No. 22-2021

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Louis Naes,

Plaintiff-Appellant

v.

City of St. Louis, Missouri, et al.,

Defendants-Appellees

On Appeal from a Final Judgment of the
United States District Court for the Eastern District of Missouri
Case No. 4:19-cv-02132-SEP, Hon. Sarah E. Pitlyk

PETITION FOR REHEARING EN BANC

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Introduction and Rule 35(b)(1) Statement

Title VII of the Civil Rights Act of 1964 makes it unlawful for an employer "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual" with respect to "compensation, terms, conditions, or privileges of employment" on the basis of race, color, religion, sex, or national origin. 42 U.S.C. § 2000e-2(a)(1). Plaintiff-appellant Louis Naes maintains that the City of St. Louis violated Title VII when it transferred him to a different job on the basis of sex.

Following binding circuit precedent, *see Muldrow v. City of St. Louis Missouri*, 30 F.4th 680 (8th Cir. 2022), *cert. granted*, __ S. Ct. __, 2023 WL 4278441 (June 30, 2023), the panel in this case held that a discriminatory job transfer is lawful under Title VII unless a court views the transfer as imposing a "materially significant disadvantage" on the employee. *See* Addendum (Add.) 3 n.2. This Court held the plaintiff's claim in *Muldrow* non-actionable under that standard. *See* 30 F.4th at 688-90. And because the panel concluded that "Naes's circumstances are nearly identical to those in Muldrow," *id.* at 3, Naes's Title VII claim failed.[1]

[1] After the Supreme Court granted certiorari in *Muldrow*, Naes moved this Court to further extend the time to file a petition for panel rehearing or rehearing en banc until 21 days after the Supreme Court disposes of *Muldrow*. *See* Mot. to Further Extend Time to File Pet. for Panel R'hrg or R'hrg En Banc (July 10, 2023). This Court has yet to rule on that motion. We respectfully suggest that this Court may wish to hold this petition in abeyance until the Supreme Court resolves *Muldrow*.

This appeal involves a question of exceptional importance that was resolved by the panel in a manner that conflicts with authoritative decisions of other United States Courts of Appeals: whether an employer's discriminatory transfer of an employee violates Title VII only when it imposes a "materially significant disadvantage" on that employee. The conflicting court of appeals' decisions include *Chambers v. District of Columbia*, 35 F.4th 870, 882 (D.C. Cir. 2022) (en banc) (holding that "discriminatory job transfers are actionable under Title VII" and interpreting the statute "consistent with its text to prohibit all discrimination in the terms or conditions of employment"), and *Ray v. Henderson*, 217 F.3d 1234, 1241 (9th Cir. 2000) (holding that discriminatory "lateral transfer[s]" are per se actionable under Title VII and citing two other precedential decisions to the same effect).

The panel decision also conflicts with decisions of the Supreme Court of the United States explaining that Title VII seeks to eliminate all workplace discrimination. *See, e.g., Los Angeles Dep't of Water & Power v. Manhart*, 435 U.S. 702, 707 n.13 (1978); *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 71 (1977)**;** *Franks v. Bowman Trans. Co.*, 424 U.S. 747, 763 (1976)**;** *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 801 (1973).

Statement of the Case

Facts. Plaintiff-appellant Louis Naes is a police officer for the City of St. Louis. For about five years, Naes was an Animal Abuse Investigator in the

police department's Nuisance Unit. Add. 2. The Police Chief then appointed Major Angela Coonce to oversee the Nuisance Unit. *Id.* Soon thereafter, Coonce transferred Naes from the Nuisance Unit to an ordinary patrol position. Naes is straight. The officer who replaced him in the Animal Abuse position is gay. *Id.*

After the transfer, Naes's salary was not reduced, but his job changed in many other ways. In Nuisance, Naes spent 90 percent of his time investigating animal-abuse crimes, App. 562–63; R. Doc. 108-1, and 10 percent of his time working on liquor-related, business-license, and pawn-shop investigations, and on a Trash Task Force, *id.* at 563. Prior to his transfer, Naes received assignments directly from the Police Chief. *Id.* at 598. In contrast, a patrol officer answers service calls, interviews witnesses, creates and files police reports, makes arrests, testifies in court, and patrols areas on foot. App. 581; R. Doc. 108-1.

As the Animal Abuse Investigator, Naes worked weekdays from 7:00 a.m. to 3:30 p.m. and had holidays off. App. 1320-21; R. Doc. 116-1. He sometimes voluntarily worked weekends in that role to earn overtime. *See* App. 692; R. Doc. 108-7. The transfer changed Naes's schedule: He had to work both weekdays and weekends, alternate between a dayshift and an afternoon shift, and could be required to work holidays. *Id.*; App. 632; R. Doc. 108-1.

Naes's opportunities for overtime pay were also diminished. App. 590–91; R. Doc. 108-1; App. 842; R. Doc. 108-19. In Nuisance, he worked his own cases for overtime; as a patrol officer, his only overtime opportunities were

those available to other patrol officers. App. 591; R. Doc. 108-1. Because of the change in overtime opportunities, Naes's overall pay dropped by about $12,000 per year. App. 153; R. Doc. 104-9, at 11; App. 1249; R. Doc. 116-1. The former position also afforded him a shared office at police headquarters, while as a patrol officer he has no office. App. 842; R. Doc. 108-19.

District-court proceedings. Naes sued the City for discrimination on the basis of sex under Title VII, the Equal Protection Clause, and the Missouri Human Rights Act (MHRA), "alleg[ing] that Coonce openly favors gay officers and transferred him because he is straight." Add. 2.

The district court initially granted in part and denied in part the City's motion for summary judgment. Add. 2. As relevant here, the court denied the City's motion on the Title VII claim, noting that Naes had established that the City's supposedly legitimate reasons for transferring him were pretextual because "three of the City's nine putative reasons for transferring him are false" and he "raised a genuine dispute over the legitimacy of five more of those reasons." App. 1392; R. Doc. 137, at 29; *see generally id.* at App. 1380–91; R. Doc. 137, at 19–28. The district court granted the City's motion, however, on Naes's equal-protection and MHRA claims. Add. 2.

The City moved for reconsideration after this Court decided *Muldrow v. City of St. Louis*, 30 F.4th 680 (8th Cir. 2022), *cert. granted*, __ S. Ct. __, 2023 WL 4278441 (June 30, 2023). Relying on this Court's so-called adverse-employment-action precedent, *Muldrow* held that even if a female police officer's job transfer were motivated by sex discrimination, the transfer did

not violate Title VII because it "did not result in a diminution to her title, salary, or benefits" and because the plaintiff purportedly offered no evidence that she suffered a "significant change in working conditions or responsibilities." 30 F.4th at 688-89. *Muldrow* also held that a discriminatory denial of a sought-after transfer does not violate Title VII unless the requested transfer "would have resulted in a material, beneficial change to [the plaintiff's] employment." *Id* at 690.

The district court agreed with the City that, under *Muldrow*, the City had not violated Title VII because Naes had not "suffered an adverse employment action." App. 441, R. 147, at 7. The court thus granted the City's motion, disposing of Naes's only remaining claims. *Id.*

This Court's panel decision. Naes appealed, and a panel of this Court affirmed based solely on *Muldrow*. The panel acknowledged that Naes's job responsibilities and benefits changed: "After his transfer, Naes went from investigating specialized cases to working as a patrol officer. His work schedule changed from a standard schedule to rotating day and night shifts. And he was no longer able to take advantage of the same overtime opportunities." Add. 3. But that did not "sufficiently distinguish [Naes's] transfer from that in Muldrow." The panel was thus "bound to follow Muldrow and conclude that Naes did not suffer an adverse employment action." *Id.*

Judge Stras concurred, noting that *Muldrow* required him to affirm. But he now doubted whether that case was correctly decided. As he put it:

"transferring an employee from a plum assignment with regular hours to a job with worse hours and less-important responsibilities alters the 'terms, conditions, or privileges of employment,' whether or not it involves a change in rank or salary." Add. 5 (quoting 42 U.S.C. § 2000e-2(a)(1)).[2]

Reasons for Granting En Banc Review

I. This Court's "adverse employment action" rule authorizes discrimination prohibited by Title VII, the Equal Protection Clause, and the MHRA, necessitating en banc review.

A. The phrase "adverse employment action" appears nowhere in Title VII's text. Yet, for years, this Court has required all Title VII disparate-treatment plaintiffs to show that the discrimination they suffered rose to the level of an "adverse employment action." *See, e.g.*, *Muldrow v. City of St. Louis Missouri*, 30 F.4th 680, 687 (8th Cir. 2022), *cert. granted*, __ S. Ct. __, 2023 WL 4278441 (June 30, 2023); Add. 1-5; *Ledergerber v. Stangler*, 122 F.3d 1142, 1144 (8th Cir. 1997).

Under this doctrine, only "tangible change[s] in working conditions that produce[] a material employment disadvantage" such as "[t]ermination,

[2] The panel expressed doubt about the validity of Naes's equal-protection and MHRA claims on separate grounds but affirmed the grant of summary judgment on those claims on the same basis that it had rejected Naes's Title VII claim: that Naes had not suffered an "adverse employment action." Add. 4. If this Court grants rehearing en banc, it should therefore rehear all of Naes's claims.

cuts in pay or benefits, and changes that affect an employee's future career prospects, as well as circumstances amounting to a constructive discharge" are actionable. *Clegg v. Ark. Dep't of Corr.*, 496 F.3d 922, 926 (8th Cir. 2007) (citation omitted). "[M]inor changes in duties or working conditions, even unpalatable or unwelcome ones, which cause no materially significant disadvantage, do not rise to the level of an adverse employment action." *Id.*; *Jackman v. Fifth Jud. Dist. Dep't of Corr. Servs.*, 728 F.3d 800, 804 (8th Cir. 2013).

This understanding conflicts with Title VII's text, the Supreme Court's understanding of the statute, and out-of-circuit precedent. Under Title VII, an employer may not "discriminate" with respect to an individual's "compensation, terms, conditions, or privileges of employment" on the basis of sex. 42 U.S.C. § 2000e-2(a)(1).

Though "[i]t's not even clear that we need dictionaries to confirm what fluent speakers of English know" about Title VII's ordinary English words, *Threat v. City of Cleveland*, 6 F.4th 672, 677 (6th Cir. 2021) (Sutton, J.), the definitions of the words "discriminate," "terms," "conditions," and "privileges" contemporaneous with Title VII's enactment are, not surprisingly, confirmatory. First, "discriminate" means "to make a difference in treatment or favor on a class or categorical basis in disregard of individual merit." *Discriminate*, Webster's Third New International Dictionary 648 (1961) (Webster's Third). "As used in Title VII, the term 'discriminate against' refers to 'distinctions or differences in treatment that

injure protected individuals.'" *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1753 (2020).

Precedent that treats the word "discriminate" in Title VII as demanding proof of a so-called "adverse employment action" therefore erects a bar higher than Title VII's unadorned text. Lidge III, Ernest F., *The Meaning of Discrimination: Why Courts Have Erred in Requiring Employment Discrimination Plaintiffs to Prove that the Employer's Action was Materially Adverse or Ultimate,* 47 U. Kan. L. Rev. 333, 368-69 (1999). No adverse-employment-action requirement can be derived from the word "discriminate" because it connotes any differential treatment. *Chambers v. District of* Columbia, 35 F.4th 870, 874 (D.C. Cir. 2022) (en banc).

"Terms" are "propositions, limitations, or provisions stated or offered for the acceptance of another and determining (as in a contract) the nature and scope of the agreement." *Terms*, Webster's Third 2358. A "condition" is "something established or agreed upon as a requisite to the doing or taking effect of something else." *Condition*, Webster's Third 473. "Privilege" means to enjoy "a peculiar right, immunity, prerogative, or other benefit." *Privilege*, Webster's Third 1805. Each of these words is defined broadly; taken together, they refer to "the entire spectrum of disparate treatment"—the gamut of workplace requirements, obligations, customs, and benefits that an employer imposes on, or grants to, an employee. *Los Angeles Dep't of Water & Power v. Manhart*, 435 U.S. 702, 707 n.13 (1978) (citation omitted). Title VII is thus not limited to "adverse employment actions" that impose pocketbook

injuries or to conduct that employers or courts view as particularly harmful. Indeed, "[t]he unadorned wording of the statute admits of no distinction between 'economic' and 'non-economic' discrimination or 'tangible' and 'intangible' discrimination." *Chambers*, 35 F.4th at 874.

Moreover, the phrase "terms, conditions, or privileges" must be considered in the context of the statute in which it appears. In enacting Title VII, "Congress intended to prohibit all practices in whatever form which create inequality in employment opportunity due to discrimination." *Franks v. Bowman Trans. Co.*, 424 U.S. 747, 763 (1976). "The emphasis of both the language and the legislative history of the statute is on *eliminating* discrimination in employment." *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 71 (1977) (emphasis added). Title VII thus "tolerates no racial [or sex] discrimination." *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 801 (1973).

In sum, the statutory phrase "terms, conditions, or privileges" is a catchall for all incidents of an employment relationship, and this Court's contrary precedent impermissibly "rewrite[s] the statute that Congress has enacted." *Puerto Rico v. Franklin California Tax-Free Tr.*, 579 U.S. 115, 130 (2016) (citation omitted).

B. Under this clear-cut understanding of Title VII's text, an employer may not transfer an employee because of his sex. As the Equal Employment Opportunity Commission has explained, "job assignments" are workplace "terms, conditions, or privileges of employment." EEOC Compliance Manual § 613.1(a), 2006 WL 4672701; *see also* EEOC Compliance Manual § 2-

II, 2009 WL 2966754. Work assignments determine the nature and scope of the employee's job, are agreed to between the employer and employee, and invest both parties with particular obligations and rights.

*Re*assignments, therefore, necessarily alter previously established workplace "terms, conditions, or privileges." A reassignment alters terms, conditions, or privileges whether it changes "the *when* of employment," *Threat*, 6 F.4th at 677, results in "a loss of prestige and responsibility," *Hinson v. Clinch County*, 231 F.3d 821, 830 (11th Cir. 2000), requires an experienced employee to take on "menial duties," *Burns v. Johnson*, 829 F.3d 1, 11 (1st Cir. 2016), removes an employee from a role demanding specialized training, *Rodriguez v. Board of Education*, 620 F.2d 362, 364, 366 (2d Cir. 1980), downgrades an employee's title or prestige, places an employee under new management, or otherwise alters an employee's workplace experience. That is so because "it is difficult to imagine a more fundamental term or condition of employment than the position itself." *Chambers*, 35 F.4th at 874 (quoting Br. for Resp't in Opp. at 13, *Forgus v. Shanahan*, 141 S. Ct. 234 (2020) (No. 18-942), 2019 WL 2006239, at *13).

The transfer here altered the "when" of Naes's employment, *Threat*, 6 F.4th at 672, as he is now required to work some weekend and holiday shifts. *See* R. Doc. 111-6, at 101:12-15, App. 632; R. Doc. 108-1. It caused a loss of prestige and responsibility because Naes no longer receives assignments directly from the Police Chief, R. Doc. 111, at 44, no longer has an office at headquarters, R. Doc. 111-18 at 5, no longer has his work covered by the

media, R. Doc. 117 at 3, and no longer may receive overtime pay for work on his own cases, R. Doc 111, at 36-37; *see also* Add. 5 (Stras, J., concurring) ("transferring an employee from a plum assignment with regular hours to a job with worse hours and less-important responsibilities alters the 'terms, conditions, or privileges of employment,' whether or not it involves a change in rank or salary"). Instead of putting his specialized skills as an animal-abuse investigator to work, he now has more menial job tasks such as answering service calls, filing police reports, and patrolling areas on foot. R. Doc. 111, at 27.

Naes cannot simply disregard these sex-based changes by, for example, not reporting for work on the weekends, showing up for work at his old office, or working on his old animal-abuse cases. Instead, the City could presumably discipline him, including by terminating his employment, if he failed to adhere to his schedule or failed to complete his assigned tasks as a patrol officer. The City's discriminatory transfer thus imposed terms or conditions on Naes's employment and denied him privileges (like the opportunity for weekend overtime).

For these reasons, the panel decision—and the precedent on which it is based—are plainly wrong and at odds with the views of other circuits, warranting en banc review.

II. The issue presented is important.

En banc review typically is reserved for important issues. As indicated above (at 1 & n.1), in *Muldrow v. City of St. Louis*, __ S. Ct. __, 2023 WL 4278441 (June 30, 2023), the Supreme Court recently granted certiorari on the question here—whether discriminatory job-transfer decisions are actionable under Title VII—leaving no doubt that the issue decided by the panel is important.

Conclusion

This petition for rehearing en banc should be granted.

Respectfully submitted,

/s/Brian Wolfman

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July 28, 2022

United States Court of Appeals
For the Eighth Circuit

No. 22-2021

Louis Naes

Plaintiff - Appellant

v.

City of St. Louis, Missouri; Angela Coonce, Major, in her individual and official capacities; John Hayden, Chief, in his official and individual capacities

Defendants – Appellees

United States

Amicus on Behalf of Appellant(s)

Appeal from United States District Court
for the Eastern District of Missouri - St. Louis

Submitted: February 16, 2023
Filed: June 14, 2023
[Unpublished]

Before SMITH, Chief Judge, STRAS and KOBES, Circuit Judges.

PER CURIAM.

Louis Naes is a police officer for the City of St. Louis. Naes was initially assigned to the Nuisance Unit as an Animal Abuse Investigator. Five years into Naes's tenure, Police Chief John Hayden appointed Major Angela Coonce to oversee the Nuisance Unit. Two weeks later, Coonce transferred Naes out of the Nuisance Unit to a patrol position and replaced him with a gay officer. Naes alleged that Coonce openly favors gay officers and transferred him because he is straight. Naes sued the City for sexual orientation discrimination under Title VII, the Missouri Human Rights Act (MHRA), and the Equal Protection Clause.

The district court[1] initially granted summary judgment to the City on the MHRA and equal protection claims, but denied summary judgment on the Title VII claim. But then we decided Muldrow v. City of St. Louis, 30 F.4th 680 (8th Cir. 2022), petition for cert. filed, 91 U.S.L.W. 3041 (U.S. Aug. 29, 2022) (No. 22-193), and the City moved for the district court to reconsider its Title VII decision. In light of Muldrow, the district court granted summary judgment to the City. Naes appeals the district court's judgment on the Title VII, MHRA, and equal protection claims.

We review the grant of summary judgment *de novo*. Recio v. Creighton Univ., 521 F.3d 934, 938 (8th Cir. 2008). Summary judgment should be granted if the City can show that there is "no genuine dispute as to any material fact" and that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a).

Naes presents no direct evidence of discrimination, so we apply the McDonnell Douglas burden-shifting framework to the Title VII, MHRA, and equal protection claims. See Singletary v. Mo. Dep't of Corr., 423 F.3d 886, 891 n.4 (8th Cir. 2005) (Title VII); Button v. Dakota, Minn. & E. R.R. Corp., 963 F.3d 824, 831 n.5 (8th Cir. 2020) (MHRA); Lockridge v. Bd. of Trs. of Univ. of Ark., 315 F.3d 1005, 1010 (8th Cir. 2003) (en banc) (equal protection). To establish his prima facie case of discrimination under McDonnell Douglas, Naes must prove that he suffered

[1]The Honorable Sarah E. Pitlyk, United States District Judge for the Eastern District of Missouri.

an adverse employment action. Hager v. Ark. Dep't of Health, 735 F.3d 1009, 1014 (8th Cir. 2013).

We first turn to whether—after Muldrow—Naes can demonstrate an adverse employment action. In Muldrow, a sergeant was transferred within the St. Louis Police Department. 30 F.4th at 684. Her transfer resulted in changed responsibilities, working non-standard hours, and losing out on her previous overtime opportunities. Id. at 685. But after the transfer, the sergeant's salary, rank, and potential for promotion remained the same. Id. at 688, 690. We held that "[a]n adverse employment action is a tangible change in working conditions that produces a material employment disadvantage." Id. at 688 (citation omitted). And absent proof of harm, we determined that the sergeant's transfer was not a sufficient adverse employment action. Id.

Naes's circumstances are nearly identical to those in Muldrow. After his transfer, Naes went from investigating specialized cases to working as a patrol officer. His work schedule changed from a standard schedule to rotating day and night shifts. And he was no longer able to take advantage of the same overtime opportunities. Still, after the transfer, Naes's salary, rank, and potential for promotion did not change.[2]

Naes does not sufficiently distinguish his transfer from that in Muldrow. We are bound to follow Muldrow and conclude that Naes did not suffer an adverse employment action. See generally Mader v. United States, 654 F.3d 794, 800 (8th Cir. 2011) (en banc) ("It is a cardinal rule in our circuit that one panel is bound by

[2]To the extent that Naes claims there were other minor changes to his position, they are insufficient to support an adverse employment action. Jackman v. Fifth Jud. Dist. Dep't of Corr. Servs., 728 F.3d 800, 804 (8th Cir. 2013) ("[M]inor changes in duties or working conditions, even unpalatable or unwelcome ones, which cause no materially significant disadvantage, do not rise to the level of an adverse employment action.").

the decision of a prior panel." (citation omitted)). The district court properly granted summary judgment to the City on Naes's Title VII claim.

Naes's inability to show an adverse employment action also forecloses any possible MHRA and equal protection claims. As a threshold matter, we doubt the viability of these claims. The Missouri Supreme Court has not extended the MHRA to claims of sexual orientation discrimination. See Lampley v. Mo. Comm'n on Hum. Rts., 570 S.W.3d 16, 24–25 (Mo. banc 2019). We decline to speculate if it would do so after Bostock v. Clayton County, 140 S. Ct. 1731 (2020). And we have not extended Bostock to equal protection claims. Even if Naes could overcome this hurdle, he cannot demonstrate an adverse employment action necessary to establish a prima facie case of sex discrimination under the MHRA or the Equal Protection Clause.

Naes's Title VII, MHRA, and equal protection claims fail, and we affirm.

STRAS, Circuit Judge, concurring.

Everyone misses things, even judges. Although I joined *Muldrow v. City of St. Louis*, 30 F.4th 680 (8th Cir. 2022), I now have my doubts about whether it was correctly decided. *See South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080, 2100 (2018) (Thomas, J., concurring) (stating that "it is never too late 'to surrende[r] former views to a better[-]considered position'" (quoting *McGrath v. Kristensen*, 340 U.S. 162, 178 (1950) (Jackson, J., concurring))).

Muldrow applied a rule we adopted long ago: employees cannot sue under Title VII without first suffering an "adverse employment action." 30 F.4th at 688 (requiring the adverse action to be "material" (citation omitted)). I do not doubt that this requirement makes sense: disagreements over minor "[c]hanges in duties or working conditions" are probably best left to human-resources departments. *Harlston v. McDonnell Douglas Corp.*, 37 F.3d 379, 382 (8th Cir. 1994). The problem, however, is that those words do not appear in Title VII's text, which asks

only whether the plaintiff was "discriminate[d] against . . . with respect to his compensation, terms, conditions, or privileges of employment." 42 U.S.C. § 2000e-2(a)(1). Both here and in *Muldrow*, the answer appears to be yes: transferring an employee from a plum assignment with regular hours to a job with worse hours and less-important responsibilities alters the "terms, conditions, or privileges of employment," whether or not it involves a change in rank or salary. *Id.*

Despite my reservations, however, I am still bound by *Muldrow* and the other adverse-employment-action cases that came before it. So I concur in the court's opinion, which is a faithful application of precedent.

CERTIFICATE OF COMPLIANCE

This petition complies with the type-volume limitation of Fed. R. App. P. 35(b)(2)(A) because it contains 2,840 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). This petition complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Palatino Linotype.

/s/ Brian Wolfman
Brian Wolfman

Counsel for Plaintiff-Appellant

CERTIFICATE OF SERVICE

I certify that, on July 28, 2023, this petition was filed using the Court's CM/ECF system. All attorney participants in the case are registered CM/ECF users and will be served electronically via that system.

/s/ Brian Wolfman
Brian Wolfman

Counsel for Plaintiff-Appellant