

No. 19-178

In The
Supreme Court of the United States

JAGDISH C. LAUL,

Petitioner;

v.

LOS ALAMOS NATIONAL LABORATORIES,

Respondent.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Tenth Circuit**

**BRIEF IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI**

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QUESTION PRESENTED

Whether the Court of Appeals properly affirmed the district court's grant of summary judgment in favor of Respondent on Petitioner's causes of action alleging discrimination and retaliation under Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, and the New Mexico Human Rights Act based on its determination that there was no genuine dispute of any material fact and Respondent was entitled to judgment as a matter of law.

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STATEMENT OF THE CASE

Dr. Laul was employed by Respondent Los Alamos National Security (“LANS”) at the Los Alamos National Laboratory (“LANL”) from 1999 until 2013.¹ *See generally Laul v. Los Alamos Nat'l Laboratories*, 714 Fed. Appx. 832, 834-35 (10th Cir. 2017) (unpublished) (“*Laul I*”). Petitioner Jagdish Laul’s Petition for Writ of Certiorari arises from the second of four lawsuits brought by Dr. Laul stemming from LANS’ December 6, 2013 termination of his employment and his subsequent efforts to become re-employed by LANS.

In *Laul I*, the Tenth Circuit affirmed the dismissal of Dr. Laul’s discrimination and retaliation causes of action associated with his termination from LANS and his unsuccessful applications for 12 positions at LANS. *See id.* at 834. Dr. Laul’s deficient work performance and the legitimate non-discriminatory and non-retaliatory reasons for his discharge and LANS’ decisions not to hire him post-termination are well documented in the Tenth Circuit’s opinion affirming summary judgment. *See id.* at 834-41. This Court denied Dr. Laul’s Petition for Writ of Certiorari in that matter on June 4, 2018. *See generally Laul v. Los Alamos Nat'l Laboratories*, 138 S. Ct. 2602 (2018).

The present lawsuit (“*Laul II*”) concerns Dr. Laul’s applications for 30 positions advertised by LANS between October 2014 and May 2015. In this case, Dr.

¹ Although Los Alamos National Laboratories was the named defendant in Plaintiff’s Complaint, the proper party name is Los Alamos National Security, LLC.

Laul alleged claims against LANS pursuant to the New Mexico Human Rights Act, N.M. Stat. Ann., §§ 28-1-1 to 15 (1969, as amended through 2007) (“NMHRA”), the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621-634 (“ADEA”), and Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, et seq. (“Title VII”).

1. Undisputed Material Facts

a. LANS Issues a “Be On the Lookout” (“BOLO”)

In early 2014, Dr. Laul went to the LANS’ Occupational Medicine (“Occ Med”) building and asked to speak to Janet McMillan, a Certified Occupational Health Nurse with LANS and the wife of then-Laboratory Director, Charlie McMillan.

When Dr. Laul found Ms. McMillan at Occ Med, he handed her a picture of himself and Ms. McMillan and her husband that had been taken at a holiday event a year earlier. Dr. Laul then asked to speak to Ms. McMillan privately. When Ms. McMillan brought Dr. Laul to her office, he shut the door behind them and tried to hand her an envelope of documents that he wanted her to give her husband regarding Dr. Laul’s termination. Ms. McMillan felt uncomfortable and intimidated as Dr. Laul stood between Ms. McMillan and the closed office door and became increasingly angry as she declined to take the documents from him. Ms. McMillan reported this 2014 incident to her supervisor.

On June 30, 2015, Dr. Laul showed up unannounced at the Occ Med building a second time. Again, he asked to speak to Ms. McMillan. Ms. McMillan declined his request to meet in her office and instead spoke to him in the Occ Med lobby. Dr. Laul again tried to give Ms. McMillan documents he said concerned the 2013 termination of his employment that he wanted her to give to her husband. When Ms. McMillan again declined to take the documents, Dr. Laul became more aggressive and continued to demand that Ms. McMillan engage with him on the employment termination and how he had been “wronged.” After seeing Ms. McMillan in distress over Dr. Laul’s conduct, a Physician’s Assistant in the LANS Occ Med Group, John Wally Collings, came to Ms. MacMillan’s assistance and told Dr. Laul to leave the building. Ms. McMillan reported this second incident with Dr. Laul to the Laboratory’s then-Executive Director, Richard Marquez.

Mr. Marquez informed Michael Lansing, Acting Principal Associate Director for Operations and Business, about the June 30, 2015 encounter between Ms. McMillan and Dr. Laul because both Ms. McMillan and Mr. Marquez were concerned about her safety and the security of the Occ Med building. After reviewing the incident, Michael Lansing and LANS Personnel Security issued a “Be On the Lookout” (“BOLO”) for Dr. Laul on July 1, 2015. A BOLO is a mechanism used by LANS Personnel Security to alert officials at the LANL gates and other LANL personnel that an individual is not permitted on Laboratory property and if seen on site, should be reported to LANL Personnel Security.

On July 22, 2015, Dr. Laul filed an EEOC Charge alleging harassment, retaliation and discrimination against LANS on the basis that he had applied for thirty (30) jobs at LANS from October 2014 to May 2015 and had not been hired for any of the positions.

2. Dr. Laul applies for 30 positions at LANS between October 2014 and May 2015.

Dr. Laul applied for 30 employment positions advertised by LANS for external candidates between October 2014 and May 2015. Below, Petitioner stipulated that only 19 of these 30 positions are at issue in this litigation as the remaining 11 positions were cancelled and no individuals were hired. As to the positions at issue in the litigation, LANS established the following undisputed material facts in its Motion for Summary Judgment:

a. Environmental Professional 3 position (IRC 35849)

Dr. Laul submitted an application for this position on October 20, 2014. The hiring manager for the position was Patricia Gallagher, who at the time was the Environmental Stewardship Group Leader. In 2017, Ms. Gallagher passed away. Jennifer Payne, who now serves as the Environmental Stewardship Group Leader, was also a member of the hiring team for this position. Based on her review of the documents related to the job posting and Ms. Gallagher's decision, and her personal knowledge from serving on the hiring team,

Ms. Payne provided a declaration regarding this position.

After a review of the applicants' resumes and other submitted materials, the hiring manager for the position, Ms. Gallagher, elected not to interview Dr. Laul as she determined that Dr. Laul did not meet the minimum qualifications for the position. Ms. Gallagher based her determination on Dr. Laul's lack of experience with National Environmental Policy Act ("NEPA") compliance, which was specifically sought in the job posting.

The successful candidate for the Environmental Professional 3 position was hired based on her extensive experience developing and preparing NEPA compliance documents, specifically for the Chemistry and Metallurgy Replacement Project at LANL.

When Ms. Gallagher made her hiring decision on this position, there is no indication that she was aware of Dr. Laul's previous performance issues at LANL, Dr. Laul's termination due to poor performance, or Dr. Laul's previous charges/claims against LANS for unfair treatment on the basis of age, race, and national origin.

When Ms. Gallagher made her decision on this position, there is no indication that she was aware of the BOLO that LANS Personnel Security issued for Dr. Laul on July 1, 2015.

There is no indication that Ms. Gallagher considered Dr. Laul's age, race, or national origin when

making her decision. Nor was Ms. Gallagher advised by James Tingey or any other LANS personnel not to interview or hire Dr. Laul for the position due to his age, race or national origin, his prior performance issues or because his employment had been terminated for poor performance.

**b. Environmental Professional 3 position
(IRC 35763)**

Dr. Laul submitted an application for the position on October 21, 2014. Because the hiring manager for the position, Patricia Gallagher, is deceased, the current Environmental Stewardship Group Leader, Jennifer Payne, has submitted a declaration regarding the position based on her review of the documents related to the job posting and Ms. Gallagher's decision.

After a review of the applicants' resumes and other submitted materials, the hiring manager for the position, Ms. Gallagher, elected not to interview Dr. Laul for the position as she determined that Dr. Laul did not meet the minimum qualifications. Ms. Gallagher based her determination on Dr. Laul's lack of experience with broad environmental regulatory compliance oversight and the Resource Conservation and Recovery Act ("RCRA"), which were specifically sought in the job posting.

The successful candidates had between ten and twenty-five years of experience with environmental regulatory compliance oversight and the RCRA, and were hired for that reason.

When Ms. Gallagher made her hiring decision, there is no indication that she was aware of Dr. Laul's previous performance issues at LANL, Dr. Laul's termination due to poor performance, or Dr. Laul's previous claims against LANS for unfair treatment on the basis of age, race, and national origin.

There is no indication that Ms. Gallagher considered Dr. Laul's age, race, or national origin when making her decision. Nor was Ms. Gallagher advised by James Tingey or any other LANS personnel not to interview or hire Dr. Laul for the position due to his age, race or national origin, his prior performance issues or because his employment had been terminated for poor performance.

c. Research and Development Manager 4 position (IRC 35837)

Dr. Laul submitted an application for the position on October 29, 2014. The hiring manager for the position, David Morris, assigned Peter Stark, a Research and Development Manager 4 (Group Leader) for the Chemistry Division's Chemical Diagnostic and Engineering Group, to review and screen the applications for the Research and Development Manager 4 position. Based on his personal knowledge, Mr. Stark submitted a declaration regarding the job posting.

Mr. Stark reviewed Dr. Laul's application and concluded that Dr. Laul was not the most qualified applicant for the position because Dr. Laul's research skills in analytical and radiochemistry, an important job

qualification for the position that was listed in the job posting, were inferior to the successful candidate. Mr. Stark also determined that Dr. Laul failed to demonstrate in his application specific experience in effectively managing safety and security in a technical experimental group, as required by the required skills in the job posting. Accordingly, Mr. Stark elected not to interview Dr. Laul for the position. Dr. Laul acknowledged that the successful candidate was “well qualified” for the position.

When Mr. Stark made his hiring decision, he was not aware of Dr. Laul’s previous performance issues at LANL, Dr. Laul’s 2013 termination due to poor performance, or Dr. Laul’s previous claims against LANS for unfair treatment on the basis of age, race, and national origin.

Mr. Stark did not consider Dr. Laul’s age, race, or national origin when making his decision. Nor was Mr. Stark advised by James Tingey or any other LANS personnel not to interview or hire Dr. Laul for the position due to his age, race or national origin, his prior performance issues or because his employment had been terminated for poor performance.

d. Engineer 3/4 position (IRC 36084)

Dr. Laul submitted an application for the position on October 31, 2014. The hiring manager for the position, Mel Burnett, reviewed Dr. Laul’s application and the applications of ten other applicants and concluded that Dr. Laul was not the most qualified applicant for

the position. Mr. Burnett determined that Dr. Laul's application did not exhibit a sufficient level of experience specific to system engineering (as specifically required in the job posting) compared to the successful applicants, and elected not to interview Dr. Laul for the position.

The successful candidates for the position were hired for the positions based on their extensive experience with system engineering. Dr. Laul acknowledged that all three of the successful candidates were qualified for the position.

When Mr. Burnett made his hiring decision, he was not aware of Dr. Laul's previous performance issues at LANL, Dr. Laul's termination due to poor performance, or Dr. Laul's previous claims against LANS for unfair treatment on the basis of age, race, and national origin.

Mr. Burnett did not consider Dr. Laul's age, race, or national origin when making his decision. Nor was Mr. Burnett advised by James Tingey or any other LANS personnel not to interview or hire Dr. Laul for the position due to his age, race or national origin, his prior performance issues or because his employment had been terminated for poor performance.

e. Scientist 2/3 position (IRC 37277)

Dr. Laul submitted an application for the position on January 23, 2015. The hiring manager for the position, Robert Steiner, reviewed Dr. Laul's application

and concluded that Dr. Laul did not meet the minimum qualifications for the position. Mr. Steiner concluded that Dr. Laul's application did not demonstrate the necessary level of experience in secondary ion mass spectrometry ("SIMS") required in the job posting, and elected not to interview Dr. Laul for the position.

The successful candidate had extensive experience in SIMS, including over eight years of experience operating magnetic sector SIMS instruments.

When Mr. Steiner made his hiring decision, he was not aware of Dr. Laul's previous performance issues at LANL, Dr. Laul's termination due to poor performance, or Dr. Laul's previous claims against LANS for unfair treatment on the basis of age, race, and national origin.

Mr. Steiner did not consider Dr. Laul's age, race, or national origin when making his decision. Nor was Mr. Steiner advised by James Tingey or any other LANS personnel not to interview or hire Dr. Laul for the position due to his age, race or national origin, his prior performance issues or because his employment had been terminated for poor performance.

**f. Quality Assurance Engineer 4 position
(IRC 37014)**

Dr. Laul submitted an application for the position on February 12, 2015. The hiring manager for the position, Dale Sivils, reviewed Dr. Laul's application and concluded that Dr. Laul was not the best qualified applicant for the position because Mr. Sivils did not

believe Dr. Laul had better experience in a manufacturing quality environment, when compared to the successful applicants, both of whom had already worked with LANS (as an employee or contractor) in positions similar to the Quality Assurance Engineer 4 position. Accordingly, Mr. Sivils elected not to interview Dr. Laul for the position.

When Mr. Sivils made his hiring decision, he was not aware of Dr. Laul's previous performance issues at LANL, Dr. Laul's termination due to poor performance, or Dr. Laul's previous claims against LANS for unfair treatment on the basis of age, race, and national origin.

Mr. Sivils did not consider Dr. Laul's age, race, or national origin when making his decision. Nor was Mr. Sivils advised by James Tingey or any other LANS personnel not to interview or hire Dr. Laul for the position due to his age, race or national origin, his prior performance issues or because his employment had been terminated for poor performance.

**g. Environmental Professional 3 position
(IRC 37521)**

The position was posted on February 3, 2015. Because the hiring manager for the position, Patricia Gallagher, is deceased, the current Environmental Stewardship Group Leader, Jennifer Payne, has submitted a declaration regarding the position based on her review of the documents related to the job posting and Ms. Gallagher's decision.

The hiring manager for the position, Ms. Gallagher, reviewed Dr. Laul's application and concluded that Dr. Laul did not meet the minimum qualifications for the position. Ms. Gallagher determined that Dr. Laul did not have the necessary experience in NEPA compliance, as specifically required in the job posting, and elected not to interview Dr. Laul for the position.

The successful candidate had more than twenty years of experience with implementation of the NEPA as both a subcontractor and Department of Energy employee.

When Ms. Gallagher made her hiring decision, there is no indication that she was aware of Dr. Laul's previous performance issues at LANL, Dr. Laul's termination due to poor performance, or Dr. Laul's previous claims against LANS for unfair treatment on the basis of age, race, and national origin.

There is no indication that Ms. Gallagher considered Dr. Laul's age, race, or national origin when making her decision. Nor was Ms. Gallagher advised by James Tingey or any other LANS personnel not to interview or hire Dr. Laul for the position due to his age, race or national origin, his prior performance issues or because his employment had been terminated for poor performance.

**h. Quality Assurance Engineer 4 position
(IRC 37672)**

Dr. Laul submitted an application for the position on February 16, 2015. The hiring manager for the position, Daniel Tepley, reviewed Dr. Laul's application and concluded that Dr. Laul did not meet the minimum qualifications for the position. Mr. Tepley concluded that Dr. Laul did not demonstrate in his application any specific experience in construction quality assurance as required in the job posting, and elected not to interview or hire Dr. Laul for the position.

The successful candidate had approximately thirty years of experience in construction quality assurance, and, in Mr. Tepley's estimation, was the most qualified candidate in all minimum, required, and desired job requirements.

When Mr. Tepley made his hiring decision, he was not aware of Dr. Laul's previous performance issues at LANL, Dr. Laul's termination due to poor performance, or Dr. Laul's previous claims against LANS for unfair treatment on the basis of age, race, and national origin.

Mr. Tepley did not consider Dr. Laul's age, race, or national origin when making his decision. Nor was Mr. Tepley advised by James Tingey or any other LANS personnel not to interview or hire Dr. Laul for the position due to his age, race or national origin, his prior performance issues or because his employment had been terminated for poor performance.

**i. Quality Assurance Engineer 4 position
(IRC 37732)**

Dr. Laul submitted an application for the position on February 16, 2015. The job posting closed on March 12, 2015. The hiring manager for the position, Daniel Tepley, reviewed Dr. Laul's application and concluded that Dr. Laul did not meet the minimum qualifications for the position as Dr. Laul did not demonstrate any specific experience in construction quality review as required by the job posting. Accordingly, Mr. Tepley elected not to interview Dr. Laul for the position.

When Mr. Tepley made his hiring decision, he was not aware of Dr. Laul's previous performance issues at LANL, Dr. Laul's termination due to poor performance, Dr. Laul's previous claims against LANS for unfair treatment on the basis of age, race, and national origin, or the BOLO that LANS Personnel Security issued for Dr. Laul on July 1, 2015.

Mr. Tepley did not consider Dr. Laul's age, race, or national origin when making his decision. Nor was Mr. Tepley advised by James Tingey or any other LANS personnel not to interview or hire Dr. Laul for the position due to his age, race or national origin, his prior performance issues or because his employment had been terminated for poor performance.

j. Critical Safety Analyst 1/2 position (IRC 37674)

Dr. Laul submitted an application for the position on February 28, 2015. The hiring manager for the position, Derek Gordon, assigned Andrew Wysong, a Nuclear Criticality Safety Division Leader in Nuclear and High Hazard Operations, to review and screen the applications for the Critical Safety Analyst 1/2 position.

Mr. Wysong reviewed Dr. Laul's application and concluded that Dr. Laul did not meet the minimum qualifications for the position because Dr. Laul stated in his resume that he "did not have hands-on experience in running codes," which was a minimum qualification listed in the job posting. Accordingly, Mr. Wysong elected not to interview Dr. Laul for the position and not to hire him. The successful candidates had experience running the relevant codes listed as a minimum job requirement in the job posting.

When Mr. Wysong made his hiring decision, he was not aware of Dr. Laul's previous performance issues at LANL, Dr. Laul's termination due to poor performance, or Dr. Laul's previous claims against LANS for unfair treatment on the basis of age, race, and national origin.

Mr. Wysong did not consider Dr. Laul's age, race, or national origin when making his decision. Nor was Mr. Wysong advised by James Tingey or any other LANS personnel not to interview or hire Dr. Laul for the position due to his age, race or national origin, his

prior performance issues or because his employment had been terminated for poor performance.

**k. Quality Assurance Specialist 2 position
(IRC 37678)**

Dr. Laul submitted an application for the position on February 28, 2015. The hiring manager for the position, Daniel Tepley, reviewed Dr. Laul's application and concluded that Dr. Laul did not meet the minimum qualifications for the position because Dr. Laul did not demonstrate in his application any specific experience in inspections and quality assurance, which was specifically listed as a minimum job requirement in the job posting. Accordingly, Mr. Tepley elected not to interview or hire Dr. Laul for the position.

In Mr. Tepley's estimation, the best qualified candidate for the position had a demonstrated level of experience in inspections and quality assurance.

When Mr. Tepley made his hiring decision, he was not aware of Dr. Laul's previous performance issues at LANL, Dr. Laul's termination due to poor performance, or Dr. Laul's previous claims against LANS for unfair treatment on the basis of age, race, and national origin.

Mr. Tepley did not consider Dr. Laul's age, race, or national origin when making his decision. Nor was Mr. Tepley advised by James Tingey or any other LANS personnel not to interview or hire Dr. Laul for the position due to his age, race or national origin, his prior

performance issues or because his employment had been terminated for poor performance.

1. Quality Assurance Engineer 3/4 position (IRC 37952)

Dr. Laul submitted an application for the position on February 28, 2015. The hiring manager for the position, Daniel Tepley, reviewed Dr. Laul's application and concluded that Dr. Laul did not meet the minimum qualifications for the position. Mr. Tepley determined that Dr. Laul did not demonstrate in his application any specific experience in construction quality review, which was a minimum requirement listed in the job posting. Accordingly, Mr. Tepley elected not to interview or hire Dr. Laul for the position.

The selected candidate demonstrated advanced experience and ability to ensure quality assurance requirements are met during the design, bid, build, and start-up of various types of facilities, all of which were specifically listed in the job posting as minimum job qualifications.

When Mr. Tepley made his hiring decision, he was not aware of Dr. Laul's previous performance issues at LANL, Dr. Laul's termination due to poor performance, or Dr. Laul's previous claims against LANS for unfair treatment on the basis of age, race, and national origin.

Mr. Tepley did not consider Dr. Laul's age, race, or national origin when making his decision. Nor was Mr. Tepley advised by James Tingey or any other LANS

personnel not to interview or hire Dr. Laul for the position due to his age, race or national origin, his prior performance issues or because his employment had been terminated for poor performance.

m. Environmental Manager 3 position (IRC 37809)

Dr. Laul submitted an application for the position on March 5, 2015. The hiring manager for the position, Anthony Grieggs, reviewed Dr. Laul's application and concluded that Dr. Laul did not meet the minimum qualifications for the position. Mr. Grieggs determined that Dr. Laul's application did not demonstrate the necessary experience in environmental management and compliance as required in the job posting, and elected not to interview Dr. Laul for the position.

The successful candidates were hired based on their extensive experience in environmental management and compliance.

When Mr. Grieggs made his hiring decision, he was not aware of Dr. Laul's previous performance issues at LANL, Dr. Laul's termination due to poor performance, or Dr. Laul's previous claims against LANS for unfair treatment on the basis of age, race, and national origin.

Mr. Grieggs did not consider Dr. Laul's age, race, or national origin when making his decision. Nor was Mr. Grieggs advised by James Tingey or any other LANS personnel not to interview or hire Dr. Laul for

the position due to his age, race or national origin, his prior performance issues or because his employment had been terminated for poor performance.

n. Operations Manager 6 position (IRC 38253)

Dr. Laul submitted an application for the position on April 9, 2015. The hiring manager for the position, Cheryl Cabbil, assigned Barbara Pacheco, the Human Resources Generalist for the Associate Directorate for Nuclear and High Hazard Operations, to review and screen the applications for the Operations Manager 6 position.

Ms. Pacheco reviewed Dr. Laul's application and concluded that Dr. Laul did not meet the minimum qualifications for the position. Ms. Pacheco determined that Dr. Laul did not demonstrate in his application a sufficient level of management experience in the operation of large nuclear and non-nuclear facilities, and elected not to refer Dr. Laul for an in-person interview for the position.

The successful candidates were hired for the position based on their extensive and recent experience in operation of large nuclear and non-nuclear facilities.

Ms. Pacheco was aware of Dr. Laul's previous performance issues at LANL and Dr. Laul's complaints against LANS for unfair treatment on the basis of age, race, and national origin. This information did not motivate Ms. Pacheco's determination that Dr. Laul did not meet the minimum qualifications for the position.

Ms. Pacheco did not consider Dr. Laul's age, race or national origin when making her hiring decision. Nor was Ms. Pacheco advised by James Tingey or any other LANS personnel not to interview or hire Dr. Laul for the position due to his age, race or national origin, his prior performance issues or because his employment had been terminated for poor performance.

o. Safety Basis Analyst 1/2 position (IRC 38516)

Dr. Laul submitted an application for the position on April 27, 2015. The hiring manager for the position, James Tingey, reviewed Dr. Laul's application and concluded that Dr. Laul was not the best qualified applicant for the position. In Mr. Tingey's estimation, Dr. Laul, while employed at LANS, had demonstrated an inability to successfully perform at the level of a Safety Basis Analyst 1/2. Accordingly, Mr. Tingey elected not to interview or hire Dr. Laul for the position.

The successful candidates were hired for the position based on their demonstrated ability to successfully perform at the level of a Safety Basis Analyst 1/2 or at the same level in a similar position.

At the time of his hiring decision, Mr. Tingey was aware of Dr. Laul's previous complaints against LANS for unfair treatment on the basis of age, race, and national origin, but this did not affect his consideration of Dr. Laul's application. Mr. Tingey did not consider Dr. Laul's age, race or national origin, or past complaints of unfair treatment when making his decision.

p. Safety Basis Analyst 3/4 position (IRC 38573)

Laul submitted an application for the position on April 27, 2015. The hiring manager for the position, James Tingey, reviewed Dr. Laul's application and concluded that Dr. Laul did not meet the minimum qualifications for the position. In Mr. Tingey's estimation, Dr. Laul, while employed at LANS, had demonstrated an inability to successfully perform at the level of a Safety Basis Analyst 3/4. Accordingly, Mr. Tingey elected not to interview or hire Dr. Laul for the position.

The successful candidate was hired for the position based on her thirty years of successful work in safety basis. Mr. Tingey was aware of Dr. Laul's previous complaints against LANS for unfair treatment on the basis of age, race, and national origin, but this did not affect his consideration of Dr. Laul's application.

Mr. Tingey did not consider Dr. Laul's age, race or national origin, or past complaints of unfair treatment when making his hiring decision.

q. Quality Assurance Engineer 3/4 position (IRC 38532)

Dr. Laul submitted an application for the position on April 28, 2015. The hiring manager for the position, Dale Sivils, reviewed Dr. Laul's application and concluded that Dr. Laul was not the best qualified applicant for the position. In Mr. Sivils' estimation, Dr.

Laul's application submittals did not demonstrate better experience in a manufacturing quality environment superior to that of the successful applicants, and Mr. Sivils elected not to interview Dr. Laul for the position.

The successful candidates were hired for the position based on their extensive experience with manufacturing quality assurance.

When Mr. Sivils made his hiring decision, he was not aware of Dr. Laul's previous performance issues at LANL, Dr. Laul's termination due to poor performance, or Dr. Laul's previous claims against LANS for unfair treatment on the basis of age, race, and national origin.

Mr. Sivils did not consider Dr. Laul's age, race, or national origin when making his decision. Nor was Mr. Sivils advised by James Tingey or any other LANS personnel not to interview or hire Dr. Laul for the position due to his age, race or national origin, his prior performance issues or because his employment had been terminated for poor performance.

**r. Operations Support Specialist 4 position
(IRC 38692)**

Dr. Laul submitted an application for the position on April 29, 2015. The hiring manager for the position, Timothy Orr, reviewed Dr. Laul's application and concluded that Dr. Laul did not meet the minimum qualifications for the position. Mr. Orr determined that Dr. Laul did not demonstrate in his cover letter and

resume the required level of writing skills for the position. Mr. Orr also determined that Dr. Laul's application package did not list specific experience to demonstrate that Dr. Laul possessed the required combination of technical and administrative skills necessary for the Operations Support Specialist 4 position. Accordingly, Mr. Orr elected not to interview Dr. Laul for the position.

The successful candidates were selected for the position based on their demonstrated combination of technical, procedure writing, and administrative skills and experience relevant to the requirements of the position.

When Mr. Orr made his hiring decision, he did not consider Dr. Laul's age, race, or national origin when making his decision.

**s. Radiation Protection Manager 4 position
(IRC 38434)**

Dr. Laul submitted an application for the position on May 4, 2015. The hiring manager for the position, Scotty Jones, reviewed Dr. Laul's application and concluded that Dr. Laul was not the most qualified applicant for the position. In Mr. Jones' estimation, Dr. Laul's application did not demonstrate the desired level of experience in radiation protection or any other related field, as specifically listed in the job posting. Accordingly, Mr. Jones elected not to interview Dr. Laul for the position.

The successful candidate was hired for the position based on his demonstrated experience and success as a radiation protection manager at LANL and related positions.

When Mr. Jones made his hiring decision, he was not aware of Dr. Laul's previous performance issues at LANL, Dr. Laul's termination due to poor performance, or Dr. Laul's previous claims against LANS for unfair treatment on the basis of age, race, and national origin.

Mr. Jones did not consider Dr. Laul's age, race, or national origin when making his decision. Nor was Mr. Orr advised by James Tingey or any other LANS personnel not to interview or hire Dr. Laul for the position due to his age, race or national origin, his prior performance issues or because his employment had been terminated for poor performance.

3. Procedural History

LANS moved for summary judgment on Petitioner's ADEA, Title VII and NMHRA causes of action on January 31, 2018. The District Court analyzed LANS' motion and Petitioner's response applying the analytical framework set forth by this Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) for evaluating circumstantial evidence of unlawful discrimination.² Petitioner did not raise any Seventh

² Petitioner does not appear to challenge the district court's grant of summary judgment on his Title VII and NMHRA retaliation claims (Dr. Laul did not allege retaliation under the ADEA).

Amendment or other objections to application of the *McDonnell Douglas* framework in the District Court. Indeed, both Petitioner and Respondent applied the *McDonnell Douglas* burden-shifting analysis in their respective briefing before the District Court.

The District Court granted summary judgment on all of Petitioner's claims. In so doing, the court concluded that Dr. Laul was unable to demonstrate a *prima facie* case of discriminatory failure to hire with respect to 12 of the 19 jobs at issue because he failed to present any evidence that he was qualified for those positions. The court further concluded that Dr. Laul was also unable to demonstrate a *prima facie* case because he presented no evidence raising an inference of discrimination (on any basis) associated with the failure to hire for any of the jobs at issue. Additionally, the court held that Dr. Laul was unable to demonstrate a fact issue or pretext regarding LANS' legitimate, non-discriminatory reasons for not hiring Dr. Laul for each of the 19 positions at issue. Finally, with respect to Dr. Laul's retaliation claim, the court held that Dr. Laul failed to demonstrate a causal connection between any protected activity and his termination or an issue of fact as to LANS' legitimate, non-retaliatory reasons for not hiring him or for putting in place property restrictions following his inappropriate and threatening conduct towards a LANS employee.

On May 6, 2019, in an unpublished opinion, the Tenth Circuit affirmed the District Court's order. *See generally Laul v. Los Alamos Nat'l Laboratories*, 765 Fed. Appx. 434 (10th Cir. 2019) (unpublished) ("*Laul*

II"). Petitioner did not raise any Seventh Amendment arguments concerning application of the *McDonnell Douglas* burden-shifting analysis in his briefing before the Tenth Circuit. Nor did Petitioner argue that the *McDonnell Douglas* framework should not have been applied by the District Court in ruling on LANS' Motion for Summary Judgment.

SUMMARY OF ARGUMENT

This case does not present issues of significant importance warranting review by this Court. "A writ of certiorari is not a matter of right but of judicial discretion . . . [and] will be granted only for compelling reasons." S. Ct. R. 10. Indeed, this Court grants certiorari review "only when the circumstances of the case satisfy us that the importance of the question involved, the necessity of avoiding conflict in the lower courts, or some matter affecting the interest of this nation demand such exercise." *Camreta v. Greene*, 131 S. Ct. 2020, 2033 (2011); *see also Braxton v. United States*, 500 U.S. 344 (1991). No such conflicts or matters of national interest are even asserted by Petitioner herein.

Dr. Laul presents only one question for review by this Court. Dr. Laul argues, for the first time, that application of the *McDonnell Douglas* burden-shifting test by the District Court deprived him of his Seventh Amendment right to a jury. However, neither the Tenth Circuit nor the District Court had the opportunity to consider this question as it was never mentioned or

preserved by Petitioner prior to the Petition filed herein. Moreover, even if Dr. Laul had properly preserved this question below, he has nonetheless failed to identify any authority or argument supporting the issuance of a writ of certiorari.



REASONS FOR DENYING THE PETITION

1. The Petition for Certiorari should be denied because Petitioner failed to preserve his arguments below and because he invited any claimed error below.

This Court is “a court of review, not of first view.” *Ark. Game & Fish Comm’n v. United States*, 568 U.S. 23, 37-38 (2012) (quoting *Cutter v. Wilkinson*, 544 U.S. 709, 718, n.7 (2005)). It is well-established that the Court reviews the actions of the lower federal courts and will only rarely consider issues that the Petitioner failed to raise in the District Court and Court of Appeals. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 146 n.2 (1970); *accord Meyer v. Holley*, 537 U.S. 280, 292 (2003); *City of Springfield v. Kibbe*, 480 U.S. 257, 259 (1987). This long-standing principle precludes review of issues—constitutional or otherwise—that a petitioner attempts to raise for the first time before this Court. *See Pa. Dep’t of Corr. v. Yeskey*, 524 U.S. 206, 212 (1998); *Duignan v. United States*, 274 U.S. 195, 200 (1927).³

³ Although the Court may consider arguments not raised below in extraordinary circumstances that result in injustice,

In this case, the issue now advanced by Dr. Laul's Petition was not raised before the District Court or the Court of Appeals. Rather, the District Court's exhaustive, 38-page Memorandum and Judgment demonstrates that Petitioner unsuccessfully attempted to meet his then-acknowledged burden on his *prima facie* case and on pretext by raising fact issues under the *McDonnell Douglas* analysis. It is patently obvious that Petitioner never claimed, and the District Court had no opportunity to address, any argument that application of this analysis violated his constitutional right to a jury trial or that the analysis was "obsolete" or somehow inappropriate. In fact, the District Court's decision as well as Plaintiff's briefing below demonstrate that Petitioner failed to assert *any* legal arguments in opposition to the summary judgment sought by LANS.

In the Tenth Circuit Court of Appeals, Dr. Laul elected to focus on the same factual arguments that he had raised, unsuccessfully, before the District Court. In affirming the District Court, the Tenth Circuit engaged in a detailed discussion of Petitioner's factual arguments regarding each count on which summary judgment was granted. The Tenth Circuit's decision is devoid of any reference to legal arguments regarding

Duignan, 274 U.S. at 200, that exception is narrowly drawn and rarely applied. For example, in *Wood v. Georgia*, 450 U.S. 261, 265 (1981), the Court vacated and remanded a criminal judgment based on a constitutional argument that was not previously raised due to an attorney's apparent conflict of interest.

the application of the *McDonnell Douglas* analysis, as no such arguments were made.

As explained above, well-established precedent precludes Petitioner from making an end run around the District Court and Court of Appeals by raising wholly new legal arguments for the first time in his Petition. Petitioner offers no reason or authority for this Court to diverge from its long-standing practice of declining to review unpreserved issues. Petitioner's failure to raise his arguments below deprived the District Court and Court of Appeals of the opportunity to consider them and deprives this Court of a record on which to base any additional review.

Petitioner's decision to focus on meeting his factual burden under the *McDonnell Douglas* framework in the lower courts in no way constitutes an exceptional circumstance that would warrant the exercise of this Court's jurisdiction. *See, e.g., Cronquist v. City of Minneapolis*, 237 F.3d 920, 925 (8th Cir. 2001). Plaintiff has not demonstrated any issue comparable to the conflict of interest problem that prompted this Court to consider an issue not raised or preserved below in *Wood v. Georgia*.

Petitioner's dual failure to present his new argument to the District Court and Court of Appeals is fatal to his Petition, and the Petition must be denied. *See, e.g., Ellis v. Dixon*, 349 U.S. 458, 460 (1955) (stating that the petitioner's arguments regarding whether certain regulations were unconstitutionally vague was not raised below and therefore not open for review

before the Supreme Court); Robert L. Stern *et al.*, *Supreme Court Practice* 459-60 (8th ed. 2002) (“In a surprisingly large number of cases every year, the petition raises questions that were not decided by the court below because they were not raised, or seriously mischaracterizes the holding of the court. Demonstration of such a defect is ordinarily fatal to the petition.”).

This Court should deny certiorari on the entirely separate basis that Dr. Laul invited the “errors”⁴ that he only now complains require reversal of the lower courts. As a general rule, “a party may not complain on appeal of errors that he himself invited or provoked the [district] court . . . to commit.” *United States v. Sharpe*, 996 F.2d 125, 129 (6th Cir. 1993) (internal quotation marks and citation omitted); *see also Hudson v. Wylie*, 242 F.2d 435, 448 (9th Cir. 1957) (“One who by his conduct induces the commission of some error by the trial court, or, in other words, who has invited error, is estopped from insisting that the action of the court is erroneous.”).

In his briefing in opposition to LANS’ Motion for Summary Judgment, Dr. Laul applied the *McDonnell Douglas* framework to his causes of action to argue

⁴ Neither the District Court nor the Tenth Circuit committed error in analyzing the Petitioner’s actual claims under the *McDonnell Douglas* rubric where the evidence adduced by Petitioner was purely circumstantial. *See, e.g., Adamson v. Multi Cnty. Diversified Servs., Inc.*, 514 F.3d 1136, 1145 (10th Cir. 2008) (stating that in the absence of direct evidence of discrimination, an employee’s discrimination claims are properly examined through the *McDonnell Douglas* burden-shifting analysis).

that there were disputed issues of material fact as to whether he was able to establish a *prima facie* case of discrimination and whether LANS' legitimate and non-discriminatory reasons for the adverse actions complained of were a pretext for unlawful discrimination. Likewise, Dr. Laul argued before the Tenth Circuit that application of the *McDonnell Douglas* framework precluded the granting of summary judgment in LANS' favor. Having invoked and relied on the *McDonnell Douglas* burden-shifting framework thus far, Dr. Laul cannot now complain that the District Court erred by analyzing his causes of action under the *McDonnell Douglas* rubric he continually relied upon in the lower courts. *See, e.g., Minneapolis & St. L. R. Co. v. Winters*, 242 U.S. 353, 355-56 (1917) (holding that any error in basing recovery upon a federal statute was invited where defendant "invoked and relied upon that statute" because a party "cannot complain of a course to which it assented below"); *see also United States v. Edward J.*, 224 F.3d 1216, 1222 (10th Cir. 2000) ("The invited error doctrine prevents a party from inducing action by a court and later seeking reversal on the ground that the requested action was error.").

For these reasons, this case is an unsuitable vehicle for the question raised by Dr. Laul in his Petition. Moreover, even if this Court were to consider Dr. Laul's newly-raised arguments, they lack merit as demonstrated below.

2. The District Court appropriately applied the *McDonnell Douglas* burden-shifting framework.

The *McDonnell Douglas* framework “requires a plaintiff to make out a prima facie case of discrimination. But it is ‘not intended to be an inflexible rule.’” *Young v. United Parcel Serv., Inc.*, 135 S. Ct. 1338, 1353 (2015) (quoting *Furnco Constr. Corp. v. Waters*, 438 U.S. 567, 575 (1978)). Rather, an individual plaintiff may establish a prima facie case by “showing actions taken by the employer from which one can infer, if such actions remain unexplained, that it is more likely than not that such actions were based on” a discriminatory motive barred by federal civil rights statutes such as Title VII and the ADEA. *Young*, 135 S. Ct. at 1353; *see also Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 142 (2000) (observing that while the Court “has not squarely addressed” whether the burden-shifting framework in *McDonnell Douglas* applies to ADEA actions, the Court would nonetheless apply *McDonnell Douglas* where the parties did not dispute its application).⁵

As this Court has recognized, “[t]he burden of making this showing is ‘not onerous.’” *Young*, 135 S. Ct. at 1354 (quoting *Texas Dep’t of Cnty. Affairs v. Burdine*, 450 U.S. 248, 253 (1981)). Indeed, “making this showing is not as burdensome as succeeding on ‘an ultimate finding of fact as to’ a discriminatory

⁵ Dr. Laul made no argument below, and does not appear to argue in this Petition, that *McDonnell Douglas* should not be applied in ADEA actions as a matter of law.

employment action.” *Id.* (quoting *Furnco*, 438 U.S. at 576); *see also Burdine*, 450 U.S. at 258 (“[W]e are unpersuaded that the plaintiff will find it particularly difficult to prove that a proffered explanation lacking a factual basis is a pretext. We remain confident that the *McDonnell Douglas* framework permits the plaintiff meriting relief to demonstrate intentional discrimination.”).

Notwithstanding Petitioner’s selection of quotes from scholars and jurists criticizing the analytical framework espoused in *McDonnell Douglas* and its progeny, this Court has continued to recognize the applicability of the *McDonnell Douglas* framework in analyzing Title VII and ADEA discrimination claims. *See, e.g., Texas Dep’t of Housing & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507, 2541 n.7 (2015); *Young*, 135 S. Ct. at 1353-54; *Ash v. Tyson Foods, Inc.*, 546 U.S. 454, 455 (2006); *Smith v. City of Jackson*, 544 U.S. 238, 252 (2005); *Vieth v. Jubelirer*, 541 U.S. 267, 295 (2004); *Raytheon Co. v. Hernandez*, 540 U.S. 44, 49-54 (2003); *Reeves*, 530 U.S. at 142; *O’Connor v. Consol. Coin Caterers Corp.*, 517 U.S. 308, 311 (1996).⁶

⁶ At least one court has observed that “rumors of *McDonnell Douglas*’s death were suffocated by the Supreme Court decision in *Raytheon Co. v. Hernandez*, 540 U.S. 44 (2003), wherein the high Court applied the *McDonnell Douglas* framework with nary a reference to *Desert Palace*.” *Randall v. Smith’s Food & Drug Centers, Inc.*, No. 05-CV-139-J, 2006 WL 8433340, at 6 n.10 (D. Wyo. Mar. 20, 2006); *see also* Christopher R. Hedican, Jason M. Hedican, & Mark P.A. Hudson, *McDonnell Douglas: Alive and Well*, 52 Drake L. Rev. 383, 401 (2004) (“If the Court—and in

Moreover, even if this Court were to have occasion to reevaluate the applicability of the *McDonnell Douglas* framework in employment discrimination and retaliation cases, the instant case does not present this Court with such an opportunity. As outlined above, both parties urged the District Court to apply the *McDonnell Douglas* framework to assess whether summary judgment was proper. Petitioner's appeal to the Tenth Circuit exclusively argued that Dr. Laul had met the requirements of the *McDonnell Douglas* prima facie discrimination case and its requirements for demonstrating pretext. The arguments Petitioner raises now were not preserved and the claimed error was expressly invited by Petitioner in his briefing below. Under these circumstances, this Court should decline to grant certiorari.

3. Petitioner was not denied his Seventh Amendment right to a jury trial.

Dr. Laul asserts for the first time in this Court that application of the burden-shifting methodology employed in the vast majority of discrimination cases deprived him of his Seventh Amendment right to a jury trial. Notwithstanding that Dr. Laul failed to preserve that claim, his argument is without merit.

It is settled law that summary judgment plays a vital role in American jurisprudence and does not

particular Justice Thomas—had opined that *Costa* overruled *McDonnell Douglas*, then *Raytheon* presented an excellent opportunity for the Court to say so.”).

violate a party's Seventh Amendment right to a jury trial. *See Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 336 (1979) (citing *Fid. & Deposit Co. v. United States*, 187 U.S. 315, 319-21 (1902)); *accord Biegas v. Quickway Carriers, Inc.*, 573 F.3d 365, 374 n.3 (6th Cir. 2009); *Calvi v. Knox Cty.*, 470 F.3d 422, 427 (1st Cir. 2006); *Harris v. Interstate Brands Corp.*, 348 F.3d 761, 762 (8th Cir. 2003); *Shannon v. Graves*, 257 F.3d 1164, 1167 (10th Cir. 2001); *In re TMI Litig.*, 193 F.3d 613, 725 (3d Cir. 1999).

For approximately 80 years, the Federal Rules of Civil Procedure have “authorized motions for summary judgment upon proper showings of the lack of a genuine issue of material fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986). Summary judgment is “regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed ‘to secure the just, speedy and inexpensive determination of every action.’” *Id.* (quoting Fed. R. Civ. P. 1).

District courts are empowered to grant summary judgment on some or all of a litigant’s causes of action without running afoul of the Seventh Amendment where there are no genuine issues of material fact and the moving party is entitled to judgment under the governing law. *See J.R. Simplot v. Chevron Pipeline Co.*, 563 F.3d 1102, 1117 (10th Cir. 2009); *see generally* Fed. R. Civ. P. 56(a). “The Seventh Amendment is not violated by proper entry of summary judgment, because such a ruling means that no triable issue exists to be submitted to a jury.” *Shannon*, 257 F.3d at 1167.

Dr. Laul further argues that “pretext evidence” is a “factual finding based on competing inferences,” and that the district court therefore deprived him of his Seventh Amendment right to a jury by making a factual determination regarding pretext.⁷ There is neither legal nor logical support proffered for Petitioner’s new theory that when courts review a pretext proffer under the *McDonnell Douglas* framework they must necessarily engage in fact determination.

Where the material facts are undisputed, a litigant’s right to a jury trial under the Seventh Amendment is not violated when a court grants summary judgment. *See, e.g., Zivojinovich v. Barner*, 525 F.3d 1059, 1066 (11th Cir. 2008) (concluding that no Seventh Amendment violation occurs when summary judgment is appropriate); *Harris*, 348 F.3d at 762 (“A grant of summary judgment does not violate the Seventh Amendment right to a jury trial. *This right exists only with respect to disputed issues of fact.*” (emphasis

⁷ Dr. Laul posits for the first time in his Petition that LANS’ legitimate, non-discriminatory reasons for not hiring Dr. Laul raised an inference of pretext because the stated reasons for the hiring decisions in the hiring managers’ respective declarations were “code words” for age and national origin discrimination. Apart from the fact that such an argument was not raised and preserved below, Dr. Laul cites no authority in support of this bald assertion, which is not supported by any evidence or argument offered by Petitioner below. *See, e.g., Thelwell v. City of New York*, No. 13 Cv. 1260 (JGK), 2015 WL 4545881, at *11 (S.D.N.Y. Jul. 28, 2015) (holding that a plaintiff’s “subjective interpretation” of “facially non-discriminatory terms does not, itself, reveal discriminatory animus” (internal quotation marks and citation omitted)).

added)). Summary judgment jurisprudence in a case alleging employment discrimination “is no different from a motion for summary judgment in any other civil action: the court acts as a gatekeeper, granting judgment as a matter of law unless the plaintiff has adduced relevant and probative evidence sufficient to support a jury verdict in his or her favor.” *Riggs v. AirTran Airways, Inc.*, 497 F.3d 1108, 1117 (10th Cir. 2007); *see also St. Mary’s Honor Ctr. v. Hicks*, 509 U.S. 502, 524 (1993) (stating that courts should not “treat discrimination differently from other ultimate questions of fact”). “This does not require a factual finding, nor does it abridge the Seventh Amendment jury trial right.” *Riggs*, 497 F.3d at 1117 (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986)).

Here, Dr. Laul does not identify any issues of material fact that he believes the district court determined against him, ignored, or misapplied to demonstrate that summary judgment was improperly granted. Moreover, while he asserts that there were competing inferences from certain “facts,” the only inference that he raises in his Petition arises out of the declaration of Jennifer Payne, a member of the hiring teams for three of the job openings at issue.

In her declaration, Ms. Payne stated that she was a member of the hiring teams for each of those positions, and had personal knowledge regarding the hiring decisions for those positions. Additionally, in her review of documents relating to those job openings, Ms. Payne observed that she did not see any information that would cause her to believe that hiring manager

Patricia Gallagher's decisions not to hire Dr. Laul were discriminatory. Dr. Laul chose not to depose Ms. Payne below, did not point to any factual disputes contained in the hiring documents for these positions, and, indeed, his only attempt to dispute the contents of Ms. Payne's declaration before the district court was his wholly unsupported opinion that Ms. Gallagher's decisions "must have" been discriminatory. Accordingly, despite Dr. Laul's assertions in this Petition, the District Court was not faced with competing inferences regarding the reason behind the decision not to hire Dr. Laul for these positions. Dr. Laul was unsuccessful in disputing the declared reasons for the hiring decisions at issue⁸ and no inferences can arise from Dr. Laul's musings about what "must have" been the reasons for the actions taken by Ms. Gallagher.

Indeed, the District Court specifically found, and the Tenth Circuit affirmed, that Dr. Laul raised no inference of discrimination sufficient to meet even his *prima facie* case burden. Similarly, these courts concluded that Petitioner failed to raise any disputed facts from which a court could infer that LANS' legitimate, non-discriminatory reasons for the claimed adverse

⁸ Further, although Dr. Laul questioned whether Ms. Payne had personal knowledge in his briefing before the district court, he did not raise any issue as to the district court's reliance on Ms. Payne's declaration in his appeal to the Tenth Circuit. Nor was Petitioner able to dispute any of the facts established by LANS with his own incompetent and self-serving affidavit which the court ruled was inadmissible. Accordingly, such an argument is not even properly before this Court. *See Adickes*, 398 U.S. at 147 n.2.

employment actions were pretextual. Dr. Laul's failure to demonstrate that the District Court misapplied Rule 56 of the Federal Rules of Civil Procedure and that summary judgment was not properly granted, is fatal to his Seventh Amendment violation theory.

4. The opinion under review has minimal precedential value.

The Tenth Circuit opinion under review has limited precedential value because it is unpublished. Tenth Circuit Rule 32.1 states in pertinent part, that “[u]npublished decisions are not precedential but may be cited for their persuasive value.” The fact that the decision is unpublished underscores its lack of importance and is further support for denial of the Petition. There is no compelling reason for this Court to grant the Petition because the Tenth Circuit opinion at issue is of significance only to the parties involved.

CONCLUSION

For the reasons set forth above, the Supreme Court of the United States should deny the Petition for Writ of Certiorari.

Respectfully submitted,

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