U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

OFFICE OF FEDERAL OPERATIONS

Tiffany N. Henderson

Complainant,

v.

Alejandro N. Mayorkas, Secretary,
U.S. Department of Homeland Security

Agency.

EEOC Appeal No. 2025000339

Agency Case No. HS-TSA-00522-2024

TIFFANY HENDERSON'S BRIEF IN SUPPORT OF APPEAL

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STATEMENT OF FACTS

Tiffany Henderson is a Christian and, pursuant to her sincerely held religious beliefs, she regularly attends church at Rebirth Christian Fellowship where Sunday services begin at 11:00 am. Report of Investigation (hereinafter "ROI") at 39, 66, 68. Ms. Henderson began working for the Transportation Security Administration (TSA) in June 2010. ROI at 38. She has been a Supervisory Transportation Security Officer (STSO) since February 2022 at Birmingham Shuttlesworth International Airport (BHM). *Id.* As an STSO, she has bid twice a year on shifts. ROI at 45. Prior to submitting her religious accommodation request on November 4, 2023, Ms. Henderson bid and was assigned the 3:15 am–11:45 am shift. ROI at 66. The only other shift available to her was 11:00 am–7:30 pm. *Id.* As a part of her bid, her off days were Thursday and Friday. ROI at 69.

When she bid on her new shift, she noticed it ended at 11:45 am, 45 minutes after the start of Sunday services. Ms. Henderson spoke with her manager, Transportation Security Manager, Latosha Carter, and Ms. Carter provided her with the necessary form to request a religious accommodation. ROI at 55. Because of the conflict between her religious beliefs regarding Sunday worship and her work schedule, Ms. Henderson requested a religious accommodation in writing on November 4, 2023, using TSA's Form 900. ROI at 39, 66. Ms. Henderson was seeking an adjusted schedule to allow her to practice her religion and continue to attend church on Sundays at 11:00 am. ROI at 66. The form requires employees to submit it to their Federal Security Directors ("FSD") or their designees. ROI at 66. The FSD at

BHM is Tara Corse. ROI at 47. Ms. Corse allows Ronald Ward, Assistant Federal Security Director for Screening (AFSD-S), to manage any shift changes or swaps. ROI at 48. Both Ms. Corse and Mr. Ward acknowledged they became aware of the conflict between Ms. Henderson's religious belief and workplace requirement following receipt of Ms. Henderson's written religious accommodation request. ROI at 48, 52.

When Ms. Henderson initially made the request to Mr. Ward, he did not want to accept it though he is the supervisor who dealt with these requests regularly. ROI at 40, 48, 60. Mr. Ward then had a conversation with Ms. Corse regarding the accommodation request. ROI at 52. Both Ms. Corse and Mr. Ward acknowledged that Ms. Henderson's religious accommodation request was denied. ROI at 49, 53. Although Ms. Corse allowed Mr. Ward to manage schedule adjustments, she was the final decision-maker regarding Ms. Henderson's request. ROI at 48, 52, 56.

Ms. Corse explained she denied the request because it was a request to attend church. ROI at 48. In fact, Ms. Corse admitted she has never granted an accommodation to attend church and told management under her that she cannot grant this accommodation. *Id.* She would go on to add that although there are a lot of individuals who would like to practice their faith as they are "in the south" and "solidly in the Bible belt," she did not want to show favoritism if they were to grant Ms. Henderson's request to attend church. *Id.* This "favoritism" is further explained in Ms. Corse's affidavit when she states, "if we allowed someone to attend church, [she] would have to do that for the rest of the state." ROI at 49. Latosha Carter went on to add the reason that Ms. Henderson's request was denied was because "the

guidance from the FSD was it would be an undue hardship if we accepted everyone's accommodation. The assumption was there would be too many requests if one was granted." ROI at 57.

On November 28, 2023, Ms. Corse allegedly wrote a memorandum to Ms. Henderson explaining that the airport uses a "bona fide seniority system" for scheduling and Ms. Henderson's position was subject to the seniority and scheduling provisions in the TSA Management Directive. ROI at 69-70. The memorandum does not state how Ms. Henderson's request would have circumvented the seniority system and gave her two alternatives based on TSA's policy. *Id.*

From November 2021 to November 2023, Ms. Corse received three religious accommodation requests for schedule adjustments, including Ms. Henderson's request. One of the requests was for an employee of the Seventh Day Adventist faith whose hours were adjusted from 12:30 pm to 5:30 pm from January 2024 to the next shift bid. The other request was for an employee of the Muslim faith who requested hours from 8:30 am to 4:30 pm during the month of Ramadan. Both of these accommodations were granted. Ms. Henderson's request was denied. ROI at 71.

Furthermore, management created a hybrid schedule for a nonreligious accommodation, allowing the employee a completely different schedule than what she bid. ROI at 41, 49, 53, 57. When asked about the nonreligious accommodation, Ms. Corse stated "that was not brought up as a religious accommodation to attend church." ROI 49. Both Ms. Corse and Mr. Ward, as management, are afforded substantial discretion when employees come to them for schedule adjustments. ROI

at 41, 48. In fact, Mr. Ward specifically told employees he had the authority to make scheduling decisions in regard to flexibility. ROI at 41. This discretion is also noted in TSA Management Directive No. 1100.61-4. The directive states "[m]anagement has the discretion to use a *broad* range of options to handle scheduling issues, including, *but not limited to*, [several options] as long as the options selected do not conflict with other provisions of this directive." ROI at 141 (emphasis added). These options include, but are not limited to: (1) blending shifts, (2) shift swapping, (3) voluntary requests, and (4) personal needs. *Id.*

When Ms. Henderson received the denial, she initiated contact with the internal Equal Employment Opportunity (EEO) counselor on December 21, 2023, and then began the pre-complaint ADR process. ROI at 16. Ms. Henderson was interviewed by the EEO Counselor on December 26, 2023. The parties attempted to come to a resolution but were unable to agree, and Ms. Henderson was given her Notice of Right to File a Formal Complaint of Discrimination on March 14, 2024. ROI at 19. Less than two weeks later, on March 26, 2024, Ms. Henderson timely filed her formal complaint. ROI at 10. The ensuing investigation spanned from May 21, 2024, through July 5, 2024. The investigative file and the notice to request a final agency decision was sent to Ms. Henderson on July 31, 2024. On August 22, 2024, Ms. Henderson timely requested a final agency decision with the Department of Homeland Security's Office for Civil Rights and Civil Liberties (Exhibit 1).

On October 1, 2024, Ms. Henderson received the final agency decision (Exhibit 2) from the Department of Homeland Security's Office for Civil Rights and Civil

Liberties (CRCL). The CRCL concluded that Ms. Henderson did not prove that TSA discriminated against her and that the record did not support Ms. Henderson's claim that her religious accommodation request was denied because Ms. Henderson was "asking for an exception to a bona fide seniority system in that she did not want to work the full shift upon which she bid." Exhibit 2, at 4.

Ms. Henderson initiated the current appeal on October 23, 2024. (Exhibit 3)

STANDARD OF REVIEW

Pursuant to 29 C.F.R. § 1614.110 (b), the Department of Homeland Security issued a final agency decision without a hearing. A final agency decision on the merits, without a hearing, is subject to de novo review by the EEOC. 29 C.F.R. § 1614.405(a). Under the de novo standard, the EEOC is required to "examine the record without regard to the factual and legal determinations of the previous decision maker" and "review the documents, statements, and testimony of record, including any timely and relevant submissions of the parties, and . . . issue its decision based on the Commission's own assessment of the record and its interpretation of the law." *Gino T. v. Department of Transportation (Federal Aviation Administration)*, Appeal No. 2019000991, at 2 (Feb. 12, 2020) (quoting *EEO Management Directive for 29 C.F.R. Part 1614*, at Ch. 9, § VI.A. (Aug. 5, 2015)).

STATEMENT OF LAW

Title VII's disparate treatment provision 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 his compensation, terms, conditions, or

privileges of employment, because of such individual's . . . *religion*." 42 U.S.C. § 2000e-2 (emphasis added). Title VII's definition of religion is broadly construed to "include[] all aspects of religious observance and practice, as well as belief . . . ." 42 U.S.C. § 2000e(j). The Supreme Court has explained that Title VII gives religious practices "favored treatment" and "requires otherwise-neutral policies to give way to the need for an accommodation." *EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 775 (2015). Employers are required to accommodate the religious practices of an employee unless the requested accommodation poses an undue hardship on the employer. 42 U.S.C. § 2000e(j); 29 C.F.R. § 1605.2 (b). Such a hardship exists only where the request will substantially interfere with the operations of the employer. *Groff v. DeJoy*, 600 U.S. 447, 468-69 (2023) (rejecting the notion that undue burden is anything rising to the level of "more than de minimis"). Importantly for purposes of this appeal, "[a] mere assumption that many more people, with the same religious practices as the person being accommodated, may also need accommodation is not evidence of undue hardship." 29 C.F.R. 1605.2 (c)(1).

"To establish a reasonable-accommodation claim of religious disparate treatment, a plaintiff must set for a prima facie case by showing that (1) [her] sincere and bona fide religious belief conflicted with an employment requirement, and (2) [her] employer took adverse action against [her] . . . because of the employer's perceived need for [her] reasonable accommodation." *Bailey v. Metro Ambulance Servs.*, 992 F.3d 1265, 1275 (11th Cir. 2021). An employee need not be discharged or disciplined to have an actionable religious discrimination claim under Title VII. *See*

Staple v. Sch. Bd. of Broward Cnty., No. 21-11832, 2024 U.S. App. LEXIS 16047, at *10 (July 2, 2024) ("there is no heightened discharge or discipline requirement for religious accommodation claims under the disparate treatment provision."). A Plaintiff must prove that "her need for an accommodation was a motivating factor in the employer's decision." *Hayes v. Parks*, No. 6:23-cv-252-ACC-EJK, 2024 U.S. Dist. LEXIS 77058, at 18 (quoting *Abercrombie*, 575 U.S. at 772)). Therefore, Title VII's disparate treatment provision "prohibits actions taken with the motive of avoiding the need for accommodating religious practice." *Abercrombie*, 575 U.S. at 774. The Supreme Court reiterated this principle when it stated, "[i]f bias or hostility to a religious practice or a religious accommodation provided a defense to a reasonable accommodation claim, Title VII would be at war with itself." *Groff*, 600 U.S. at 472.

Moreover, "[t]he Commission's longstanding view is that 'the denial of reasonable religious accommodation absent undue hardship is actionable even if the employee has not separately suffered an independent adverse employment action, such as being disciplined, demoted or discharged as a consequence of being denied accommodation.'" *Barrett V. v. Vilsack*, Appeal No. 2019005478, at 6 (March 7, 2024) (quoting EEOC Compliance Manual on Religious Discrimination, Section 12-IV(A) (Jan. 15, 2021)).

ARGUMENT

I. CONTRARY TO THE FINAL AGENCY DECISION, THE RECORD SHOWS THAT MS. HENDERSON WAS DISCRIMINATED AGAINST ON THE BASIS OF HER RELIGION IN VIOLATION OF TITLE VII.

A. Ms. Henderson's Schedule Conflicted with Her Sincerely Held Religious Beliefs and Practices.

Ms. Henderson was not seeking an "exception to a bona fide seniority system"; rather, she was requesting a religious accommodation pursuant to her Title VII rights to attend church because her schedule conflicted with her religious practice. Ms. Henderson, pursuant to her sincerely held religious beliefs and practice as a Christian, regularly attends church that begins at 11:00 am. Her 3:15 am-11:45 am shift required her to be at work and did not allow her to fulfill her religious obligation of attending church. Even if she had bid on the other shift available to her, i.e., the 11:00 am-7:30 pm shift, she still would not have been able to attend church. After becoming aware of the conflict between her work schedule and religious practice, Ms. Henderson exercised her Title VII rights and sought an accommodation. Specifically, she sought an accommodation for an adjusted schedule to work from 3:15 am-10:00 am on Sundays and then from 3:15-1:30 pm on Mondays so that she could practice her religion by attending church. An adjusted schedule is within the discretion of the FSD. *See* ROI at 71. Ms. Henderson seeks an accommodation because her religious beliefs and practices clearly conflict with her Sunday schedule.

B. FSD Corse Impermissibly Denied Ms. Henderson's Religious Accommodation Because it was an Accommodation to Attend Church.

As the Supreme Court has noted, an employer cannot deny an accommodation request "with the motive of avoiding the need for accommodating religious practice." *Abercrombie*, 575 U.S. at 774. The agency found that "the record does not support Complainant's claim that her religious accommodation request was denied." Ex. 2 at 4. Rather, the agency relied on Ms. Corse's testimony that she denied Ms.

Henderson's accommodation request based on "mission needs." *Id.* at 3. The agency also placed emphasis on Ms. Corse's memorandum and Mr. Ward's testimony that Ms. Corse denied the request because the airport had to have sufficient staff to support the program. *Id.* In relying on these facts, the agency wrongly concluded that the record does not support Ms. Henderson's claim that her religious accommodation was denied. The agency clearly overlooked key facts that show Ms. Corse denied Ms. Henderson's request because she wanted to avoid accommodating an employee needing to attend church.

First, the agency's conclusion that Ms. Henderson's request for a religious accommodation was not denied is simply not the case. The final decision maker, Ms. Corse, clearly noted in her affidavit that TSA denied the request. ROI at 49. Moreover, a list of TSA employees at the airport who have requested religious accommodations shows that Ms. Henderson's request for a schedule adjustment was denied. ROI at 71. In addition, the agency's conclusion is not reflected by the testimony of Mr. Ward, who expressly noted that "the religious accommodation was denied by [Ms. Corse]." ROI at 52. The record undeniably shows that Ms. Henderson's request was in fact denied and the agency clearly and wrongly overlooked this fact. Thus, despite the agency's conclusion, Ms. Henderson was subjected to an adverse employment action when her request for an accommodation was denied. *See Barrett V. v. Vilsack*, Appeal No. 2019005478, at 6 (March 7, 2024).

Second, the reason why the request was denied is critical to Ms. Henderson's Title VII claim and was overlooked by the agency. The record shows that Ms.

Henderson was subjected to disparate treatment because of her religious practice of attending church. The agency, relying on Ms. Corse's affidavit (ROI at 48-50) and her memorandum (ROI at 69-70), stated that "the FSD explained that complainant's specific request to have her shifts indefinitely altered could not be granted as her STSO position was subject to the seniority and scheduling provisions." Notably, Ms. Corse's testimony in her affidavit does not mention that she failed to grant the request for that reason. ROI at 48-50. For example, when the investigator asked if Ms. Corse was aware that Ms. Henderson's religious beliefs conflicted with her employment requirements, Ms. Corse responded

> I have had many individuals who would like to attend church services. I am in the South. We are solidly in the Bible belt. There are a lot of individuals who would like to practice their faith. I have made the decision and told all management under me where I cannot grant this accommodation to one. *I have not granted religious accommodation to attend church.*

ROI at 48 (emphasis added). Further, when asked whether she was involved in responding to Ms. Henderson's religious accommodation request, Ms. Corse denied involvement, although she allegedly wrote and signed the memorandum that responded to Ms. Henderson's request. The memorandum that was relied upon by the agency in its final decision is nowhere mentioned in Ms. Corse's affidavit. ROI at 48-50. In addition, when asked about the nature of her involvement, Ms. Corse did note that Mr. Ward manages the operation when it comes schedule changes; however, she would go on to explain that she "look[s] at religious accommodations on a case by case basis, but *I do not allow accommodations just to attend church for the long term*." ROI at 48 (emphasis added). Ms. Corse would go on to add that "if we allowed someone to

attend church, we would have to do that for the rest of the state." Ms. Carter's affidavit solidifies this point by stating that, "the guidance from the FSD was it would be an undue hardship if we accepted everyone's accommodation. The assumption was that there would be too many requests if one was granted." ROI at 57.

A flat-out and definitive refusal to accommodate a religious practice or belief based on a mere assumed or hypothetical concern flies in the face of Title VII. *See, e.g.*, *Tabura v. Kellogg USA*, 880 F.3d 544, 558 (10th Cir. 2018) (reversing summary judgment for employer where it "did not . . . cite to any evidence to support its assertions" that accommodating plaintiffs' need to observe their Sabbath would impose an undue hardship "in the form of unauthorized overtime, quality control issues, and even forcing entire lines to shut down"). As mentioned *supra*, "[a] mere assumption that many more people, with the same religious practices as the person being accommodated, may also need accommodation is not evidence of undue hardship." 29 C.F.R. 1605.2 (c)(1).

"[O]nce an employee requests an accommodation . . . , the employer must engage in an interactive process with the employee to determine the appropriate reasonable accommodation." *United States EEOC v. UPS Supply Chain Sols.*, 620 F.3d 1103, 1110 (9th Cir. 2010) (quoting *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1089 (9th Cir. 2002). This interactive process "requires: (1) direct communication between the employer and employee to explore in good faith the possible accommodations; (2) consideration of the employee's request; and (3) offering an accommodation that is reasonable and effective." *Id*. Here, instead of engaging in an

interactive process to accommodate Ms. Henderson's religious practice and belief, TSA has replied with "the classic rejoinder of bureaucrats throughout history: If I make an exception for you, I'll have to make one for everybody, so no exceptions." *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 436 (2006). That approach is wholly inconsistent with Title VII.

Ashley v. Chafin, No. 7:07-cv-177(HL), 2009 U.S. Dist. LEXIS 87699 (M.D. Ga. Sept. 23, 2009), is instructive. In that case, a detention officer was seeking a religious accommodation from a sheriff's office to observe his Sabbath on Saturdays. *Id.* at *1. The defendant sheriff attempted to argue that "if Ashley is accommodated, then all employees will begin to swap their schedules, all order will be lost, chaos will ensue, and public safety will be threatened." *Id.* at *30. In response, the court emphasized that "the assumption that other employees will seek accommodation without any supporting evidence is not a relevant consideration. Without a single piece of evidence in support of the Sheriff's suggestion, the Court cannot consider such a baseless claim." *Id. See also Shepherd v. Gannondale*, No. 1:14-cv-8, 2014 U.S. Dist. LEXIS 176822, at *52-53 (W.D. Pa. Dec. 22, 2014) ("No doubt every employer would argue that allowing even one employee to be excused from an organization-wide practice would undermine that practice as a whole and might encourage other employees to seek exemptions. Nevertheless, Title VII requires reasonable accommodation of employees' sincerely held religious beliefs unless an employer demonstrates that such accommodation would subject it to an undue hardship.") (citing 29 C.F.R. § 1605.2(c)(1) ("A mere assumption that many more people, with the same religious

practices as the person being accommodated, may also need accommodation is not evidence of undue hardship.")).

Even if Ms. Corse's policy of not accommodating church attendance were neutral—it obviously is not—enforcement of a neutral, uniform policy must still give way to a religious accommodation, where doing so would not create an undue hardship. *See, e.g.*, *Abercrombie*, 575 U.S. at 775 ("An employer is surely entitled to have, for example, a no-headwear policy as an ordinary matter. But when an applicant requires an accommodation as an 'aspec[t] of religious . . . practice,' it is no response that the subsequent 'fail[ure] . . . to hire' was due to an otherwise-neutral policy.").

Ms. Corse's testimony shows that Ms. Henderson's request to attend church was the motivating factor in her decision to deny Ms. Henderson's request. ROI at 48. Ms. Corse has never granted an accommodation for an employee to attend church, and she admitted that she does not allow accommodations just to attend church. In addition, out of all the religious accommodations that have been granted by Ms. Corse, Ms. Henderson's request for a schedule adjustment to attend church is the only religious accommodation request that has been denied. *See* ROI at 71. In fact, based on TSA's records of religious accommodation requests at BHM, Ms. Henderson's request was the only request to attend church. Thus, any suggestion that other employees would seek an accommodation to attend church is "baseless" and irrelevant. *Ashley*, 2009 U.S. Dist. LEXIS 87699 at *30; *see also Tooley v. Martin-Marietta Corp.*, 648 F.2d 1239, 1243 (9th Cir. 1981) ("A claim of undue hardship

cannot be supported by merely conceivable or hypothetical hardships"). A similarly situated employee outside of Ms. Henderson's protected class was given a flexible schedule—an accommodation well within management's discretion to provide when it comes to scheduling changes. ROI at 41, 49, 53, 57, 134-142. When asked about that request, Ms. Corse stated that accommodation "was not brought up as a religious accommodation to attend church." ROI at 49. In short, the record shows that Ms. Corse did not deny the request because it violates any seniority system. Ms. Corse denied the request because Ms. Henderson requested an accommodation to attend church.

RELIEF REQUESTED

For the reasons stated above, Tiffany Henderson respectfully requests the following relief:

1) Reversal of the Department of Homeland Security's Final Agency decision;
2) Restoration of any leave used by Ms. Henderson because of the Agency's discriminatory actions; and
3) Award any and all applicable fees and costs to Ms. Henderson as the prevailing party.

Respectfully submitted, this 21st day of November 2024.

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CERTIFICATE OF SERVICE

I certify that on November 21, 2024, this brief was filed with the EEOC's Office of Federal Operations and served on the Agency, U.S. Department of Homeland Security, via the EEOC's Public Portal.

/s/ Garrett A. Taylor
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