

No. 24-1763

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ASHRAF MUSTAFA,
Plaintiff-Appellant,

v.

FORD MOTOR CO.,
Defendant-Appellee.

On Appeal from the United States District Court
for the Eastern District of Michigan

BRIEF OF THE EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION AS AMICUS CURIAE IN SUPPORT OF
APPELLANT AND IN FAVOR OF REVERSAL

KARLA GILBRIDE
General Counsel

JENNIFER S. GOLDSTEIN
Associate General Counsel

ANNE NOEL OCCHIALINO
Assistant General Counsel

GEORGINA C. YEOMANS
Attorney

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
Office of General Counsel
131 M St. N.E., 5th Floor
Washington, D.C. 20507
202-921-2748
georgina.yeomans@eeoc.gov

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STATEMENT OF INTEREST

Congress charged the Equal Employment Opportunity Commission (EEOC) with administering and enforcing Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.* This appeal presents important questions about the scope of Title VII's retaliation provision. Because the EEOC has a substantial interest in the proper interpretation of Title VII, it files this brief pursuant to Federal Rule of Appellate Procedure 29(a).¹

STATEMENT OF THE ISSUES

Whether the district court erred in holding that the plaintiff did not plausibly allege a causal connection between his complaint about discrimination and harassment and his termination.²

¹ An amicus curiae “must file its brief...no later than 7 days after the principal brief of the party being supported is filed.” Fed. R. App. P. 29(a)(6). Typically, the EEOC waits to file its brief until after the party being supported has already filed its principal brief. In light of the potential federal government shutdown, however, and given the significance of the issue, the EEOC files this brief now. *See* Antideficiency Act, 31 U.S.C. §§ 1341(a)(1)(B), 1342.

² We address no other issue on appeal.

STATEMENT OF THE CASE

A. Statement of the Facts³

Plaintiff Ashraf Mustafa, a Middle Eastern man who practices Islam, worked as a manufacturing engineer at defendant Ford Motor Company (Ford) for nearly seven years. Amended Complaint, R.16, PAGEID #108 ¶¶ 7-11. Ford gave him positive ratings during his first five years with the company. *Id.* PAGEID #109 ¶ 14. But that changed in 2019, when Ford transferred Mustafa to a new team with new managers and tasked him with managing the launch of the 2022 Ford F-150 pickup truck. *Id.* PAGEID #108 ¶¶ 11-12. Mustafa alleges the new managers treated him poorly, including by giving him negative performance ratings and disciplining him for “alleged poor performance.” *Id.* PAGEID #109 ¶ 15. At the same time, Mustafa earned praise for his excellent work from other managers when he occasionally performed “temporary” projects for them. *Id.* ¶ 16.

In 2020, one of Mustafa’s managers, Gordon Richei, reprimanded him for wearing shorts to work, even though many of Mustafa’s White

³ We accept Mustafa’s allegations as true and draw reasonable inferences in his favor, as is required on review of a motion to dismiss. *See Buddenberg v. Weisdack*, 939 F.3d 732, 738 (6th Cir. 2019).

coworkers had recently done the same without issue. *Id.* ¶¶ 17-18.

Mustafa's coworker mentioned to others that Mustafa had been reprimanded while others had not; Ford fired that coworker soon after. *Id.* PAGEID #109-110 ¶¶ 19-20.

During this time, Mustafa was also being overloaded with work and needed assistance. *Id.* PAGEID #110-111 ¶¶ 21-28. In October 2020, a junior engineer was assigned to help Mustafa with his extra work. But when the junior engineer arrived, Richei assigned him to help a different engineer, leaving Mustafa to handle his excess work alone. *Id.* PAGEID #111 ¶¶ 29-33.

Also in October 2020, Mustafa filed a formal complaint with Ford's human resources department alleging that "he had suffered illegal discrimination and harassment by his supervisors." *Id.* PAGEID #112 ¶ 35. Within two weeks of that report, Richei accused Mustafa of timecard falsification. *Id.* ¶ 36. Human resources investigated and "found no merit to Richei's accusation." *Id.* ¶ 37. Then in December, Mustafa received another poor performance evaluation, despite the evaluation acknowledging he "met and completed all of his deliverables." The report claimed he did so only because of the work of his other team members. *Id.* ¶ 38.

Mustafa went on medical leave in January 2021 because of a workplace injury. He returned on July 19, 2021. That same day, he was invited to a July 21 meeting, where managers fired him for alleged poor performance. *Id.* PAGEID #112-13 ¶¶ 39-43.

B. District Court's Decision

Mustafa sued Ford alleging Title VII race, national origin, and religious discrimination and retaliation. The district court dismissed Mustafa's complaint and, later, Mustafa's First Amended Complaint (FAC).

Regarding the retaliation claim, which is the only claim we address, the court held that because Mustafa filed his EEOC charge 299 days after his termination, only the termination could constitute a timely adverse action for the claim. Order Dismissing Amended Complaint ("Order"), R.25, PAGEID #215, 220.

The court then acknowledged that Mustafa's human resources complaint was undisputedly protected activity and that his termination was materially adverse. *Id.* PAGEID #216, 224. But the court held that Mustafa failed to allege facts giving rise to an inference that his protected activity caused his termination. The court reasoned that the October-July timeline between the events was too attenuated to support a causal

inference and that there was “no obvious reason to discount” the months Mustafa was on medical leave when calculating the events’ temporal proximity. *Id.* PAGEID #225. The court acknowledged the “suspicious[ly]” close temporal proximity between Mustafa’s complaint and Richei’s timecard falsification accusation, but dismissed the allegation as immaterial because the adverse action at issue was Mustafa’s termination nine months later, not the false accusation. *Id.* PAGEID #224-25. The court also held that Mustafa’s poor performance review in December was not probative of retaliation because Mustafa pled that he started receiving negative performance reviews in 2019, before he complained to human resources. *Id.* PAGEID #225. Mustafa appealed.

ARGUMENT

As the district court correctly acknowledged, to state a retaliation claim Mustafa need only plausibly allege he was “fired in retaliation for opposing what he reasonably believed to be a discriminatory practice.” Order, R.25, PAGEID #224 (quoting *Cox v. Shelby State Cmty. Coll.*, 48 F. App’x 500, 506 (6th Cir. 2002)); *see generally* *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) (pleading standard); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) (same). Mustafa’s complaint clearly satisfies this standard.

Ford acknowledged that Mustafa's October 2020 human resources complaint was opposition conduct that triggered Title VII's prohibition on retaliation, Motion to Dismiss, R.17, PAGEID #143, and the district court correctly agreed, R.25, PAGEID #216. But the district court wrongly concluded that Mustafa had not plausibly alleged a connection between his protected opposition conduct and his termination. Order, R.25, PAGEID #224-25.

In fact, Mustafa pled that Ford took an adverse action against him at its first meaningful opportunity to do so following Mustafa's complaint of discrimination. Mustafa also alleged additional facts giving rise to an inference that Ford acted with a retaliatory motive – namely, that a supervisor falsely accused him of misconduct and that Ford gave him a negative performance review, both shortly after his protected conduct. Because Mustafa pled two possible theories connecting his protected activity and his termination, this Court should reverse the dismissal of his retaliation claim and remand for further proceedings.

I. Mustafa plausibly alleged a causal connection between his protected conduct and his termination.

Title VII prohibits Ford from discriminating against Mustafa “because he has opposed any practice made an unlawful employment practice by this subchapter.” 42 U.S.C. § 2000e-3(a). To survive dismissal, a retaliation complaint need only allege facts from which the court can reasonably infer a causal connection between the plaintiff’s protected conduct and the adverse action. *See Iqbal*, 556 U.S. at 678. This is not an onerous standard.

There is no need to plead the elements of a *McDonnell Douglas Corporation v. Green*, 411 U.S. 792 (1973), prima facie case in a complaint. *See Keys v. Humana, Inc.*, 684 F.3d 605, 609 (6th Cir. 2012) (citing *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 510-12, 514 (2002)); *see also Carrethers v. Speer*, 698 F. App’x 266, 271-72 (6th Cir. 2017) (evaluating whether plaintiff “established a plausible claim that [the plaintiff] *will be* able to establish a prima facie case of retaliatory discharge for engaging in activity protected under Title VII” (emphasis added)). But because the elements of a retaliation claim closely track the prima facie case, courts often look to the prima facie case elements in assessing a claim’s plausibility. Those

elements are: (1) the plaintiff engaged in protected conduct, (2) of which the defendant was aware, (3) the defendant took a materially adverse action against the plaintiff, and (4) there is a causal connection between the protected conduct and the adverse action. *Montell v. Diversified Clinical Seros., Inc.*, 757 F.3d 497, 504 (6th Cir. 2014); *see also Moore v. Coca-Cola Bottling Co. Consol.*, 113 F.4th 608, 627 (6th Cir. 2024).

The plaintiff's "burden of proof" regarding the causation element of a prima facie case is "minimal," even at summary judgment. *Upshaw v. Ford Motor Co.*, 576 F.3d 576, 588 (6th Cir. 2009) (citation omitted). "[A]ll the plaintiff must do is put forth some credible evidence that enables the court to deduce that there is a causal connection between the protected activity and the retaliatory action." *Id.*

Often, plaintiffs rely on the timing between their protected conduct and adverse action to establish causation. In this Court, there is a sliding scale of timing that suffices to satisfy the causation element at summary judgment – and thus suffices as well at the complaint stage. If the protected conduct and adverse action are close together in time, that fact alone can establish causation. *See Kirilenko-Ison v. Bd. of Educ.*, 974 F.3d 652, 664 (6th Cir. 2020) (noting the court has denied summary judgment where "just a

few months” separated protected conduct and adverse action). If the timing is more attenuated, plaintiffs can still establish causation in two ways. First, even where a “long lapse of time” separates the protected conduct from the adverse action, “a court may still draw an inference of causation where the defendant took advantage of its first meaningful opportunity to retaliate against the plaintiff, even if that opportunity did not arise until several months after the plaintiff’s protected conduct.” *Id.* at 665; *see also* EEOC Enforcement Guidance on Retaliation and Related Issues (Retaliation Guidance), 2016 WL 4688886, at *23 (Aug. 25, 2016) (“[A]n opportunity to engage in a retaliatory act may not arise right away. In these circumstances, a materially adverse action might occur long after the original protected activity occurs, and retaliatory motive is nevertheless proven.”).

Second, plaintiffs may “couple temporal proximity with other evidence of retaliatory conduct to establish causality.” *Kirilenko-Ison*, 974 F.3d at 665 (cleaned up); *see also* Retaliation Guidance at *23 (plaintiffs may rely on “other evidence of retaliatory motive” to establish causation in absence of suspicious timing).

At the pleading stage, Mustafa need only set forth “a plausible claim that [h]e will be able to” make such a showing at summary judgment. *See Carrethers*, 698 F. App’x at 271–72. Mustafa’s FAC plausibly alleged that Ford took its first meaningful opportunity to retaliate against him and plausibly alleged other indicia of discriminatory motivation. The district court should not have dismissed his retaliation claim for failure to plead causation.

A. Ford acted against Mustafa at its first meaningful opportunity.

Given that Mustafa was on medical leave for a work-related injury for six of the nine months that separated his protected conduct from his termination, Mustafa has plausibly alleged that Ford took adverse action against him at its first meaningful opportunity to do so. Mustafa went on medical leave in January 2021, three months after his October 2020 protected conduct. Amended Complaint, R.16, PAGEID #112 ¶¶ 35, 39. Immediately upon Mustafa’s return, Ford terminated him. *Id.* PAGEID #113 ¶¶ 40-42. The district court found “no obvious reason to discount those months [of medical leave] in evaluating whether the termination was suspiciously timed.” Order, R.25, PAGEID #225. But one possible, common-sense reason for the delay that the court overlooked was that Ford

was waiting to see when – and perhaps whether – Mustafa would return from the leave he took to attend to his workplace injury before firing him. *Cf. Iqbal*, 556 U.S. at 664 (courts should call upon “experience and common sense” in assessing complaint’s plausibility). Discounting Mustafa’s medical leave, only three months elapsed between his complaint and termination. And three months is sufficiently temporally proximate to plausibly allege causation. *See Bryson v. Regis Corp.*, 498 F.3d 561, 571 (6th Cir. 2007) (in FMLA case, holding that three months between leave request and termination established causation at prima facie stage); *Rhodes v. R & L Carriers, Inc.*, 491 F. App’x 579, 584 (6th Cir. 2012) (allegations regarding employer’s unlawful practices, plaintiff’s opposition, and plaintiff’s termination “mere months” later, despite “great” work, stated Family and Medical Leave Act (FMLA) retaliation claim).

B. Mustafa put forth other allegations of retaliatory motive.

Moreover, Mustafa did not rely on temporal proximity alone to allege a causal link between his complaint and termination. He also alleged that Richei falsely accused him of timecard fraud shortly after Mustafa complained to human resources. Amended Complaint, R.16, PAGEID #117

¶ 66. The district court acknowledged “the timing of Richei’s accusations

that he falsified his timecard certainly was suspicious.” Order, R.25, PAGEID #216. But it then disregarded the false-accusation allegation on the basis that the false accusation was not itself actionable retaliation, as it was outside the limitations period of Mustafa’s EEOC charge. *Id.* PAGEID #224-25.

But even if not itself actionable retaliation, the false accusation is probative of Ford’s retaliatory motivation in eventually terminating Mustafa. As the Supreme Court explained in *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101 (2002), even if a discrete act of discrimination is untimely and cannot be considered part of a continuing violation, Title VII does not “bar an employee from using the prior acts as background evidence in support of a timely claim,” *id.* at 113. Mustafa’s allegation regarding Richei’s false accusation is therefore probative of causation.

An employer’s increased scrutiny of an employee following that employee’s protected activity, when combined with temporal proximity between that protected activity and a materially adverse action, can establish causation. *See Hamilton v. Gen. Elec. Co.*, 556 F.3d 428, 435-36 (6th Cir. 2009); *Upshaw*, 576 F.3d at 588; *see also Laster v. City of Kalamazoo*, 746 F.3d 714, 732 (6th Cir. 2014). Certainly, false accusations of misconduct are

similarly, if not more, probative. *Cf. DeGuiseppe v. Vill. of Bellwood*, 68 F.3d 187, 192 (7th Cir. 1995) (false accusations may constitute actionable retaliation in First Amendment context); *Campbell v. Hawaii Dep't of Educ.*, 892 F.3d 1005, 1022 (9th Cir. 2018) (noting that “merely investigating an employee – regardless of the outcome of that investigation – likely can support a claim for Title VII retaliation”).

Mustafa also alleged that Ford gave him a negative performance review in December 2020. Amended Complaint, R.16, PAGEID #112 ¶ 38. The district court disregarded that allegation because the FAC alleges that Ford started giving Mustafa negative reviews in 2019, before he complained to human resources. *Id.* PAGEID #109 ¶ 15. The negative 2019 evaluation may undermine the probative value of Mustafa’s 2020 negative review, but the latter is still material to the causation analysis. Importantly, the FAC alleges that Mustafa met all his annual goals, that the review acknowledged as much, but that it incorrectly attributed Mustafa’s satisfaction of his goals to his coworkers. *Id.* PAGEID #112 ¶ 38. These are factual allegations to be credited at the pleading stage and that “establish[] a plausible claim that [Mustafa] *will be* able to establish a prima facie case,”

after discovery, at summary judgment. *See Carrethers*, 698 F. App'x at 271-72.

* * *

In short, the district court should not have dismissed Mustafa's retaliation claim on the basis that it failed to plausibly allege causation. Subtracting Mustafa's medical leave from the equation, Ford fired him three months after he complained to human resources. That alone is sufficient at the complaint stage to allege causation. When combined with Mustafa's allegations that, during those intervening months, Richei falsely accused him of misconduct and Ford gave him another bad performance review, Mustafa's complaint more than plausibly alleges a causal link.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be vacated and the case remanded for further proceedings.

Respectfully submitted,

KARLA GILBRIDE
General Counsel

JENNIFER S. GOLDSTEIN
Associate General Counsel

ANNE NOEL OCCHIALINO

Assistant General Counsel

s/Georgina C. Yeomans

GEORGINA C. YEOMANS

Attorney

EQUAL EMPLOYMENT

OPPORTUNITY COMMISSION

Office of General Counsel

131 M St. N.E., 5th Floor

Washington, D.C. 20507

202-921-2748

georgina.yeomans@eeoc.gov

December 20, 2024

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B) because it contains 2,633 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and Sixth Circuit Rule 32(b)(1).

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s/Georgina C. Yeomans
GEORGINA C. YEOMANS
Attorney
EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
Office of General Counsel
131 M St. N.E., 5th Floor
Washington, D.C. 20507
202-921-2748
georgina.yeomans@eeoc.gov

December 20, 2024

CERTIFICATE OF SERVICE

I certify that on December 20, 2024, 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.

s/Georgina C. Yeomans
GEORGINA C. YEOMANS
Attorney
EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
Office of General Counsel
131 M St. N.E., 5th Floor
Washington, D.C. 20507
202-921-2748
georgina.yeomans@eoc.gov

ADDENDUM

Designation of Relevant District Court Documents

Record Entry #	Document Description	Page ID # Range
16	Amended Complaint	107-118
17	Motion to Dismiss Amended Complaint	119-163
25	Order Granting Motion to Dismiss Amended Complaint	212-226