

No. 26-10505

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Chauncy Bell,
Plaintiff-Appellant,

v.

Lhoist North America of Texas, LLC,
Defendant-Appellee.

On Appeal from the United States District Court
for the Northern District of Texas

**BRIEF OF THE EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION AS AMICUS CURIAE IN SUPPORT OF APPELLANT**

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STATEMENT OF INTEREST

This appeal raises important questions concerning the appropriate standards for determining whether an individual has engaged in protected activity and suffered a materially adverse action for purposes of a retaliation claim under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, and, by extension, 42 U.S.C. § 1981.

The Equal Employment Opportunity Commission (EEOC) administers and enforces Title VII and thus has a substantial interest in proper resolution of these questions. *See* 42 U.S.C. § 2000e-5(a), (f)(1). The EEOC files this brief under Federal Rule of Appellate Procedure 29(a)(2).

STATEMENT OF THE ISSUES¹

1. Whether the district court applied an incorrect legal standard in assessing whether the plaintiff suffered a materially adverse action for purposes of his retaliation claim.

2. Whether the district court applied an incorrect legal standard in assessing whether the plaintiff engaged in protected activity for purposes of his retaliation claim.

¹ The EEOC takes no position on any other issues in this appeal.

STATEMENT OF THE CASE

A. Factual Background²

Chauncy Bell, who is Black, worked as a truck driver for Lhoist North America of Texas, LLC. ROA.700. He mainly worked out of the company's terminal in McKinney, Texas, and his work generally involved hauling and delivering lime products. ROA.700; ROA.508-09.

Bell maintains that Lhoist disproportionally required him and other Black drivers to work weekend shifts and regularly assigned them to deliver the “last load” of the day while allowing White drivers to avoid this task. ROA.700-02; *see also* ROA.775. For various reasons, the last load was the “most burdensome delivery” and “caused significant hardship” for those assigned to it. ROA.701-02. The last load required Black drivers to work late and, in winter months, it often forced them to return to the terminal after dark. ROA.701-02. The drivers then had to either wash out their trucks in dark and freezing conditions, which reduced visibility and increased risk of chemical burns, or skip washing until the next morning.

² Because this appeal arises from a grant of summary judgment, we present the facts relevant to the issues we address in this brief in the light most favorable to Bell. *See Johnson v. PRIDE Indus., Inc.*, 7 F.4th 392, 399 (5th Cir. 2021).

ROA.702. If the drivers skipped washing, they then had to show up early to finish the job or delay their scheduled deliveries. ROA.702. In that event, the task became even more difficult because the lime would harden overnight. ROA.702. Because drivers on the last load had to work late, they also faced increased traffic, risked depleting their “DOT hours,” and missed time with their families. ROA.702.

Bell complained about the last-load and weekend-shift assignments to a dispatcher, Warren Jones, to whom Bell reported. ROA.700, 702; *see also* ROA.763-64. Bell asked Jones whether Jones had “assigned [Bell] the last loads and weekend loads because [Bell] was Black.” ROA.702. Although Jones was not a manager, Bell “understood him to be a direct point of contact who would take concerns up the chain of command.” ROA.702; *see also* ROA.777-78. Bell thereafter continued to complain to Jones about Lhoist assigning him and other Black drivers to weekend shifts. ROA.702; *see also* ROA.784.

After Bell complained, Lhoist’s treatment of him worsened. ROA.702; ROA.784. About a month after Bell initially complained to Jones, Lhoist disciplined him for not wearing a seatbelt and for using a cellphone headset while driving. ROA.703; ROA.788-89. Lhoist warned Bell that

“[f]uture violations of this policy could result in further disciplinary actions up to and including termination.” ROA.788-89. Bell claims he often did not wear a seatbelt at jobsites because he needed to frequently enter and exit his truck and drove only three-to-four miles per hour, and Lhoist had never before disciplined him for that common practice. ROA.703; ROA.779-80. Similarly, Bell had been using a cellphone headset while driving for several months without issue, and he witnessed non-Black drivers use their cellphones in hand while driving without facing any discipline. ROA.703; ROA.780-81.

Around the same time, Lhoist began placing more “pre-trip inspection tags” on Bell’s and other Black drivers’ trucks. ROA.703; ROA.521. As a result, Bell had to conduct more thorough pre-trip inspections, which meant he “had to put more time and effort into preparing for trips.” ROA.700-01; *see also* ROA.783. Additionally, “Lhoist would discipline drivers who did not report finding tags,” ROA.700, which meant that placing more tags on Bell’s truck put him at greater risk of discipline. Finding Lhoist’s treatment of him intolerable, Bell eventually resigned. ROA.703; ROA.784-85.

B. District Court Decision

Bell filed this action, asserting claims for race discrimination and retaliation under 42 U.S.C. § 1981. In support of his retaliation claim, Bell contended, among other things, that he had engaged in protected activity by complaining to Jones about Lhoist's discriminatory last-load and weekend-shift assignments and that Lhoist had retaliated against him by disciplining him for alleged seatbelt and cellphone-use violations and by putting more inspection tags on his truck.³ ROA.691.

The district court granted summary judgment to Lhoist. ROA.2361. The court rejected Bell's retaliation claim on two principal grounds. First, the court determined that Bell had not engaged in protected activity. ROA.2358-59. The court acknowledged that Bell "asked Jones ... if he was giving Bell a load because Bell was Black." ROA.2359. But it reasoned that "this incident provides no evidence that Bell reasonably believed his being assigned the load was unlawful, nor does it suggest that he was opposing

³ Bell also alleged that Lhoist retaliated against him when someone tampered with his truck. ROA.691. The district court rejected Bell's retaliation claim premised on that conduct because Bell could not identify the culprit or otherwise show that Lhoist was responsible. ROA.2360. We take no position on that portion of the court's ruling.

the practice.” ROA.2359. It also faulted Bell for “not submit[ting] a formal complaint to Human Resources or management.” ROA.2359. The court concluded that “[n]o reasonable jury could find that Bell was opposing discrimination that he reasonably believed to be unlawful based on this evidence.” ROA.2359.

Second, the court determined that Bell had not suffered an “adverse employment action.” ROA.2359-61. The court stated: “To be adverse, an employment action must cause some harm affecting an identifiable term or condition of employment.” ROA.2359 (citing *Muldrow v. City of St. Louis*, 601 U.S. 346, 354 (2024)). Applying this standard, the court reasoned that the discipline and inspection tags “did not alter the terms or conditions of [Bell’s] employment,” and thus were not sufficiently adverse. ROA.2360.

Having determined that Bell could not establish that he engaged in protected activity or that he suffered an adverse action, the court did not address whether he could establish a causal connection between any alleged protected activity and any alleged adverse action. *See* ROA.2358-61.

This appeal followed. ROA.2363.

SUMMARY OF ARGUMENT

To prove discrimination or retaliation under Title VII – and, by extension, § 1981 – a plaintiff must show that he suffered some type of adverse action. But a different adversity standard governs depending on whether the claim is for discrimination or retaliation. For retaliation claims, the plaintiff must show that he suffered a *materially adverse action*, which is one that well might dissuade a reasonable worker from making or supporting a claim of discrimination. The Supreme Court set forth this standard in *Burlington Northern & Santa Fe Railway Co. v. White*, 548 U.S. 53 (2006), and it clarified that a materially adverse action *need not* affect or relate to the terms or conditions of employment. By contrast, for discrimination claims, the plaintiff must show that he suffered an *adverse employment action*, which is one that causes “some harm” with respect to a person’s terms or conditions of employment. The Supreme Court set forth the “some harm” standard in *Muldrow v. City of St. Louis*, 601 U.S. 346 (2024).

In this case, Bell’s retaliation claim implicates both adversity standards, albeit in different ways. To prove retaliation, Bell had to show both that he engaged in protected activity and that he suffered a materially

adverse action. As just explained, *Burlington Northern* squarely governs whether Bell suffered a materially adverse action for purposes of his retaliation claim. But *Muldrow*, too, is relevant in determining whether he engaged in protected activity. On that front, Bell had to show that he reasonably believed the employment practice he complained about — Lhoist’s practice of disproportionately assigning last-load and weekend-shift assignments to Black drivers — constituted *unlawful* discrimination. And since *Muldrow* governs what constitutes unlawful discrimination, it informs whether Bell’s belief was reasonable. So long as Bell reasonably believed that Lhoist’s assignment practice caused “some harm” with respect to the terms or conditions of employment, then he reasonably believed the practice was unlawful. In short, *Burlington Northern* governs the material-adversity analysis, but *Muldrow* remains relevant in the protected-activity analysis.

Here, the district court did not properly apply either adversity standard in evaluating Bell’s retaliation claim.

First, in assessing adversity for purposes of Bell’s retaliation claim, the court required Bell to show that he suffered an adverse “*employment action*,” that is, one that altered his terms or conditions of employment. But

that is the adversity standard for discrimination claims, not retaliation claims. Under the correct standard – *Burlington Northern*’s well-might-have-dissuaded standard – an employer’s retaliatory conduct may be materially adverse even when it does not affect one’s terms or conditions of employment. And under that standard, a reasonable jury could find that Bell suffered a materially adverse action.

Second, in assessing whether Bell engaged in protected activity, the court reasoned that Bell could not have reasonably believed that Lhoist’s assignment practice constituted unlawful discrimination. Under *Muldrow*’s some-harm standard, however, discriminatory work or shift assignments may constitute unlawful adverse employment actions because they inherently relate to the terms or conditions of employment and often cause “some harm.” And a reasonable jury could find that Bell opposed that practice by communicating to Lhoist his belief that it was discriminatory. Contrary to the district court’s reasoning, the fact that Bell phrased his opposition in the form of a question does not foreclose that result.

ARGUMENT

Retaliation claims under Title VII and § 1981 “‘are parallel causes of action’ that require ‘proof of the same elements in order to establish

liability.’” *Owens v. Circassia Pharms., Inc.*, 33 F.4th 814, 835 n.18 (5th Cir. 2022) (citation omitted). To prove retaliation under either statute, a plaintiff must show that (1) he engaged in protected activity, (2) he suffered a materially adverse action,⁴ and (3) there was a causal connection between the two. *See Cabral v. Brennan*, 853 F.3d 763, 766 (5th Cir. 2017).

This brief, like the district court’s opinion, focuses on the first and second elements.⁵ We start with the district court’s material-adversity analysis and then turn to its protected-activity analysis.

⁴ As this Court has recognized, *Burlington Northern* “explicitly rejected the ‘adverse employment action’ test” for Title VII retaliation claims. *Lowery v. Mills*, 157 F.4th 729, 742 (5th Cir. 2025). Thus, although some decisions continue to use the term “adverse employment action” in describing the adversity element for retaliation claims, the term “materially adverse action” is more appropriate. *See Perkins v. Int’l Paper Co.*, 936 F.3d 196, 213 (4th Cir. 2019) (“[T]he materially adverse action requirement [for retaliation claims] ... is different from an adverse employment action required for a disparate treatment claim.”); *Laster v. City of Kalamazoo*, 746 F.3d 714, 719 (6th Cir. 2014) (same).

⁵ As noted above, the district court did not address the third element of Bell’s retaliation claim: whether he could show a causal connection between his protected activity and a materially adverse action. *See* ROA.2358-61. We take no position on whether Bell’s retaliation claim could survive summary judgment on causation grounds.

I. The district court applied an incorrect legal standard in assessing whether Bell suffered a materially adverse action for purposes of his retaliation claim.

The Supreme Court's decision in *Burlington Northern* supplies the appropriate standard for assessing material adversity in the retaliation context. See *Johnson v. Halstead*, 916 F.3d 410, 420 (5th Cir. 2019). In that decision, 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." *Burlington N.*, 548 U.S. at 68 (citation modified).

Here, the district court erred by failing to apply the material adversity standard set forth in *Burlington Northern* and instead applying the separate and distinct adversity standard for discrimination claims set forth in *Muldrow*. Under the correct standard — *Burlington Northern*'s well-might-have-dissuaded standard — a reasonable jury could find that Bell suffered a materially adverse action.

A. The district court failed to apply the material adversity standard set forth in *Burlington Northern*.

In assessing whether Bell suffered a materially adverse action for purposes of his retaliation claim, the district court did not mention or apply

Burlington Northern. Instead, relying on *Muldrow*, the court required Bell to show that he suffered an adverse “*employment action*,” meaning “some harm affecting an identifiable term or condition of employment.” ROA.2359 (emphasis added) (citing *Muldrow*, 601 U.S. at 354).

That is the adversity standard for discrimination claims, not retaliation claims.⁶ In *Burlington Northern*, the Court expressly clarified that, unlike discrimination claims, retaliation claims are “*not limited to ... actions that affect the terms and conditions of employment.*” 548 U.S. at 64 (emphasis added). Rather, retaliation claims “*extend[] beyond workplace-related or employment-related retaliatory acts and harm.*” *Id.* at 67; *see also Stratton v. Bentley Univ.*, 113 F.4th 25, 44 (1st Cir. 2024) (“[R]etaliation need not ... even ‘relate to the terms or conditions of employment.’” (citation omitted)).

⁶ As other circuits have recognized, *Muldrow* “expressly declined to disturb the ‘materially adverse’ requirement for retaliation claims.” *Bilyeu v. UT-Battelle, LLC*, 154 F.4th 396, 405 (6th Cir. 2025) (citing *Muldrow*, 601 U.S. at 357); *accord Herkert v. Bisignano*, 151 F.4th 157, 166 (4th Cir. 2025); *Plump v. Gov’t Emps. Ins. Co.*, 161 F.4th 1222, 1229 n.10 (10th Cir. 2025); *Bailey v. Fulton Cnty. Sch. Dist.*, No. 24-13013, 2025 WL 3642317, at *2 n.3 (11th Cir. Dec. 16, 2025).

By invoking the adversity standard for discrimination claims rather than *Burlington Northern*, the district court applied the wrong legal standard. See *Crawford v. W. Tex. A&M Univ.*, --F.4th--, 2026 WL 2795827, at *3 (5th Cir. Sept. 18, 2026) (district court erred where it “failed to apply the *Burlington [Northern]* test”); *Ahmed v. Hamtramck Pub. Schs.*, 178 F.4th 975, 982 (6th Cir. 2026) (district court erred by relying on “cases that applied the distinct standard from Title VII’s anti-discrimination provision, rather than the *Burlington Northern* retaliation standard appropriate to this case”); *Xu v. LightSmyth Techs., Inc.*, No. 23-35423, 2024 WL 4562748, at *2 (9th Cir. Oct. 24, 2024) (district court erred by failing to conduct separate adversity analysis for retaliation claim).

B. Under the correct standard, a reasonable jury could find that Bell suffered a materially adverse action.

Under *Burlington Northern*’s well-might-have-dissuaded standard, a reasonable jury could find that Lhoist’s actions were materially adverse in at least two respects.

1. Warnings of disciplinary action or termination.

As an initial matter, a reasonable worker could find an employer’s warning of disciplinary action or termination materially adverse in some

circumstances. *See, e.g., Daniels v. Sch. Dist. of Phila.*, 776 F.3d 181, 196 (3d Cir. 2015) (reasonable jury could find that a disciplinary notice, which warned plaintiff that future infractions “would lead to more severe disciplinary action,” was materially adverse); *Pantoja v. Am. NTN Bearing Mfg. Corp.*, 495 F.3d 840, 849 (7th Cir. 2007) (reasonable jury could find that “disciplinary warnings” were materially adverse).

It is not difficult to see why. When such a warning comes on the heels of an employee’s protected activity, the employee reasonably might interpret the warning as a veiled threat that his employer will punish him if he continues to complain. In turn, “[a]n employee who knows that, by making a charge of discrimination, she risks a threat of further, more serious discipline for deficiencies at work might well choose not to proceed with such a charge in the first place.” *Planadeball v. Wyndham Vacation Resorts, Inc.*, 793 F.3d 169, 178 (1st Cir. 2015) (citation modified).

In other words, an employer’s disciplinary warning may well hang like the proverbial sword of Damocles over the head of the complaining employee. And of course, as Justice Marshall once observed in a different

context, “the value of a sword of Damocles is that it hangs – not that it drops.” *Arnett v. Kennedy*, 416 U.S. 134, 231 (1974) (Marshall, J., dissenting).⁷

Here, Bell alleges that Lhoist disciplined him shortly after he complained about the company’s assignment practice, ROA.703, expressly warning that “[f]uture violations of this policy could result in further disciplinary actions up to and including termination,” ROA.788-89.

2. More arduous or less desirable tasks.

Along similar lines, a reasonable worker could find an assignment of more difficult or less desirable tasks materially adverse in some circumstances. Indeed, in *Burlington Northern* itself, the Court concluded that giving an employee duties that were “by all accounts more arduous and dirtier” could qualify as materially adverse. 548 U.S. at 71. The Court explained: “Common sense suggests that one good way to discourage an

⁷ We note, however, that because *Burlington Northern* sets an objective standard, an employer’s retaliatory conduct may be materially adverse even when it does not succeed in dissuading an employee from complaining. See *Steidle v. U.S. Liab. Ins. Co.*, 179 F.4th 193, 208 (3d Cir. 2026); *Steele v. Schafer*, 535 F.3d 689, 696 (D.C. Cir. 2008); *Patane v. Clark*, 508 F.3d 106, 116 (2d Cir. 2007); see also *Baloch v. Kempthorne*, 550 F.3d 1191, 1199 n.5 (D.C. Cir. 2008) (Kavanaugh, J.) (under *Burlington Northern*, relevant focus is not on plaintiff’s “subjective reactions,” but “whether the objective ‘reasonable worker’ would have been dissuaded from making a discrimination complaint”).

employee ... from bringing discrimination charges would be to insist that she spend more time performing the more arduous duties and less time performing those that are easier or more agreeable.” *Id.* at 70-71.

Consistent with that reasoning, assigning more difficult or less desirable tasks could, in some contexts, dissuade a reasonable worker from complaining about discrimination. *See Davis-Garett v. Urb. Outfitters, Inc.*, 921 F.3d 30, 47-48 (2d Cir. 2019) (reasonable jury could find that plaintiff suffered materially adverse action where, among other things, employer assigned her duties that “everyone disliked the most” and “no one want[ed] to do”); *Ellis v. Houston*, 742 F.3d 307, 323-24 (8th Cir. 2014) (plaintiff suffered materially adverse action where, among other things, employer “forced [him] to take unpopular details”); *Moore v. City of Phila.*, 461 F.3d 331, 348 (3d Cir. 2006) (reassignment to less desirable position could be materially adverse).

Here, Bell alleges that Lhoist began putting more pre-trip inspection tags on his truck, which both required him to spend more time and effort conducting pre-trip inspections and put him at greater risk of discipline. ROA.700-01.

II. The district court applied an incorrect legal standard in assessing whether Bell engaged in protected activity for purposes of his retaliation claim.

The next question is whether Bell engaged in protected activity. An employee may engage in protected activity by, among other things, opposing an unlawful employment practice. *See Scott v. U.S. Bank Nat'l Ass'n*, 16 F.4th 1204, 1209-10 (5th Cir. 2021). An employee engages in this kind of protected oppositional activity when he (1) opposes an employment practice and (2) reasonably believes the employment practice is unlawful. *See id.*

Here, a reasonable jury could find that Bell reasonably believed that Lhoist's practice of disproportionately assigning last-load and weekend-shift assignments to Black employees constituted unlawful discrimination.⁸ Under *Muldrow*, discriminatory work or shift assignments may constitute

⁸ We pause to clarify one point. To establish this reasonable belief, Bell had to show that he reasonably believed not only that a race-based assignment practice is unlawful, but also that Lhoist, as a factual matter, had engaged in such a practice by disproportionately assigning last loads and weekend shifts to him and other Black drivers. We assume for purposes of our argument that the summary judgment record, viewed in the light most favorable to Bell, could allow a reasonable jury to find that Bell reasonably believed Lhoist engaged in that practice. Thus, we address only whether a reasonable jury could find that Bell reasonably believed the practice was unlawful.

adverse employment actions because they inherently relate to the terms or conditions of employment and often cause “some harm.” A reasonable jury could likewise find that Bell opposed that practice when he asked whether Lhoist was allocating last-load and weekend-shift assignments based on race.

A. A reasonable jury could find that Bell reasonably believed Lhoist’s race-based assignment practice was unlawful.

Under Title VII and § 1981, an employer engages in unlawful discrimination when it takes an “adverse employment action” against an individual because of the individual’s race. *See Harrison v. Brookhaven Sch. Dist.*, 82 F.4th 427, 429-30 & n.3 (5th Cir. 2023). The Supreme Court’s decision in *Muldrow* supplies the appropriate standard for assessing adversity in the discrimination context. There, the Court clarified that a plaintiff must show his employer took an action that caused “some harm respecting an identifiable term or condition of employment.” *Muldrow*, 601 U.S. at 354-55; *see also id.* at 359 (plaintiff “need show only 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 355-56 & n.2 (citation omitted).

Under *Muldrow*’s “some harm” standard, giving an employee unfavorable work or shift assignments – thereby forcing him to take on worse responsibilities or work worse hours – may constitute an adverse employment action.

To start, such assignments inherently regard the “terms” or “conditions” of employment because they affect which work-related tasks an employee must perform and when the employee must perform them. Indeed, the responsibilities associated with one’s job are, almost tautologically, terms or conditions of one’s employment. *See Ahmed*, 178 F.4th at 985 (employer’s action “concerned a term or condition of employment” where it affected plaintiff’s ability to “perform her job duties”). So too is one’s work schedule. As this Court recognized even before *Muldrow*, “[t]he days and hours that one works are quintessential ‘terms or conditions’ of one’s employment.” *Hamilton v. Dallas Cnty.*, 79 F.4th 494, 503 (5th Cir. 2023) (en banc); *see also 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?”).

Furthermore, unfavorable work or shift assignments can cause “some harm” even when they do not change the employee’s rank or pay, or otherwise tangibly affect his employment. Indeed, a wide range of intangible consequences can amount to “some harm” or “simple injury.” See *Muldrow*, 601 U.S. at 354 (Title VII is not limited to “economic or tangible” harms (citation omitted)). As Justice Kavanaugh explained in his concurring opinion in *Muldrow*, employment actions that cause reductions in “prestige, status, career prospects, interest level, perks, professional relationships, networking opportunities, effects on family obligations, or the like” cause some harm and thus may be sufficiently adverse. *Id.* at 365 (Kavanaugh, J., concurring in judgment). When an unfavorable work or shift assignment causes such harm, it satisfies *Muldrow*’s standard and thus constitutes an adverse employment action.

Against this backdrop, a reasonable jury could find that Bell reasonably believed that Lhoist’s practice of disproportionately assigning last-load and weekend-shift assignments to Black employees was unlawful. According to Bell, this practice caused harm because the last-load assignment involved more burdensome and less desirable responsibilities. See ROA.701-02. Indeed, *Muldrow* itself suggests actions that impose less

desirable or prestigious responsibilities on an employee may cause some harm. *See* 601 U.S. at 351, 359 (discussing how transfer diminished plaintiff’s duties and responsibilities); *McNeal v. City of Blue Ash*, 117 F.4th 887, 900 (6th Cir. 2024) (“detrimental change in responsibilities” may be an adverse employment action (citation omitted)); *Johnson-Lee v. Tex. A&M Univ.-Corpus Christi*, 729 F. Supp. 3d 709, 719 (S.D. Tex. 2024) (“undesirable work assignments” may cause more than de minimis harm); *see also* *Hamilton*, 79 F.4th at 509 (Ho, J., concurring) (noting Department of Justice’s argument that “work assignments happening on the basis of race are likewise actionable under Title VII” (citation modified)).

Lhoist’s assignment practice also caused harm by forcing Black drivers to work longer and later hours. *See* ROA.701-02. By itself, a detrimental change to one’s work schedule is actionable. *See* *Hamilton*, 79 F.4th at 503-05; *Threat*, 6 F.4th at 677-80. And here, the schedule change had additional downstream effects: because drivers on the last load had to stay late, they faced increased traffic, risked depleting their “DOT hours,” and missed time with their families. ROA.702; *see* *Muldrow*, 601 U.S. at 365 (Kavanaugh, J., concurring in judgment) (listing “effects on family obligations” as possible harm).

The district court stated without explanation that Bell could not have reasonably believed that making race-based work or shift assignments was unlawful. *See* ROA.2359. That assertion may have rested on the court's misreading of *Muldrow*. In a different part of its analysis, the court misarticulated *Muldrow*'s standard, stating that "the challenged action must *meaningfully* alter the terms of employment." ROA.2359 (emphasis added). But as this Court has recognized, *Muldrow* expressly clarified that a plaintiff need not show a "significant change" to his employment. *Strife v. Aldine Indep. Sch. Dist.*, 138 F.4th 237, 249 n.3 (5th Cir. 2025). Because the word "meaningful" is synonymous with "significant" or "serious," *see In re Harman Int'l Indus., Inc. Sec. Litig.*, 791 F.3d 90, 101 (D.C. Cir. 2015), the district court's formulation cannot be squared with *Muldrow*.

B. A reasonable jury could find that Bell opposed Lhoist's race-based assignment practice.

To oppose an employment practice, an employee usually need only communicate to his employer a belief that the practice is discriminatory. *See Crawford v. Metro. Gov't of Nash. & Davidson Cnty.*, 555 U.S. 271, 276-77 (2009). As this Court has observed, "stating one's belief that discrimination has occurred 'virtually always' constitutes opposition." *Wallace v.*

Performance Contractors, Inc., 57 F.4th 209, 224 (5th Cir. 2023) (quoting *Crawford*, 555 U.S. at 276-77); see also *Brown v. United Parcel Serv., Inc.*, 406 F. App'x 837, 840 (5th Cir. 2010) (employee must alert employer to belief that “unlawful discrimination is at issue,” but “[m]agic words are not required”).

An employee may convey such a belief even when he phrases it in the form of a question. In *Qin v. Vertex, Inc.*, 100 F.4th 458, 476 (3d Cir. 2024), the Third Circuit held that an employee opposed discrimination when he “asked his manager ... if the reason why he had not been promoted was because he was Chinese.” The court explained that although the employee had posed a question, he nonetheless “made an explicit connection between his membership in a protected class and his lack of promotion.” *Id.* In context, the court reasoned, “there is no meaningful difference between [the employee] asking, ‘Am I not being promoted because I’m Chinese?’ and [him] saying, ‘I think I am not being promoted because I’m Chinese.’” *Id.* Accordingly, the court concluded, a reasonable jury could find that the employee communicated to his employer a belief that he had suffered discrimination. *Id.* The court further noted that the

manager's response to the question "bolsters such a conclusion" because he referred the employee to human resources. *Id.*

The facts here are, in relevant respects, analogous to those in *Qin*. Much like the employee in *Qin*, Bell asked Jones if he had "assigned [Bell] the last loads and weekend loads because [he] was Black." ROA.702. Like the employee in *Qin*, Bell thus made an "explicit connection" between a protected trait (his race) and an adverse employment action (the last-load and weekend-shift assignments). And as in *Qin*, there is no meaningful difference between Bell asking, "Am I being given these assignments because I'm Black?" and him saying, "I think I am being given these assignments because I'm Black." Accordingly, a reasonable jury could find that Bell communicated to Lhoist a belief that its assignment practice was discriminatory. *See Crawford*, 555 U.S. at 276-77; *Wallace*, 57 F.4th at 224.

A plaintiff need not "submit a formal complaint" to engage in oppositional activity, as the district court here appeared to assume. ROA.2359. To the contrary, "[a]n informal complaint may constitute protected [oppositional] activity for purposes of retaliation claims." *Amanduron v. Am. Airlines*, 416 F. App'x 421, 424 (5th Cir. 2011) (quoting *Casna v. City of Loves Park*, 574 F.3d 420, 427 (7th Cir. 2009)); *see also Payne v.*

McLemore's Wholesale & Retail Stores, 654 F.2d 1130, 1137, 1139 n.9 (5th Cir. Unit A Sept. 1981) (holding that boycott and picketing to protest employer's discriminatory practices was oppositional activity and recognizing importance of "protect[ing] an employee's right to oppose perceived discrimination by appropriate, informal means"); *Alkhawaldeh v. Dow Chem. Co.*, 851 F.3d 422, 429 n.23 (5th Cir. 2017) (noting that Title VII's "opposition clause has been held to encompass informal protests, such as voicing complaints to employers" (quoting *Armstrong v. Index J. Co.*, 647 F.2d 441, 448 (4th Cir. 1981))).

None of this is to suggest that *any* employee who asks whether an employment decision was made because of race has necessarily engaged in protected activity. As explained above, a plaintiff must also show that he reasonably believed the practice he opposed was unlawful. *See Scott*, 16 F.4th at 1209-10. Where, as here, an employee *both* reasonably believes that an employment practice is discriminatory *and* communicates that belief to his employer by asking whether that is so, he has engaged in protected activity.

CONCLUSION

For the foregoing reasons, we respectfully urge this Court to hold that the district court applied incorrect legal standards in determining that no reasonable jury could find that Bell suffered a materially adverse action or engaged in protected activity for purposes of his retaliation claim.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B), and Fifth Circuit Rules 29.2, 29.3, and 32.2, because it contains 4,988 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and Fifth Circuit Rule 32.2.

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CERTIFICATE OF SERVICE

I certify that on September 23, 2026, I electronically filed the foregoing brief in PDF format with the Clerk of Court 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.

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