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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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LEWIS ET AL. *v.* CITY OF CHICAGO, ILLINOIS

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 08–974. Argued February 22, 2010—Decided May 24, 2010

In 1995, respondent the City of Chicago gave a written examination to applicants seeking firefighter positions. In January 1996, the City announced it would draw candidates randomly from a list of applicants who scored at least 89 out of 100 points on the examination, whom it designated as "well qualified." It informed those who scored below 65 that they had failed and would not be considered further. It informed applicants who scored between 65 and 88, whom it designated as "qualified," that it was unlikely they would be called for further processing but that the City would keep them on the eligibility list for as long as that list was used. That May, the City selected its first class of applicants to advance, and it repeated this process multiple times over the next six years. Beginning in March 1997, several African-American applicants who scored in the "qualified" range but had not been hired filed discrimination charges with the Equal Employment Opportunity Commission (EEOC) and received right-to-sue letters. They then filed suit, alleging (as relevant here) that the City's practice of selecting only applicants who scored 89 or above had a disparate impact on African-Americans in violation of Title VII of the Civil Rights Act of 1964, see 42 U. S. C. §2000e–2(k)(1)(A)(i). The District Court certified a class—petitioners here—of African-Americans who scored in the "qualified" range but were not hired. The court denied the City's summary judgment motion, rejecting its claim that petitioners had failed to file EEOC charges within 300 days "after the unlawful employment practice occurred," §2000e–5(e)(1), and finding instead that the City's "ongoing reliance" on the 1995 test results constituted a continuing Title VII violation. The litigation then proceeded, and petitioners prevailed on the merits. The Seventh Circuit reversed the judgment in their favor, holding

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that the suit was untimely because the earliest EEOC charge was filed more than 300 days after the only discriminatory act—sorting the scores into the "well qualified," "qualified," and "not qualified" categories. The later hiring decisions, the Seventh Circuit held, were an automatic consequence of the test scores, not new discriminatory acts.

Held: A plaintiff who does not file a timely charge challenging the *adoption* of a practice may assert a disparate-impact claim in a timely charge challenging the employer's later *application* of that practice as long as he alleges each of the elements of a disparate-impact claim. Pp. 4–11.

(a) Determining whether petitioners' charges were timely requires "identify[ing] precisely the 'unlawful employment practice' of which" they complain. *Delaware State College* v. *Ricks*, 449 U. S. 250, 257. With the exception of the first selection round, all agree that the challenged practice here—the City's selection of firefighter hires on the basis announced in 1996—occurred within the charging period. Thus, the question is not whether a claim predicated on that conduct is *timely*, but whether the practice thus defined can be the basis for a disparate-impact claim *at all*. It can. A Title VII plaintiff establishes a prima facie claim by showing that the employer "uses a particular employment practice that causes a disparate impact" on one of the prohibited bases. §2000e–2(k). The term "employment practice" clearly encompasses the conduct at issue: exclusion of passing applicants who scored below 89 when selecting those who would advance. The City "use[d]" that practice each time it filled a new class of firefighters, and petitioners allege that doing so caused a disparate impact. It is irrelevant that subsection (k) does not address "accrual" of disparate-impact claims, since the issue here is not when the claims accrued but whether the claims stated a violation. They did. Whether petitioners proved a violation is not before the Court. Pp. 4–7.

(b) The City argues that the only actionable discrimination occurred in 1996 when it used the test results to create the hiring list, which it concedes was unlawful. It may be true that the City's adoption in 1996 of the cutoff score gave rise to a freestanding disparate-impact claim. If so, because no timely charge was filed, the City is now "entitled to treat that past act as lawful," *United Air Lines, Inc.* v. *Evans*, 431 U. S. 553, 558. But it does not follow that no new violation occurred—and no new claims could arise—when the City later implemented the 1996 decision. *Evans* and later cases the City cites establish only that a Title VII plaintiff must show a "present violation" within the limitations period. For disparate-treatment claims—which require discriminatory intent—the plaintiff must demonstrate

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deliberate discrimination within the limitations period. But no such demonstration is needed for claims, such as this one, that do not require discriminatory intent. Cf., *e.g., Ledbetter* v. *Goodyear Tire & Rubber Co.*, 550 U. S. 618, 640. Contrary to the Seventh Circuit's reasoning, even if both types of claims take aim at prohibited discrimination, it does not follow that their reach is coextensive. Pp. 7–10.

(c) The City and its *amici* warn that this reading will result in a host of practical problems for employers and employees alike. The Court, however, must give effect to the law Congress enacted, not assess the consequences of each approach and adopt the one that produces the least mischief. Pp. 10–11.

(d) It is left to the Seventh Circuit to determine whether the judgment must be modified to the extent that the District Court awarded relief based on the first round of hiring, which occurred outside the charging period even for the earliest EEOC charge. P. 11.

528 F. 3d 488, reversed and remanded.

SCALIA, J., delivered the opinion for a unanimous Court.