No. 22-174

In the Supreme Court of the United States

GERALD E. GROFF, PETITIONER

v.

LOUIS DEJOY, POSTMASTER GENERAL

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*, prohibits employment discrimination on the basis of religion and generally requires an employer to reasonably accommodate an employee's religious observance or practice unless the employer is unable to do so "without undue hardship on the conduct of the employer's business." 42 U.S.C. 2000e(j); see 42 U.S.C. 2000e-2(a)(1), 2000e-16(a). The questions presented are:

1. Whether the statement in *Trans World Airlines, Inc.* v. *Hardison*, 432 U.S. 63 (1977), that requiring an employer "to bear more than a *de minimis* cost" to accommodate an employee's religious practice "is an undue hardship," *id.* at 84, should be revisited.

2. Whether the court of appeals correctly affirmed the district court's determination, based on the record in this case, that petitioner's requested religious accommodation would have imposed an undue hardship on the employer in part because of the burdens the accommodation would have imposed on other employees.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-32a) is reported at 35 F.4th 162. The opinion of the district court (Pet. App. 33a-60a) is not published in the Federal Supplement but is available at 2021 WL 1264030.

JURISDICTION

The judgment of the court of appeals was entered on May 25, 2022. The petition for a writ of certiorari was filed on August 23, 2022. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Petitioner filed suit in the United States District Court for the Eastern District of Pennsylvania, alleging employment discrimination in violation of 42 U.S.C. 2000e-16(a). The district court granted respondent's motion for summary judgment. Pet. App. 33a-60a. The court of appeals affirmed. *Id.* at 1a-32a.

1. Title VII of the Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 253-266 (42 U.S.C. 2000e *et seq.*), generally prohibits employment discrimination against an individual "because of such individual's * * * religion." § 703(a)(1) and (2), 78 Stat. 255 (42 U.S.C. 2000e-2(a)(1) and (2)). That prohibition applies to certain federal-sector employers, including "the United States Postal Service." 42 U.S.C. 2000e-16(a). In 1972, Congress clarified that "'religion' includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business." Equal Employment Opportunity Act of 1972, Pub. L. No. 92-261, § 2(7), 86 Stat. 103 (42 U.S.C. 2000e(j)). Together, those provisions require an employer "to reasonably accommodate the religious practices of an employee or prospective employee, unless the employer demonstrates that accommodation would result in undue hardship." 29 C.F.R. 1605.2(b)(1); see 29 C.F.R. 1614.102(a)(7); see also *EEOC* v. *Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 776 (2015) (Alito, J., concurring in the judgment).

Title VII does not define "undue hardship." In *Trans World Airlines, Inc.* v. *Hardison*, 432 U.S. 63 (1977), this Court stated that an accommodation imposes an "undue hardship" if it requires an employer "to bear more than a *de minimis* cost." *Id.* at 84; see *Ansonia Board of Education* v. *Philbrook*, 479 U.S. 60, 67 (1986) (explaining that "an accommodation causes 'undue hardship' whenever that accommodation results in 'more than a *de minimis* cost' to the employer") (citation omitted); see also 29 C.F.R. 1605.2(e)(1).

2. Petitioner was employed by the United States Postal Service (USPS) as a Rural Carrier Associate (RCA) from 2012 until he resigned in January 2019. Pet. App. 4a. An RCA is "a non-career employee who provides coverage for absent career employees." *Ibid.* RCAs do not have "specific hours or set schedules," but instead "are scheduled on an as-needed basis." *Id.* at 36a. Accordingly, "the job requires flexibility." *Id.* at 4a. In particular, "all RCAs must be willing to work weekends and holidays." *Id.* at 36a. Petitioner's religious beliefs, however, prevent him from working on Sunday, when he observes the Sabbath. *Id.* at 3a. That was initially not a problem because "[a]s a [general] rule, letter carriers have never gone out on their rounds on Sundays." USPS, *Delivery: Monday through Saturday since 1863*, at 2 (June 2009), about.usps.com/who/profile/history/pdf/delivery-monday-through-saturday.pdf.

That changed in 2013, when USPS, "[i]n an effort to remain profitable," signed an agreement with Amazon to deliver packages, including on Sundays. Pet. App. 36a. Although "Congress designed USPS to be financially self-sustaining," "USPS's expenses [had] beg[u]n consistently exceeding revenues in fiscal year 2007." United States Government Accountability Office, *U.S. Postal Service Primer* 17, GAO-21-479SP (Sept. 2021). Accordingly, "[t]he success of Amazon Sunday delivery was critical to USPS." Pet. App. 5a.

The Amazon Sunday delivery service "initially began at only some post offices," Pet. App. 4a, and when it was instituted in 2015 at the post office at which petitioner worked, he was "exempted" from Sunday work as an accommodation for his religion because the station was

"relatively large" and "had sufficient carriers available for Sunday delivery," *id.* at 6a.

In 2016, however, USPS and the union representing RCAs entered into a memorandum of understanding (MOU) to address Sunday and holiday delivery work. Pet. App. 5a & n.3; see C.A. App. 47-48. Under the MOU, a given post office or regional hub must first seek to staff such deliveries with part-time carriers whose sole job is to work on Sundays and holidays, followed by other part-time flexible carriers, including RCAs, who had volunteered for Sunday or holiday work. Pet. App. 5a-6a. If those sources are insufficient, USPS may assign other part-time flexible carriers, who generally must be scheduled on a rotating basis. *Id.* at 6a.

After the MOU went into effect, petitioner was informed that he could no longer be exempted from the rotation and would have to begin working Sundays during the "peak season" from mid-November though early January. Pet. App. 6a. Petitioner transferred to a small station in Holtwood, Pennsylvania, to avoid Sunday work, but in March 2017 the Holtwood station also began Amazon Sunday delivery service. *Ibid.* Petitioner informed his supervisors that he would not work on Sundays. *Ibid.*

The Holtwood Postmaster attempted to find other carriers to cover petitioner's Sunday shifts and stated that such shift swaps were "the only accommodations that would not 'impact operations.'" Pet. App. 7a (citation omitted). Another RCA initially volunteered to cover petitioner's Sunday shifts, but she was later unable to continue after suffering an injury. *Ibid.* The only other RCA at the small Holtwood station was thus required to "bear the burden of Amazon Sundays alone during the 2017 peak season," *ibid.*, and in the 2018

peak season, the "Holtwood Postmaster himself was forced to deliver mail on Sundays when no RCAs were available," *id.* at 8a.

The Holtwood Postmaster explained that attempting to find coverage for petitioner each Sunday was "time consuming" and an added burden for him and other postmasters in the region. Pet. App. 7a-8a (citation omitted). He also explained that petitioner's absences "created a 'tense atmosphere' among the other RCAs" and led to "resentment toward management." *Id.* at 8a (citation omitted). Another supervisor stated that petitioner's absences "contributed to morale problems." *Ibid.* Other carriers had "to deliver more mail than they otherwise would have on Sundays." *Id.* at 9a. A union member submitted a grievance in 2017, alleging that he had been forced to work on Sundays to cover for petitioner, in contravention of the MOU. See *id.* at 8a n.8. USPS ultimately resolved that grievance by entering into a settlement reiterating its obligation to follow the MOU. "One carrier transferred from Holtwood because he felt it was not fair that [petitioner] was not reporting on scheduled Sundays." *Id.* at 39a. "Another carrier resigned in part because of the situation." *Ibid.*

Petitioner resigned in January 2019. Pet. App. 9a. He never worked on a Sunday during his tenure, and missed a total of at least 24 scheduled Sunday shifts. *Id.* at 39a. During that time, USPS conducted eight pre-disciplinary interviews and ultimately imposed a written warning in June 2017, a 7-day paper suspension in January 2018, and a 14-day paper suspension in October 2018. *Id.* at 40a-41a. Those disciplinary measures were "intended to be 'corrective' in nature, not punitive," and "paper suspensions do not cause an employee to lose work or pay." *Id.* at 40a (citation omitted). After re-

signing and exhausting administrative remedies, see *id.* at 7a, 9a, petitioner filed this suit alleging, among other things, that USPS had not accommodated his religion as required by Title VII.

3. The district court granted the government's motion for summary judgment. Pet. App. 33a-60a. As relevant here, the court found that petitioner's "desired accommodation of being skipped over in the schedule every Sunday" would have imposed an undue hardship on USPS. *Id.* at 55a; see *id.* at 55a-60a.

The district court observed that under *Hardison*, an "accommodation that imposes anything more than a *de minim[i]s* cost on an employer causes such a hardship." Pet. App. 56a. The court also stated that "[i]f an accommodation would violate a CBA or impose more than a *de minimis* impact on co-workers, 'then the employer is not required to offer the accommodation under Title VII.'" *Ibid.* (brackets and citation omitted). The court observed that "allowing [petitioner] to be skipped in the schedule every Sunday would be a clear violation of the MOU," *ibid.*, which was "sufficient to prove undue hardship," *id.* at 60a n.3; see *id.* at 56a-58a. The court also found that "even if the MOU did not exist," USPS had "identified multiple other hardships that would easily meet the *de minim[i]s* standard necessary to prove an undue hardship," *id.* at 58a, including "the impact on the Holtwood Post Office" from allowing petitioner, but not the other RCA(s), to be skipped in the Sunday rotation, *ibid.*; see *id.* at 58a-60a.

4. The court of appeals affirmed. Pet. App. 1a-32a.

a. As relevant here, the court of appeals held that exempting petitioner from Sunday work, as he had requested, would impose an undue hardship on USPS. Pet. App. 21a-25a. The court acknowledged that it was

"bound by th[e] ruling" in *Hardison* that "requiring an employer 'to bear more than a de minimis cost' to provide a religious accommodation is an undue hardship." *Id.* at 22a n.18 (citation omitted). The court emphasized, however, that "[t]he impact on the workplace here * * * far surpasses a de minimis burden." *Ibid.* The court explained that "[b]oth economic and noneconomic costs suffered by the employer can constitute an undue hardship," and that "[e]xamples of undue hardships include negative impacts on the employer's operations, such as on productivity or quality, personnel and overtime costs, increased workload on other employees, and reduced employee morale." *Id.* at 22a.

Applying those principles to the record in this case, the court of appeals concluded that "[petitioner's] proposed accommodation of being exempted from Sunday work would cause an undue hardship" because it "actually imposed on his coworkers, disrupted the workplace and workflow, and diminished employee morale." Pet. App. 24a. The court explained that given the limited number of RCAs at Holtwood, petitioner's repeated Sunday absences "placed a great strain on the Holtwood Post Office personnel and even resulted in the Postmaster['s] delivering mail on some Sundays." *Id.* at 25a. The court observed that other carriers who were "forced to cover [petitioner's] shifts" gave up their own "family time" and "ability to attend church." *Ibid.* (citation omitted). The court explained that petitioner's absences "also had an impact on operations and morale," "made timely delivery [of mail] more difficult," and had the effect of requiring carriers "to deliver more mail." *Ibid.*

b. Judge Hardiman dissented. Pet. App. 26a-32a. He would have remanded the case for a trial because he

found insufficient evidence in the summary judgment record "to show how [petitioner's] accommodation would harm its 'business,'" and not merely "[petitioner's] coworkers." *Id.* at 26a (citation and emphasis omitted). In particular, Judge Hardiman found that "issues of material fact remain regarding USPS's claims related to RCA scheduling and overtime." *Id.* at 29a; see *id.* at 29a-32a.

ARGUMENT

Petitioner contends (Pet. 12-27) that this Court should revisit its determination in *Trans World Airlines, Inc.* v. *Hardison*, 432 U.S. 63 (1977), that requiring an employer "to bear more than a *de minimis* cost" to accommodate an employee's religious practice "is an undue hardship" under Title VII. *Id.* at 84. The government has previously urged this Court to review that question. See U.S. Amicus Br. at 19-22, *Patterson* v. *Walgreen Co.*, 140 S. Ct. 685 (2020) (No. 18-349). But this case would be a poor vehicle in which to do so for several reasons, including because petitioner would not be entitled to relief under any plausible standard for "undue hardship." This Court has recently denied multiple petitions seeking review of the question presented. See *Dalberiste* v. *GLE Associates, Inc.*, 141 S. Ct. 2463 (2021) (No. 19-1461); *Small* v. *Memphis Light, Gas & Water*, 141 S. Ct. 1227 (2021) (No. 19-1388); *Patterson* v. *Walgreen Co.*, 140 S. Ct. 685 (2020) (No. 18-349). The same course is warranted here.

Petitioner separately contends that the court of appeals erred in holding that "an employer may demonstrate undue hardship merely by showing that the requested accommodation burdens the employee's coworkers." Pet. 27 (formatting altered); see Pet. 27-31. But the court did not adopt any such categorical rule,

and its factbound decision finding sufficient evidence of hardship on this record—including evidence of disruption to the workplace and workflow—is correct and does not conflict with any decision of this Court or another court of appeals. Further review is unwarranted.

A. This Case Would Be A Poor Vehicle In Which To Revisit *Hardison*'s De Minimis Standard

Petitioner contends (Pet. 12-27) that *Hardison*'s "de minimis" standard should be revisited on the grounds that it was *obiter dictum*, conflicts with the text of Title VII, and does not warrant adherence under principles of *stare decisis*. Whatever the merits of those criticisms, this case would be an inappropriate vehicle in which to address them for at least three reasons. First, petitioner's proposed accommodation would have required USPS to violate a collectively bargained agreement, which Title VII does not require under an independent holding of *Hardison* that petitioner does not challenge. Second, and in any event, the court of appeals found that the hardship in this case "far surpasses a de minimis burden," Pet. App. 22a n.18, and petitioner would not be entitled to relief on his Title VII claim under any plausible "undue hardship" standard. Third, a case involving a federal employer like USPS would a poor vehicle in which to reconsider *Hardison* because the federal government is bound by the Religious Freedom Restoration Act of 1993 (RFRA), Pub. L. No. 103-141, 107 Stat. 1488 (42 U.S.C. 2000bb *et seq.*). Although petitioner did not bring a RFRA claim here, RFRA generally provides at least as much protection for religious-accommodation claims as any interpretation of Title VII, rendering the precise meaning of Title VII's "undue hardship" standard largely academic in the federal employment context.

1. The only reasonable accommodation proposed in this case—that USPS simply skip petitioner in the Sunday work rotation—would have violated the MOU between USPS and the union representing RCAs. In a holding independent of its de-minimis reasoning, *Hardison* concluded that Title VII does not require an employer to violate the terms of a collectively bargained agreement, see 432 U.S. at 79-81, and petitioner does not seek to revisit that aspect of the case.

In *Hardison*, an airline employee who worked in a 24-hour department at a maintenance base sought a religious accommodation under Title VII to avoid working on Saturdays, when he observed the Sabbath. 432 U.S. at 66-69. The court of appeals had ruled in favor of the employee, holding that the airline could have offered three different reasonable accommodations that would not have imposed an undue hardship: allowing the employee to work a four-day week, filling his Saturday shift with other available personnel, or arranging shift swaps. See *id.* at 76. This Court reversed, concluding that each of those potential alternative accommodations would have imposed an "undue hardship" under the relevant Equal Employment Opportunity Commission (EEOC) guidelines, which Congress later codified in the 1972 statute. *Id.* at 76-77 & n.11. With respect to the first two proposals, the Court explained that each would have caused the airline to "bear more than a *de minimis* cost." *Id.* at 84.

With respect to the third proposal, however, the Court found that requiring the employer to swap shifts so that the plaintiff would not have to work on Saturdays would have violated provisions in the collective-bargaining agreement that allocated weekend work by seniority. *Hardison*, 432 U.S. at 79-81. The Court held

that "Title VII does not require an employer" to breach such an agreement as part of a religious accommodation. *Id.* at 81. "Allocating the burdens of weekend work," the Court explained, is "a matter for collective bargaining," and an employer and union could reasonably "adopt a neutral system, such as seniority, a lottery, or rotating shifts," to "govern this allocation." *Id.* at 80.

Hardison thus determined that "[i]t would be anomalous to conclude that by 'reasonable accommodation' Congress meant that an employer must deny the shift and job preferences of some employees, as well as deprive them of their contractual rights, in order to accommodate or prefer the religious needs of others." 432 U.S. at 81. On that point, even the dissenting Justices appeared to agree that Title VII does not require employers to offer religious accommodations that would deprive other employees of rights secured under a collective-bargaining agreement. See *id.* at 96 (Marshall, J., dissenting); see also *id.* at 83 n.14 (majority opinion). That is also EEOC's position. See EEOC, *Compliance Manual* § 12-IV(B)(3) & n.258 (Jan. 15, 2021), www.eeoc.gov/laws/guidance/section-12-religious-discrimination ("A proposed religious accommodation poses an undue hardship if it would deprive another employee of a job preference or other benefit guaranteed by a bona fide seniority system or collective bargaining agreement (CBA).").

Here, the district court expressly relied on *Hardison*'s holding "that violation of a collectively bargained agreement is an undue hardship" as an independent basis for granting summary judgment to USPS on petitioner's religious-accommodation claim. Pet. App. 56a; see *id.* at 55a-58a. As the court observed, "[s]kipping [petitioner] in the Sunday rotation and never scheduling

him to work on that day of the week would clearly violate the process carefully laid out in the MOU." *Id.* at 57a. And the court correctly rejected petitioner's contention that *Hardison*'s holding is limited to seniority provisions in a collectively bargained agreement, explaining that the relevant consideration is that the agreement was "bargained for and agreed upon," irrespective of the criteria governing how the "agreement chose to assign shifts to [the] employees." *Ibid.*

Just as the seniority system allocating weekend work in *Hardison* "itself represented a significant accommodation to the needs, both religious and secular, of all of TWA's employees" by implementing "a neutral way of minimizing the number of occasions when an employee must work on a day that he would prefer to have off," 432 U.S. at 78, so too did the MOU here represent an accommodation to the needs of RCAs by implementing a neutral method of allocating Sunday delivery work. As with the collectively bargained agreement in *Hardison*, therefore, Title VII did not require USPS to breach the MOU in order to accommodate petitioner.

Petitioner observes (Pet. 9 n.1) that the court of appeals found the undue hardship standard satisfied without relying on the MOU. But the government preserved that argument below, see Gov't C.A. Br. 52-57, and a respondent may "defend the judgment below on any ground which the law and record permit," *Smith* v. *Phillips*, 455 U.S. 209, 215 n.6 (1982); see *Upper Skagit Indian Tribe* v. *Lundgren*, 138 S. Ct. 1649, 1654 (2018). Here, moreover, that alternative ground is straightforward. The district court emphasized that petitioner's preferred accommodation would "clearly violate" the MOU. Pet. App. 60a n.3. And that is not merely hypothetical: USPS actually faced a grievance from another

employee over petitioner's failure to work Sundays, and although USPS initially denied liability, it ultimately settled the matter and agreed that any "Sunday/holiday delivery schedules must be consistent with the MOU." *Id.* at 9a n.8. Petitioner's proposed accommodation thus not only would have required USPS to breach the original MOU, but that specific settlement agreement as well. And that clear alternative basis for rejecting petitioner's Title VII claim would make this case a poor vehicle in which to address the first question presented.

2. Another reason this case would be a poor vehicle in which to revisit *Hardison*'s more-than-de-minimis standard is that petitioner could not prevail under any plausible standard of "undue hardship." Although petitioner does not definitively advocate a particular alternative standard, he invokes the government's invitation brief in *Patterson*, which stated that "an undue hardship is * * * an 'excessive hardship' or a hardship that is 'more than appropriate or normal,'" Pet. 15 (brackets and citation omitted); the government's brief in *Hardison*, which petitioner characterizes as having "assumed a standard that required accommodation 'except to the limited extent that a person's religious practice significantly and demonstrably affects the employer's business,'" Pet. 20 (citations and emphasis omitted); and the provision in the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 *et seq.*, defining "undue hardship" for purposes of that statute to mean "'an action requiring significant difficulty or expense' in light of certain enumerated factors," Pet. 15 (quoting 42 U.S.C. 12111(10)), such as "the employer's financial resources, the number of individuals it employs, and the nature of its operations and facilities," Pet. 25 (citation omitted); see Pet. 15-16 (citing other statutes); Pet. 24-25 (same).

Petitioner's "desired accommodation of being skipped over in the schedule every Sunday," Pet. App. 55a, would qualify as an undue hardship under any of those standards. As noted, simply skipping petitioner in the rotation for Sunday work would have violated both a collectively bargained MOU and a specific settlement. In addition, petitioner's absence caused the only other RCA at Holtwood, a very small station, to "bear the burden of Amazon Sundays alone during the 2017 peak season." *Id.* at 7a. The "Holtwood Postmaster himself was forced to deliver mail on Sundays when no RCAs were available." *Id.* at 8a. Petitioner's absences "created a 'tense atmosphere,'" *ibid.* (citation omitted), led to "resentment toward management," *ibid.*, "contributed to morale problems," *ibid.*, increased the workload of other carriers, *id.* at 9a, and ultimately caused one carrier to leave Holtwood and (at least in part) another to quit USPS altogether, *id.* at 39a.

Those hardships are, by any measure, "more than appropriate or normal," Pet. 15 (quoting U.S. Br. at 19, *Patterson*, *supra* (No. 18-349)), and they "significantly and demonstrably affect[ed] [USPS's] business," Pet. 20 (citation and emphasis omitted). As an RCA, petitioner's very job description was to fill in for career carriers—in particular on weekends and holidays. And given the small station to which petitioner had transferred, petitioner's desire to be skipped in the rotation forced not just the sole remaining RCA to work every Sunday but the Postmaster himself to do petitioner's job. That is hardly "normal." And although objections from coworkers cannot, standing alone, constitute an undue hardship for purposes of Title VII, see *EEOC Compliance Manual* § 12-IV(B)(4), here petitioner's desired accommodation caused one carrier to leave the

Holtwood station, thereby significantly affecting that small station's ability to fulfill its delivery requirements, and (in part) another carrier to leave USPS altogether.

As for the ADA standard, petitioner's requested accommodation would require "significant difficulty or expense in light of the employer's financial resources, the number of individuals it employs, and the nature of its operations and facilities." Pet. 25 (citation omitted). Although USPS is a large government agency, it also is charged with being financially self-sufficient and has suffered substantial losses for many years, see p. 3, *supra*, which made it "critically important to the USPS that Sunday Amazon delivery be successful," Pet. App. 36a. Similarly, USPS has many employees across the country, but—reflecting a general scarcity of RCAs in the central Pennsylvania region—USPS had only one or two other RCAs at the Holtwood station, the small and rural nature of which exacerbated the difficulty and expense of simply skipping petitioner in the Sunday rotation, especially given the critical importance to USPS of its Amazon Sunday delivery operations. Cf. *US Airways, Inc.* v. *Barnett*, 535 U.S. 391, 402-403 (2002) (explaining that under the ADA, a reasonable accommodation generally does not require an employer to breach a collectively bargained seniority system).

For those reasons, petitioner's requested accommodation of simply being exempted from Sunday work altogether, notwithstanding the role of an RCA and the importance of Amazon Sunday delivery, would have imposed an undue hardship on USPS and its Holtwood operations under any of the various standards that petitioner invokes. As the court of appeals observed, the hardship in this case thus "far surpasses a de minimis

burden." Pet. App. 22a n.18. Petitioner thus would not be entitled to relief even if the first question presented were resolved in his favor.

Judge Hardiman's dissenting opinion does not alter that conclusion. Judge Hardiman acknowledged that USPS "may be able to prove that accommodating [petitioner] would have caused its business to suffer undue hardship," but he would have remanded for a trial because he believed that genuine issues of fact remained about the extent of the burden posed by petitioner's proposed accommodation. Pet. App. 27a. In particular, Judge Hardiman believed that there was some uncertainty about the extent to which the accommodation would have caused scheduling difficulties or increased overtime for other workers. *Id.* at 27a-32a. But the panel majority viewed the summary-judgment record differently, concluding that exempting petitioner from Sunday work had "actually imposed on his coworkers, disrupted the workplace and workflow, and diminished employee morale at both the Holtwood Post Office and the [regional] hub." *Id.* at 24a. Judge Hardiman did not dispute that those effects, if proven, would constitute an undue hardship. And Judge Hardiman's analysis did not address some of the concrete adverse effects of exempting petitioner from Sunday work, including that it had contributed to the loss of one employee at the regional hub and the transfer of another from Holtwood, and that continuing the practice would have violated both the MOU and a settlement agreement.

3. Finally, a federal-sector case like this one would be a poor vehicle for reconsidering *Hardison* because federal employers like USPS are subject to RFRA. See 42 U.S.C. 2000bb-1, 2000bb-2(1). Congress enacted RFRA in the wake of *Employment Division* v. *Smith*,

494 U.S. 872 (1990), which held that neutral laws of general applicability that burden a person's religious exercise generally do not violate that person's constitutional free-exercise rights, *id.* at 885. See 42 U.S.C. 2000bb; *Burwell* v. *Hobby Lobby Stores, Inc.*, 573 U.S. 682, 693-694 (2014). RFRA, by contrast, provides that the government "shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability" unless the government "demonstrates that application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. 2000bb-1(a) and (b).

Although RFRA is not a workplace-specific statute, the Executive Branch has long maintained that federal employers must follow its standards when accommodating employees' religious practices. See Office of the Press Secretary, The White House, *Guidelines on Religious Exercise and Religious Expression in the Federal Workplace* § 2(E) (Aug. 14, 1997), 1997 WL 475412; Memorandum From Attorney General Sessions to All Executive Departments and Agencies, *Federal Law Protections for Religious Liberty*, at 6-7, 10a-11a (Oct. 6, 2017), www.justice.gov/opa/press-release/file/1001891/download.*

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* In *Brown* v. *General Services Administration*, 425 U.S. 820 (1976), this Court held that Title VII's comprehensive remedial scheme provides the "exclusive, preemptive administrative and judicial scheme for the redress of federal employment discrimination." *Id.* at 829. Some courts of appeals have, at the government's urging, relied on *Brown* to conclude that federal employees may not bring employment-discrimination claims based on RFRA. See *Harrell* v. *Donahue*, 638 F.3d 975 (8th Cir. 2011); *Francis* v. *Mineta*, 505 F.3d 266 (3d Cir. 2007). But RFRA "displac[es] the normal opera-

RFRA's compelling-interest and least-restrictive-means requirements generally demand more of the employer than does Title VII's relatively forgiving undue-hardship standard. To be sure, RFRA also requires the employee to demonstrate a "substantial[] burden" on religious exercise, 42 U.S.C. 2000bb-1(a), in contrast to Title VII, which requires the employer, absent undue hardship, to reasonably accommodate the "employee's religious observance or practice." 42 U.S.C. 2000e(j). In that sense, RFRA is more demanding of the employee than Title VII. Nevertheless, for generally applicable employment practices that impose substantial burdens—potentially including weekend scheduling that requires Sabbath work, as in this case—a federal employee generally may invoke a more favorable standard for a religious-discrimination claim under RFRA than under Title VII. Although petitioner did not bring a RFRA claim in this case, the potential availability of that standard in general makes any case involving a fed-

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tion of other federal laws," and this Court has suggested (albeit in the context of an employer's defense to liability) that RFRA "might supersede Title VII's commands in appropriate cases." *Bostock* v. *Clayton County*, 140 S. Ct. 1731, 1754 (2020); see 42 U.S.C. 2000bb-3(a) (stating that RFRA applies to "all Federal law, * * * whether adopted before or after" RFRA's enactment). In 2021, the government reconsidered its position on that question, and it now maintains that federal employees may rely on RFRA for religious employment-discrimination claims. See, *e.g.*, Gov't C.A. Br. at 28-31, *Truskey* v. *Vilsack*, No. 21-5821, 2022 WL 3572980 (6th Cir. Aug. 19, 2022). That includes federal employees covered by the Civil Service Reform Act of 1978, Pub. L. No. 95-454, 92 Stat. 1111 (5 U.S.C. 1101 *et seq.*), who may rely on RFRA's substantive standards when challenging adverse employment actions in proceedings before the Merit Systems Protection Board, cf. *Elgin* v. *Department of Treasury*, 567 U.S. 1, 13 (2012).

eral employer a poor vehicle in which to revisit *Hardison*.

B. The Question Whether An Employer May Demonstrate Undue Hardship By Showing That The Requested Accommodation Burdens The Employee's Coworkers Does Not Warrant Review

Petitioner briefly contends that the court of appeals erred in holding "that an employer may establish undue hardship merely by showing that an accommodation burdens or inconveniences the plaintiff's co-workers." Pet. 27; see Pet. 27-31. But the court did not adopt any such categorical rule. Instead, it acknowledged that "[e]xamples of undue hardship include negative impacts on the employer's operations, *such as* on productivity or quality, personnel and overtime costs, increased workload on other employees, and reduced employee morale." Pet. App. 22a (emphasis added). As the italicized "such as" makes clear, the court recognized that an undue hardship is one on "the employer's operations," an *example* of which is "increased workload on other employees." *Ibid.* As the court explained, "[a] business may be compromised, in part," by "poor morale among the work force and disruption of work flow" because those circumstances "could affect an employer's business and could constitute undue hardship." *Id.* at 22a n.19. In focusing on the hardship to the employer, therefore, the court set forth precisely the rule that petitioner presses. Cf. Pet. 27-28.

The court of appeals also correctly applied that rule to the record in this case. The court expressly stated that it found an undue hardship not only because skipping petitioner in the Sunday rotation "imposed on his coworkers," but also because it "disrupted the workplace and workflow, and diminished employee

morale"—which are harms to USPS. Pet. App. 24a; see *id.* at 25a (explaining that petitioner's absence also "made timely delivery more difficult"). To be sure, some portion of those harms may have been the result of the burdens imposed on petitioner's coworkers, see *id.* at 24a-25a, but petitioner himself acknowledges that "an accommodation's impact on coworkers can be *relevant* under the proper reading of Title VII," Pet. 30. Consistent with those principles, EEOC recognizes that "a showing of undue hardship based on coworker interests generally requires evidence that the accommodation would actually infringe on the rights of coworkers or cause disruption of work." *EEOC Compliance Manual* § 12-IV(B)(4). As noted above, the record in this case demonstrates both. See Pet. App. 25a (noting both the grievance for violating employee rights under the MOU and the negative impact on operations at Holtwood). Petitioner's disagreement with the court's fact-bound application of the very rule that he endorses does not merit this Court's review.

Moreover, petitioner does not identify any conflict among the courts of appeals with respect to the appropriate treatment of coworker burdens in assessing an undue hardship under Title VII. Cf. Pet. 28 (contending that all courts of appeals have adopted the same approach). Petitioner instead contends (Pet. 29) that the approach adopted by lower courts "conflicts" with this Court's decision in *EEOC* v. *Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768 (2015). But *Abercrombie* did not address the undue-hardship defense at all, much less the specific question of the role that coworker burdens may play in establishing an undue hardship. See *id.* at 772 & n.1; *id.* at 780 (Alito, J., concurring in the

judgment). Further review of the second question presented is thus unwarranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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