

**FOR THE APPELLATE MOOT COURT COLLEGIATE CHALLENGE**

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**MILTON WADDAM,**

**Petitioner,**

**v.**

**INITECH INDUSTRIES, INC.,**

**Respondent.**

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**On Writ of Certiorari to  
the Supreme Court Of The United States**

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**BRIEF FOR THE PETITIONER**

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## QUESTIONS PRESENTED

- I. WHETHER SUPREME COURT PRECEDENT REQUIRES THAT ALL PLAINTIFFS, REGARDLESS OF MINORITY STATUS, SATISFY THE SAME STANDARD UNDER THE MCDONNELL DOUGLAS BURDEN SHIFTING FRAMEWORK.
  
- II. IF NONMINORITY PLAINTIFFS ARE REQUIRED TO OFFER ADDITIONAL EVIDENCE TO SATISFY MCDONNELL DOUGLAS, WHETHER THIS COURT SHOULD REQUIRE ONLY MINIMAL EVIDENCE THAT RAISES SUSPICION OF DISCRIMINATION.

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SUPREME COURT OF THE UNITED STATES  
CASE No. AMC3-SUP 2013

MILTON WADDAM,  
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JURISDICTION

The Supreme Court of the United States may review cases from the U.S. courts of appeals by writ of certiorari granted upon the petition of any party to a civil or criminal case. 28 U.S.C. § 1254(1) (2013). On February 1, 2013 Petitioner appealed the order granting summary judgment in *Waddam v. Initech Industries* (21<sup>st</sup> Cir. 2013) by filing a Writ of Certiorari with the Supreme Court of the United States. R. at 25. R at 21. On April 29, 2013, this Court granted the Petition for Certiorari. R. at 28.

CONSTITUTIONAL PROVISIONS AND OTHER STATUTES INVOLVED

This case concerns the history and interpretation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. The relevant segments are as follows:

“(a) Employer Practices

It shall be an unlawful employment practice for an employer – (1) to fail to refuse to hire or to discharge any individual, or otherwise 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.”

## STATEMENT OF THE CASE

This action arises out of a dispute between the parties as to whether Respondent, Initech Industries, Inc. discriminated on the basis of race in its hiring decision with respect to Petitioner, Milton Waddam. After Respondent's final decision dated May 9, 2012, Waddam initiated a timely appeal to the Equal Employment Opportunity Commission on May 21, 2012. R. at 3. The appeal is brought under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. *Id.* at 3. The EEOC affirmed the agency's final decision on the grounds that Waddam failed to establish a prima facie case. R. at 4. On July 10, 2012, Waddam filed a complaint in the District Court for the Western District of Volkswagenville alleging Respondent violated 42 U.S.C. § 2000e et seq. R. at 5. On July 20, 2012, Respondent filed a response denying such violation and filed a Motion for Summary Judgment on the basis of no genuine issue of material fact. R. at 8. On July 30, 2012, Waddam filed an Opposition to Motion for Summary Judgment. R. at 12. The Honorable Michael Judge granted Respondent's Motion for Summary Judgment on September 24, 2012. R. at 16.

Milton Waddam appealed the decision of the District Court on September 24, 2012, in the United States Court of Appeals for the Twenty-First Circuit on October 1, 2012. R. at 17. The appeal was granted by the Honorable Christopher Paul on November 21, 2012. R. at 18. The United States Court of Appeals for the Twenty-First Circuit affirmed the decision of the district court on January 25, 2013. R. at 20. On February 1, 2013, Waddam filed a Petition for Writ of Certiorari before the Supreme Court of the United States. R. at 25. On February 8, 2013, Respondent filed an Opposition to Petition for a Writ of Certiorari. R. at 27. On April 29, 2013, The Supreme Court of the United States granted the Petition for Certiorari. R. at 28. These matters are now before this Court.

## STATEMENT OF THE FACTS

Waddam is a white male who has been employed by Respondent, a computer banking software company, since August 7, 1986. *Id.* at 3. Since February 19, 1999, Waddam has held the position of Storage Coordinator. *R.* at 6. On January 18, 2012, Waddam applied to an opening for Storage Manager at Respondent, Initech Industries, Inc. The guidelines for candidate qualification stated that the applicants are to be judged on all past Initech performance reports, performance in behavior interview with members of the hiring committee, and performance on the relevant standardized capability test. *Id.* at 6. Once all relevant criteria are collected, selection is carried out by first the ranking of all candidates by the hiring committee. *Id.* at 6. This list is submitted to the Area Manager, who shall award the position based on the list unless the first individual is unable to fill the position. *Id.* at 6. The Area Manager in charge is William Lumbergh. *Id.* at 6.

Waddam received a perfect score on the company's Storage Acumen Capability Test on January 27, 2012. *Id.* at 6. Between January 27 and February 17, 2012, Mr. Waddam was interviewed by the hiring committee. *Id.* at 6. On February 21, 2012, the hiring committee submitted the list to Mr. Lumbergh, ranking Waddam their first choice. *Id.* at 6. Mr. Lumbergh requested that the committee reconsider their rankings on both March 1 and 5, 2012. *Id.* at 6. Each time, the committee declined to make the changes. *Id.* at 6. On March 6, 2012, Mr. Waddam was informed by Mr. Lumbergh that he was not chosen. *Id.* at 6. The position was given instead to Samir Najjar, an Indian-born candidate. *Id.* at 6. Mr. Najjar has missed five questions on his Storage Acumen Capability Test. *Id.* at 6. Mr. Najjar's combined average score

for his performance reviews was 82 for the past five years. Waddam's combined average score for the same period was 88. *Id.* at 6.

### SUMMARY OF THE ARGUMENT

All plaintiffs regardless of minority status should be held to the same standard under *McDonnell Douglas*. Title VII's purpose was to prevent any kind of employment discrimination, without regard to minority status. The writers of Title VII intended for it to apply equally to members of any race. Because Waddam is considered by the Court to be a member of a protected class, his burden in proving a prima facie case of employment discrimination should be no different than that of a minority. Requiring additional evidence for a white male would add an undue burden, limiting the ability of plaintiffs like Waddam to bring legitimate discrimination lawsuits. Because Waddam should be held to the same standard under *McDonnell Douglas*, he is able to make out a prima facie case of discrimination given the facts of the case.

If this Court decides that additional evidence must be offered, this Court should require only the smallest amount of additional evidence that can raise suspicion. Minimizing necessary additional evidence keeps the burden for nonminority plaintiffs such as Waddam manageable. Given this Court adopts a minimal standard for additional evidence, the record clearly establishes an inference of discrimination. Waddam's superior qualifications compared to the hired applicant, Mr. Najjar, are undeniable. Where an employer purposefully hires a less qualified minority candidate, it can be assumed that racial discrimination against the majority has taken place.

### ARGUMENT

- I. REGARDLESS OF MINORITY STATUS, THIS COURT SHOULD HOLD ALL PLAINTIFFS TO THE SAME STANDARD BECAUSE (1) TITLE VII'S PURPOSE IS TO PREVENT ANY FORM OF EMPLOYMENT DISCRIMINATION AND (2)

REQUIRING A HIGHER STANDARD FOR NONMINORITY PLAINTIFFS  
IMPOSES AN UNREASONABLE BURDEN.

Because the purpose of Title VII is to prohibit the dismissal of any individual's allegation of discrimination regardless of race, this Court created a burden shifting framework to allow plaintiffs a fair chance to bring discrimination cases without overwhelming amounts of evidence. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973); *McDonald v. Santa Fe Trail Transp. Co.*, 427 U.S. 273, 278 (1976). The framework requires that plaintiffs make only a prima facie case before shifting the burden to the employer to articulate a legitimate reason for its hiring decision. If the defendant offers a reasonable, nondiscriminatory reason, then the burden moves back to the plaintiff to show that the employer's stated reason was mere pretext. *Id.* at 804. In order to establish if a plaintiff meets the prima facie burden for a Title VII claim of racial discrimination, this Court developed a four-prong test that the plaintiff must meet: "(i) that he belongs to a racial minority; (ii) that he applied and was qualified for a job for which the employer was seeking applicants; (iii) that, despite his qualifications, he was rejected; and (iv) that, after his rejection, the position remained open and the employee continued to seek applicants from persons of complainant's qualifications." *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973).

Since *McDonnell Douglas*, this Court has considered the first prong to also cover all plaintiffs, regardless of minority status. *See McDonald*, 427 U.S. at 279. However, debate has arisen among the circuit courts as to how non-minority plaintiffs satisfy the prima facie burden. Compare, e.g., *Iadimarco*, 190 F.3d at 160-2 (applying same standard) and *Mower v. Westfall*, 177 F.Supp.2d 940, 949 (Iowa 2001) (applying different standards to different plaintiffs). This Court should resolve this conflict and hold both majority and minority plaintiffs to the same standard because (1) requiring nonminority plaintiffs to produce additional evidence

demonstrating employment discrimination violates the purpose of Title VII and (2) an unfair burden is placed upon nonminority plaintiffs by requiring a higher standard.

A. Requiring nonminority plaintiffs to produce additional evidence demonstrating employment discrimination violates the purpose of Title VII

The purpose of Title VII was to protect all Americans and to provide equal opportunity of employment to all races regardless of the racial composition present in the work force. *Id.* at 293; *Furnco Constr. Corp. v. Waters*, 438 U.S. 567, 579 (1978). The law was intended to “cover both minorities and nonminorities” and to create an “obligation not to discriminate on the basis of any race.” *Id.* at 280.

Given this purpose, it is clear that Title VII applies equally to both minority and majority racial groups. *See McDonald*, 427 U.S. at 278; *Aragon Republic Silver State Disposal, Inc.*, 292 F.3d 654, 659 (9th Cir. 2002); *Iadimarco v. Runyon*, 190 F.3d 151, 158 (3rd Cir. 1999). Because Title VII applies equally to all plaintiffs, both minority and nonminority plaintiffs may make a prima facie case by satisfying the four-prong test outlined in *McDonnell Douglas*. Here, Waddam is a member of a protected class and may make a prima facie case. *See R.* at 3; *Aragon*, 292 F.3d at 659; *Byers v. Dallas Morning News, Inc.*, 209 F.3d 419, 426 (5th Cir. 2000).

B. An unfair burden is placed on nonminority plaintiffs by requiring a higher standard.

The only way to fairly evaluate Title VII claims is by applying the same standard to both minority and majority plaintiffs. Some courts have suggested that two additional tests should be levied upon the majority plaintiffs seeking to establish prima facie in a Title VII case: “(1) evidence indicating that the particular employer at issue has some reason or inclination to discriminate invidiously against whites and (2) evidence indicating that there is something “fishy” about the facts of the case at hand that raises an inference of discrimination.” *Mower v.*

*Westfall*, 177 F.Supp.2d 940, 949 (Iowa 2001). However, courts that apply the four-prong test to the minority while requiring the majority to present additional evidence create a discrepancy that is inconsistent with the goals of Title VII. *See Notari v. Denver Water Dep't*, 971 F.2d 585, 590 (10th Cir. 1992). First, courts have found that the unusual employer requirement is merely just an “arbitrary barrier that only serves to frustrate those who have legitimate Title VII claims.”

*Iadimarco*, 190 F.3d at 160. The concept of requiring background circumstances is irreversibly ambiguous and imprecise. *Id.* at 160. Moreover, its imprecise nature is likely to lead to jury confusion. *Id.* at 162. Second, multiple courts have found that requiring a nonminority plaintiff to show that there was a pattern of discrimination imposes an onerous burden upon such a plaintiff as compared to any other protected group. *Id.* at 160. A higher prima facie burden for nonminority plaintiffs creates an unfair stratification of reverse discrimination standards.

Because multiple courts deem background circumstances unreasonable, this Court should hold Waddam to the four-prong test outlined in *McDonnell Douglas*. Waddam meets all four prongs. First, Waddam’s status as a nonminority is irrelevant for the reasons stated previously. Moving to the second prong, Waddam applied to be a storage manager, which Initech was seeking applications for. *R.* at 6. Moreover, Waddam’s perfect score on the company’s Storage Acumen Capability Test and his twenty-six years of experience clearly makes him a qualified candidate, meeting both requirements for prong two. *Id.* at 6. Waddam meets the third prong, as he was rejected and Mr. Samir Najar was chosen. *Id.* at 6. Finally, Waddam meets the fourth prong because Initech considered applicants with Waddam’s same qualifications and of lesser qualifications. *Id.* at 6. Specifically, Waddam had a superior score on an aptitude test, better performance review history, and was ranked higher by the internal hiring committee. *Id.* at 3. Therefore, Waddam establishes his prima facie burden for his Title VII claim.

Because the original intention of Title VII was to protect all races and requiring additional evidence for nonminority plaintiffs creates an unfair burden, this Court should hold both minority and majority plaintiffs to the same standard. Therefore, Waddam meets his prima facie burden under Title VII as he satisfies all four prongs of the *McDonnell Douglas* Test.

II. ALL PLAINTIFFS REGARDLESS OF RACE SHOULD BE HELD TO THE SAME STANDARD, BUT IF THIS COURT REQUIRES NONMINORITY PLAINTIFFS TO DEMONSTRATE BACKGROUND CIRCUMSTANCES, IT SHOULD REQUIRE MINIMAL EVIDENCE THAT RAISES SUSPICION OF DISCRIMINATION, WHICH WADDAM'S SUPERIOR QUALIFICATIONS ACCOMPLISH.

Putting forth a prima facie case is the first step in a series of legal proceedings regarding employment discrimination, and in no way serves the same fact-finding function as a full trial. The prima facie case was not intended to be a burdensome or inflexible process, but rather a reasonable and adaptable way to assess evidence of discrimination. *United States Postal Service Board of Governors v. Aikens*, 60 U.S. 711, 718 (1983). This Court constructed the *McDonnell Douglas* test relatively broadly to acknowledge subtle forms of racial discrimination and intended that indirect evidence and inferences of discrimination would satisfy the test, allowing plaintiffs to take their case to trial. *McDonnell*, 411 U.S. 792 at 802. If this Court decides not to adopt the same standard for nonminority plaintiffs, then this Court should only require a minimal standard of indirect evidence to demonstrate background circumstances in order to be consistent with the intent behind prima facie case requirement and the *McDonnell Douglas* test. Here, Waddam meets that standard.

A. Because the requirement of background circumstances is not intended as an additional hurdle, this Court should only consider a minimal standard of indirect evidence.

The District Court of Iowa in *Mower* set forth a background circumstances test to determine if an inference of discrimination can be raised. Nonminority plaintiffs can satisfy this

test in two ways: “(1) evidence indicating that the particular employer at issue has some reason or inclination to discriminate invidiously against whites and (2) evidence indicating that there is something ‘fishy’ about the facts of the case at hand that raises an inference of discrimination.” *Mower*, 177 F.Supp.2d at 945. The language of the test is intentionally broad to allow for nonminority plaintiffs to satisfy the test without a heavy burden.

The Court of Appeals for the District of Columbia ruled in *Harding* that the background circumstances requirement is not intended to be “an additional hurdle for white plaintiffs” and must ensure that “white plaintiffs have the same rights as minority plaintiffs.” *Harding v. Gray*, 9 F.3d 150, 154 (D.C. Cir. 1993). Furthermore, this Court in *Aikens* acknowledges it is unlikely that there will be any direct evidence stating the employer’s discriminatory intent. *Aikens*, 60 U.S. at 716. Therefore, this Court should not adopt a standard requiring direct evidence for nonminority plaintiffs because this imposes an unfair burden.

Instead, this Court should adopt a minimal standard of indirect evidence in order to maintain an equitable consideration between minority and nonminority claims. The Court of Appeals for the Tenth Circuit in *Notari* acknowledges that *McDonnell Douglas* was not meant to bar claims by historically discriminated groups as well as nonminority plaintiffs who have been harmed by actions prohibited under Title VII. *Notari*, 971 F.2d at 590. If the standard is set too high, this Court risks barring nonminority plaintiffs from continuing their legitimate employment discrimination cases in court while their minority counterparts are able to do so, creating an unfair disparity. The Court of Appeals for the Seventh Circuit in *Mills* elaborates that *McDonnell Douglas* was meant to be applied with flexibility. *Mills v. Health Care Service Corporation*, 171 F.3d 450, 460 (7<sup>th</sup> Cir. 1999). This Court has the discretion to set a low

standard of indirect evidence for nonminority plaintiffs. Doing otherwise would impose an unfair burden and violate the intent of *McDonnell Douglas*.

B. Here, evidence that Respondent overlooked Waddam's superior qualifications is enough to fulfill the requirement of background circumstances.

As previously discussed, *Mower* set forth in its second prong that nonminority plaintiff can satisfy the background circumstances prong by giving evidence that there is something "fishy about the facts at hand that raises an inference of discrimination." *Mower*, 177 F.Supp.2d at 945. The passing over of a more qualified white applicant in favor of a less qualified minority applicant constitutes something "fishy" *Harding*, 9 F.3d at 153. *Harding* reasons that the rational employer would gain no legitimate benefit through the employment of a less qualified applicant. *Id.* at 153. Moreover, *Mower* also acknowledges that if a company deviates from standard hiring procedures, it is also an indication of something "fishy." *Mower*, 177 F.Supp.2d at 950 (considering *Mower's* superior qualifications compared to the minority applicant who scored last on a written exam and oral board interview).

Here, Waddam outscored Mr. Najjar, the minority applicant actually chosen, on the Storage Acumen Capability Test by five questions and outscored him on his performance review by six points. R. at 6. Coupling these facts with Waddam's distinction of receiving the highest rating by the hiring committee, Waddam clearly was the superior applicant. *Id.* at 6. However, Mr. Najjar was selected over Mr. Waddam by the hiring manager despite the hiring committee's repeated advice. *Id.* at 6. According to *Harding*, Waddam fulfills the modified first prong of test outlined in *McDonnell Douglas* as the hiring manager denied Waddam a promotion in favor of a minority applicant with lesser qualifications. *Harding*, 9 F.3d at 153. The hiring manager's passing over Waddam for a less qualified minority candidate demonstrates "evidence indicating that there is something 'fishy' about the facts of the case at hand that raises an inference of

discrimination.” *Id* at 153. Moreover, by overlooking Waddam, Initech acted contrary to its best interests by promoting a less-qualified minority applicant, increasing the likelihood that the employer acted out of a discriminatory motive. *Id* at 153. Therefore, if this Court decides to require background circumstances, it should find that Initech’s refusal to hire Waddam, despite his superior qualifications, for a lesser-qualified minority candidate indicate that Initech’s decision was racially motivated and thereby in violation of Title VII.

### CONCLUSION

For the reasons stated, Petitioner Waddam respectfully requests that the Court of Appeals for the Twenty-First Circuit’s decision affirming summary judgment be reversed and the case be remanded for judgment requiring the same standard for nonminority plaintiffs.

Respectfully submitted,

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