 357, 370 (6th Cir. 2007) (recognizing that a plaintiff can plead a plausible disparate discipline claim by identifying another employee outside her protected class who was not similarly disciplined for misconduct of “comparable seriousness” (citation omitted)), *abrogated on other grounds by Lewis v. Humboldt Acquisition Corp.*, 681 F.3d 312 (6th Cir. 2012) (en banc). Such allegations are “adequate to plead an inferential case that the employer’s reliance on [the] . . . employee’s misconduct as grounds for [disciplining her] was

merely a pretext.” *Stotts v. Memphis Fire Dep’t*, 858 F.2d 289, 296 (6th Cir. 1988) (citation omitted).

That is precisely what Ahmed did here: She alleged that the School District disciplined her for alleged misconduct but did not discipline a similarly situated employee for the same conduct. Ahmed identified a comparator (her predecessor, Niczay) who did not share her protected traits (Yemini-born, woman), held the same position (superintendent), engaged in similar conduct (involuntarily transferring teachers), and suffered no adverse consequences (like a suspension). Compl., R.1, Page ID #4, 24, 27-28. Moreover, the School District suspended Ahmed even though it had up to that point given her its highest possible job-performance rating. *Id.* at Page ID #5.

Under a straightforward application of the plausibility pleading standard, those allegations (taken as true) were enough to “nudge[]” Ahmed’s discrimination claim “across the line from conceivable to plausible,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007), and allow the court to draw a plausible inference of intentional discrimination, *Keys*, 684 F.3d at 610.

B. The district court incorrectly imposed a heightened pleading requirement.

In holding otherwise, the district court did not properly apply the plausibility standard. Instead, the court faulted Ahmed for not providing enough details about her comparator to show that he was “‘nearly identical’ in ‘all of the relevant aspects of his employment situation.’” Order, R.105, Page ID #2988 (quoting *Seay v. Tennessee Valley Auth.*, 339 F.3d 454, 479 (6th Cir. 2003)).

1. The district court’s reasoning effectively requires a plaintiff to plead enough facts to prove a prima facie case under the burden-shifting framework of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). To establish a prima facie case under that framework, a plaintiff who relies on comparator evidence must show that her proposed comparator was “‘similarly-situated . . . in all relevant respects.” *Ercegovich v. Goodyear Tire & Rubber Co.*, 154 F.3d 344, 353 (6th Cir. 1998) (emphasis omitted). But the Supreme Court and this Court have long held that “plaintiffs are not required ‘to *plead* facts establishing a prima facie case,’ given that the *McDonnell Douglas* framework ‘is an evidentiary standard, not a

pleading requirement.”⁷ *Charlton-Perkins v. University of Cincinnati*, 35 F.4th 1053, 1060 (6th Cir. 2022) (quoting *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 510-511 (2002)); *see also Savel v. MetroHealth Sys.*, 96 F.4th 932, 943 (6th Cir. 2024) (“A plaintiff does not have to allege specific facts establishing a prima facie case of discrimination in their complaint.”).

The district court erred by requiring Ahmed to plead enough facts about her comparator to prove a prima facie case at the pleading stage. *See Keys*, 684 F.3d at 609 (“The district court’s requirement that [the plaintiff’s] complaint establish a prima facie case under *McDonnell Douglas* and its progeny is contrary to Supreme Court and Sixth Circuit precedent.”); *see also Joyner v. Morrison & Foerster LLP*, 140 F.4th 523, 530 (D.C. Cir. 2025) (emphasizing that “the plaintiff’s burden at the summary judgment stage and at trial is different and substantially more onerous than the pleading burden” (internal quotation marks and citation omitted)).

⁷ Indeed, “[f]ar from extending the framework to new contexts,” the Supreme Court has “taken steps to limit the relevancy and applicability of the *McDonnell Douglas* framework,” including by saying “that the framework is inapplicable at the pleading stage.” *Ames v. Ohio Dep’t of Youth Servs.*, 145 S. Ct. 1540, 1552 (2025) (Thomas, J., concurring) (citation modified).

2. Even putting aside that problem, the district court imposed an impossibly exacting similarity requirement. According to the court, Ahmed must allege precise details showing that Niczay was subject to similar contractual terms governing his authority to transfer teachers and that he transferred teachers under similar circumstances, namely, “a crisis in similar magnitude as COVID-19.” Order, R.105, Page ID #2988. That requirement is incorrect for two independently sufficient reasons.

First, it is inconsistent with the plausibility pleading standard, which does not require that level of specificity. *See Lee v. Vanderbilt Univ.*, No. 22-5607, 2023 WL 4188341, at *4 (6th Cir. June 22, 2023) (rejecting view that plaintiff must “allege with specificity that similarly situated employees who were not part of her protected class were treated more favorably than she was in order to survive a motion to dismiss”); *see also Joyner*, 140 F.4th at 530 (holding that “a plaintiff proceeding on only a comparator theory must plead enough facts about those comparators and the relevant context to allow a plausible inference that he was treated differently because of his race”). After all, “whether two employees are similarly situated” ordinarily “presents a question of fact

rather than a legal question to be resolved on a motion to dismiss.” *Brown v. Daikin Am. Inc.*, 756 F.3d 219, 230 (2d Cir. 2014) (citation modified).

For this reason, whether comparators are sufficiently similar in all relevant respects is a question better reserved for the summary judgment stage, after the parties have had a chance to conduct discovery. Indeed, much of the evidence germane to answering that question—for example, a comparator’s disciplinary history or the identities of relevant decisionmakers—will often be unavailable to a plaintiff without the benefit of discovery. As the Seventh Circuit has explained, such considerations “are critical in figuring out who else might have been similarly situated,” and “[t]he employee often will not be able to answer those questions without discovery.” *Carlson v. CSX Transp., Inc.*, 758 F.3d 819, 830 (7th Cir. 2014). The district court thus erred by requiring Ahmed to provide these precise details at the pleading stage and without the benefit of discovery.

Second, even at summary judgment, a plaintiff relying on comparator evidence “need not demonstrate an exact correlation with the employee receiving more favorable treatment.” *Ercegovich*, 154 F.3d at 352; *see also Joyner*, 140 F.4th at 531 (holding that a complaint need not

“include factual allegations showing that the comparator’s circumstances are nearly identical to the plaintiff’s in all relevant aspects” (internal quotation marks and citation omitted)). Rather, a plaintiff need only show that his comparator is similar in *relevant* respects, and what is relevant in some circumstances may be irrelevant in others. *Ibid.*; *see also Jackson v. VHS Detroit Receiving Hosp., Inc.*, 814 F.3d 769, 777 (6th Cir. 2016).

Here, the district court erred by essentially requiring Ahmed to plead an exact correlation between herself and Niczay when the precise relevance, if any, of the circumstances on which the district court focused (*i.e.*, the contract terms and the COVID-19 pandemic) is not yet clear. After discovery, the School District may well present evidence that Ahmed acted outside her contractual authority and that the COVID-19 pandemic affected its assessment of her actions. But on the face of the complaint, it is not apparent that those circumstances are *relevant* respects in which Ahmed must be similar to Niczay.

III. The district court erred by failing to apply *Burlington Northern* to assess Ahmed’s Title VII retaliation claim.

Title VII forbids an employer from retaliating against an employee for making or supporting a charge of discrimination. 42 U.S.C. 2000e-

3(a). To prevail on a retaliation claim, a plaintiff must show, among other things, that she suffered a “materially adverse action.” *Moore v. Coca-Cola Bottling Co. Consol.*, 113 F.4th 608, 627 (6th Cir. 2024) (citation omitted).

The Supreme Court’s decision in *Burlington Northern & Santa Fe Railway Co. v. White*, 548 U.S. 53 (2006), governs whether an action is materially adverse for purposes of a retaliation claim. There, the Court held that an employer’s retaliatory conduct is materially adverse if, under the surrounding circumstances, “it well might have dissuaded a reasonable worker from making or supporting a charge of discrimination.” *Id.* at 68-69 (citation modified); *see also Taylor v. Geithner*, 703 F.3d 328, 336 (6th Cir. 2013).

Under that standard, an involuntary suspension, even with pay, will often (perhaps usually) constitute a materially adverse action. *See Michael v. Caterpillar Fin. Servs. Corp.*, 496 F.3d 584, 596 (6th Cir. 2007) (placing employee on two days of paid leave, followed by a performance plan, could meet *Burlington Northern’s* “relatively low bar”); *Davis v. Legal Servs. Ala., Inc.*, 19 F.4th 1261, 1266 n.3 (11th Cir. 2021) (observing that a “paid suspension may constitute an adverse employment action in

the retaliation context” (emphasis omitted)); *cf. Burlington N.*, 548 U.S. at 73 (“[A]n indefinite suspension without pay could well act as a deterrent, even if the suspended employee eventually received backpay.”).

Here, the district court did not cite or apply *Burlington Northern*. Nor did it conduct a separate adversity analysis for Ahmed’s retaliation claim. Instead, it simply assumed that because Ahmed’s suspension was not an adverse employment action for purposes of her *discrimination* claim, it likewise was not materially adverse for purposes of her *retaliation* claim. Order, R.105, Page ID #2976-2978.

This Court has squarely rejected that reasoning because “[t]he ‘materially adverse action’ element of a Title VII retaliation claim is *substantially different* from the ‘adverse employment action’ element of a Title VII . . . discrimination claim.” *Laster v. City of Kalamazoo*, 746 F.3d 714, 719 (6th Cir. 2014) (emphasis added; citation omitted). Under the former, an employer’s conduct need only have the potential to dissuade a reasonable worker from complaining about discrimination, and it need not affect one’s terms or conditions of employment. *Burlington N.*, 548 U.S. at 64, 68.

Given these differing standards, the same action could “qualify as [materially adverse] in the retaliation context” even when it is not an adverse employment action “for purposes of an anti-discrimination claim.” *Laster*, 746 F.3d at 731-732 (quoting *Michael*, 496 F.3d at 596). Thus, because “Title VII’s substantive provision and its antiretaliation provision are not coterminous,” *Burlington N.*, 548 U.S. at 67, the district court here erred by not conducting a separate analysis.

The district court also appeared to suggest that *Muldrow v. City of St. Louis*, 601 U.S. 346 (2024), may have altered the material adversity standard for retaliation claims. *See* Order, R.105, Page ID #2978-2980. That too is incorrect. Although *Muldrow* changed the adversity standard for discrimination claims, it clarified that *Burlington Northern* continues to govern in the retaliation context. *Muldrow*, 601 U.S. at 357-358 (rejecting argument that the Court “should import the same standard into the anti-discrimination provision” as is used in “Title VII’s separate anti-retaliation provision”). As this Court has recognized post-*Muldrow*, “the ‘materially adverse’ standard for retaliation claims still applies.” *Milczak v. General Motors, LLC*, 102 F.4th 772, 789 (6th Cir. 2024) (citation omitted).

CONCLUSION

For the foregoing reasons, this Court should reverse the district court's dismissal of Ahmed's Title VII discrimination and retaliation claims and remand for further proceedings.

Respectfully submitted,

HARMEET K. DHILLON

Assistant Attorney General

JESUS A. OSETE

Principal Deputy Assistant Attorney
General

s/ Yael Bortnick

ANDREW G. BRANIFF

Yael BORTNICK

Attorneys

Department of Justice

Civil Rights Division

Appellate Section

Ben Franklin Station

P.O. Box 14403

Washington, D.C. 20044-4403

(202) 616-8271

Date: August 4, 2025

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because it contains 5747 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and Sixth Circuit Rule 32(b)(1).

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it was prepared in Century Schoolbook 14-point font using Microsoft Word 365.

s/ Yael Bortnick
Yael BORTNICK
Attorney

Date: August 4, 2025

CERTIFICATE OF SERVICE

I certify that on August 4, 2025, I electronically filed the foregoing brief in PDF format with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit via the appellate CM/ECF system. I certify that all counsel of record are registered CM/ECF users, and service will be accomplished via the appellate CM/ECF system.

s/ Yael Bortnick
Yael BORTNICK
Attorney

**ADDENDUM: DESIGNATION OF RELEVANT
DISTRICT COURT DOCUMENTS**

Record Entry #	Document Description	Page ID# Range
1	Complaint	1-38
68	Proposed Fourth Amended Complaint	1805-1860
82	Order Denying Plaintiff's Motion for Leave to File an Amended Complaint	2311-2345
88	Defendants' Motion to Dismiss Plaintiff's Complaint Under Fed. R. Civ. P. 12(b)(6)	2435-2617
105	Order Granting the School District Defendants' Motion to Dismiss and Denying the Motion to Strike as Moot	2963-2997
108	Notice of Appeal	3001-3002