CASE NO. 21-6690

IN THE
SUPREME COURT OF THE UNITED STATES

JOE PYATT,

Petitioner,

v.

AECOM TECHNICAL SERVICES, INC.,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals for the Eleventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO WRIT OF CERTIORARI

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COUNTER-STATEMENT OF QUESTION

1. Whether this Court wishes to grant a petition for writ of certiorari to determine factual findings made by the district court and affirmed by the Eleventh Circuit Court of Appeals, concluding that Petitioner failed to meet his burden of proof under *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973), and did not rebut Respondent's legitimate, nondiscriminatory reasons for the adverse employment action.

LIST OF ALL PARTIES

Petitioner/Plaintiff:

Joe Nathan Pyatt, Jr.

Respondent/Defendant:

AECOM Technical Services, Inc.

CORPORATE DISCLOSURE STATEMENT

Earth Technology Corporation (USA) is Respondent's parent company. The stock of Respondent is not publicly traded. No publicly-held entity owns 10% or more of the stock of Respondent.

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PRELIMINARY STATEMENT

The Petition for Writ of Certiorari (the "**Petition**") does not involve any conflict of law, the supremacy of federal jurisprudence, or any of the grounds cited in S. Ct. R. 10. Rather, the Petition merely presents Petitioner/Plaintiff Joe Pyatt's ("**Pyatt's**") unsubstantiated interpretation and speculation about the evidence. He argues that the U.S. District Court for the Southern District of Florida (the "**district court**") and the Eleventh Circuit Court of Appeals (the "**Eleventh Circuit**") purportedly made erroneous factual findings and failed to properly apply *McDonnell Douglas Corp. v. Green* against his former employer, Respondent/Defendant AECOM Technical Services, Inc. ("**AECOM**"). Pyatt asks this Court to review the Eleventh Circuit's opinion (the "**Opinion**") which affirmed the district court's Order granting Summary Judgment (the "**Summary Judgment Order**") to AECOM. The Petition elevates a commonplace Court of Appeals' opinion involving unfounded and uncorroborated employment discrimination allegations in an attempt to meet the "compelling reasons" threshold of S. Ct. R. 10.

Despite Pyatt's efforts to cloak the lower courts' decisions as conflicting and purportedly ignoring *McDonnell Douglas*, this dispute is largely based on Pyatt's failure to present any relevant and admissible evidence at the district court level to support his race discrimination claim, as well as to rebut AECOM's reasons for his termination: Pyatt was terminated due to a significant and threatening altercation

with a building security guard that was witnessed by multiple individuals, in which he was screaming, was extremely upset, and used profanity.

As the evidence below revealed, the Summary Judgment Order and the Opinion were correctly decided. No further review should be warranted because the Summary Judgment Order and the Opinion do not conflict with *McDonnell Douglas*, any decision of this Court, or any decision of any Court of Appeals. Accordingly, AECOM respectfully requests that the Petition be denied because it lacks any compelling reasons for certiorari.

COUNTER-STATEMENT OF BASIS FOR JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

COUNTER-STATEMENT OF THE STATUTORY PROVISIONS INVOLVED

The instant appeal solely involves an employment discrimination claim under Florida state law: the Florida Civil Rights Act, Section 760.10, Florida Statutes (the "**FCRA**"). Section 760.10(1)(a), Fla. Stat., states:

> It is an unlawful employment practice for an employer: (a) To discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.

§ 760.10(1)(a), Fla. Stat. Pyatt did **not** bring any claim under Title VII of the Civil Rights Act, 42 U.S.C. § 2000e ("**Title VII**"), as he suggests. *See* Pet. Brief at 5.

COUNTER-STATEMENT OF THE CASE[1]

A. AECOM hires Pyatt.

AECOM is an engineering firm with its headquarters in California. On April 20, 2017, Samuel Worthy ("**Mr. Worthy**"), an AECOM civil engineer, attended a job fair for college students on behalf of AECOM and met Pyatt. Mr. Worthy was impressed with Pyatt and discussed potential employment opportunities for Pyatt with AECOM. Based on Mr. Worthy's encouragement, Pyatt applied for an entry-level position with AECOM on the day following the job fair. Shortly thereafter, Mr. Worthy wrote to Pyatt via email, in which he advised Pyatt that he had spoken with his supervisor, asked for Pyatt's resume, and stated that he was "going to refer [Pyatt] for the open position." In fact, Mr. Worthy referred Pyatt for the position, and Pyatt confirms that he was hired "mostly solely because of [Mr. Worthy]."

On July 7, 2017, AECOM offered Pyatt an entry-level position as a Roadway Engineering Technician. Gorky Charpentier ("**Mr. Charpentier**"), AECOM's Senior Manager of Engineering, supervised Pyatt. Carlos Zea ("**Mr. Zea**"), AECOM's Vice President, Highway Manager, supervised Mr. Charpentier. Carlos Garcia ("**Mr. Garcia**"), AECOM's Vice President, Florida Transportation State Lead, supervised Mr. Zea and managed AECOM's South Florida office.

[1] The facts in this Section are set forth and supported by evidence cited and referenced on pages 3 to 7 of the district court's Summary Judgment Order, which is attached as Resp't App. A.

B. Pyatt's Performance Problems.

Initially, Mr. Charpentier assigned Pyatt to assist on projects with Mr. Worthy. Mr. Worthy worked with Pyatt from July 2017 until approximately May 2018. Mr. Worthy believed that Pyatt "was focused during his first few months," but thereafter, "he and others found that Pyatt encountered many performance problems." Specifically, Pyatt had to "redo projects, failed to review assignments, had misspellings, and provided a poor work product." Mr. Worthy documented these concerns to Mr. Charpentier, via email on April 5, 2018. In that email, Mr. Worthy explained that (1) Pyatt deliberately disobeyed his instructions; (2) Pyatt's attitude and communication style were problematic; (3) Pyatt became argumentative when informed that he improperly performed an assigned task; (4) Pyatt refused to accept constructive criticism; and (5) Pyatt failed to improve his performance despite multiple attempts to address these issues.

Several weeks later, Mr. Worthy advised Pyatt and Mr. Charpentier of continued problems with Pyatt's work performance. For example, AECOM was forced to restrict Pyatt's access to certain files to a "read-only" basis because Pyatt modified structural designs for proposed bridges. In his deposition, Pyatt acknowledged that changing a structural design "can cause a catastrophe." On a separate occasion, Mr. Worthy counseled Pyatt that Pyatt "again made incorrect conclusions on a project which had not been assigned to him and sent his incorrect conclusions to others, misleading them to believe that the design was flawed."

On April 26, 2018, Mr. Charpentier, Mr. Zea, and Mr. Garcia met to address Pyatt's performance and behavioral issues and decided to prepare a written performance improvement plan (the "**PIP**"). On May 7, 2018, Pyatt met with Mr. Garcia, Mr. Charpentier, and AECOM's Human Resources Outside Representative, Rebecca Devivo, for his performance review. During this meeting, Pyatt was given the PIP, which, in addition to Pyatt's work performance, addressed Pyatt's behavioral problems, including his argumentative and defensive behavior, failure to accept responsibility for mistakes, and inability to conform to an assigned work schedule.

Pyatt's performance did not improve. On June 6, 2018, Pyatt met with Mr. Charpentier and another manager to discuss Pyatt's continued performance issues. During the meeting, Pyatt "refused to take responsibility for his mistakes, blamed others, was belligerent and argumentative, and yelled at Mr. Charpentier."

C. Pyatt's Complains Against Mr. Worthy and Mr. Charpentier.

On the next day after the June 6th meeting, Pyatt contacted AECOM's human resources department to file a complaint against Mr. Worthy. Pyatt stated that on October 31, 2017 (seven months before the June 6th meeting), Mr. Worthy brought to work "a black mask that he claimed was to make Mario [Ramos] pretend to be a stranger with a black mask giving out candy." Mr. Worthy purchased the theatrical mask, which is sold in all colors, in a Halloween store in Miami Beach. According to Mr. Worthy, he suggested that Mr. Ramos wear the mask because he had no costume. However, neither Mr. Ramos nor anyone else wore the mask. The mask has no racial

connotation, but is rather a theatrical mask. Pyatt, on the other hand, alleges that the black mask is a representation of "black face." Pyatt testified that the mask is "a new trend and it's not known," and that he only learned about the black mask after recently watching a Netflix show titled "Dear White People."

Teresa Pownall, a member of AECOM's Employee Relations & Compliance department, investigated Pyatt's allegations and found no evidence of discrimination. In his deposition, Pyatt conceded that he initiated this discrimination complaint because of the June 6, 2018 meeting. Moreover, Pyatt did not identify any purportedly racist acts attributable to Mr. Worthy that occurred before or after October 31, 2017. In other words, Mr. Worthy's only purportedly racist act is with respect to the mask.

On approximately July 3, 2018, Mr. Charpentier asked Pyatt to assist him with an important presentation that AECOM would be making to a potential client on Monday, July 16, 2018. By Friday, July 13, 2018, Mr. Charpentier received an unacceptable work product from Pyatt. Pyatt testified that Mr. Charpentier "was very upset." On July 17, 2018, Pyatt sent an email to Ms. Pownall and alleged that he was "experiencing unethical behavior by my supervisor." After investigating Pyatt's allegations, Ms. Pownall did not find any evidence to substantiate Pyatt's claims of unethical behavior.

On September 18, 2018, Ms. Pownall spoke with Pyatt, who stated that he had taken time off in July and August and had been working exclusively with a different

project manager, Genevieve Cave-Hunt. Pyatt stated that "work [was] calm," and he claimed that "things have been on a 'corrective measure.'" Pyatt testified that from July 17, 2018 until October 1, 2018, he did not encounter any racism or discrimination at work.

D. Pyatt's Altercation with the Office Building's Security Guard.

On October 1, 2018, Pyatt's car needed a jump start, and Pyatt asked the security guard in the lobby of AECOM's office building to use his phone. After making the phone call, Pyatt sat down on a sofa in the lobby, waited for over 90 minutes, and "went into the slouch position." The security guard approached Pyatt and informed him that he was not allowed to sleep in the building lobby. According to Pyatt's testimony, the following events ensued:

> I said: You can't tell me how to sit in my place of work. Not only that, you can't speak to me in such a manner as if I'm not an employee of the building. I actually wasn't wearing my button-up. I was in a regular shirt.
>
> But I know -- he was an older man. He's not -- so he might have -- I mean, I could give him the benefit of the doubt that he's forgetful, but I've seen him all year. He was around 60ish.
>
> He then threatened to call the police on me. When he threatened to call the police on me, that's when my tone of voice got louder. And I said: I will not accept you talking to me in such a manner, threaten the police where I work. . . . Not only that, I can slouch on the couch if I want to. You are not my boss, nor do you even work -- do you know the company I work for?
>
> His job is to be security. He has absolutely no right to tell me not to slouch on the couch. . . . Then he also follows up with: You are slouching on the couch. And threatens to call the police. After he threatens to call

> the police on me, my voice gets louder. Another security guard had came in and they are de-escalating the situation.

Witnesses described the situation as one in which Pyatt "was yelling at the security guard in a threatening manner," and witnesses "were concerned for the security guard's safety." According to Ms. Pownall's subsequent investigation, one witness stated that he "saw this gentleman (Pyatt) yelling at the security guard at the top of his lungs and described the incident as something you'd see in a movie." That witness described Pyatt as "irate" and went to the building next door to advise the security personnel "as to what was occurring at his building and asked them to call 911 due to security and safety concerns." In addition, the security guard's supervisor immediately went to the lobby after learning of the incident. When the supervisor arrived, Pyatt "was screaming, extremely upset, and using profanity."

During this incident, one of AECOM's employees was exiting the building, and when she learned about what was occurring, contacted Mr. Garcia and informed him of the incident. Mr. Garcia spoke with the security guard and his supervisor, who confirmed that Pyatt "was agitated, screaming, and using profanities." The next day, Mr. Garcia reported the incident to AECOM's human resources department. Mr. Garcia also called Pyatt and advised him not to return to the office until AECOM investigated the incident.

Ms. Pownall investigated the incident and spoke with witnesses who confirmed Pyatt's "improper and threatening behavior." Based on Ms. Pownall's investigation

results, Mr. Garcia made the decision to terminate Pyatt's employment. Neither Mr. Charpentier nor Mr. Worthy were involved in the decision to terminate Pyatt.

E. Basis for Federal Jurisdiction and Procedural History.

On February 12, 2019, Pyatt served AECOM with a state-court Complaint alleging claims for race discrimination (Count I) and retaliation (Count II) under the FCRA. On September 6, 2019, AECOM filed its notice of removal to the district court because complete diversity exists between Pyatt and AECOM pursuant to 28 U.S.C. § 1332(c). AECOM is a California corporation with its principal place of business in Los Angeles, California; Pyatt is a Florida citizen; and the amount of controversy exceeded $75,000.

On November 12, 2019, Pyatt filed a Second Amended Complaint alleging discrimination and retaliation claims under the FCRA. Pyatt states that AECOM terminated his employment because of his race.

On March 26, 2020, AECOM filed its Summary Judgment Motion. On April 8, 2020, Pyatt filed his Response. On April 15, 2020, AECOM filed its Reply Memorandum.

On August 14, 2020, the district court entered the Summary Judgment Order in favor of AECOM, as well as Final Judgment. Resp't App. A.

Pyatt timely appealed the Summary Judgment Order and Final Judgment to the Eleventh Circuit. On September 13, 2021, the Eleventh Circuit entered the Opinion which affirmed the Summary Judgment Order. Resp't App. B.

This Petition followed.

REASONS FOR DENYING THE PETITION

I. Pyatt has not Identified How the District Court and the Eleventh Circuit "Overruled" *McDonnell Douglas* or have Departed from the Supreme Court's Decisions.

Pyatt argues that the Court should grant the Petition for three reasons.

First, Pyatt states that "[t]he ruling given by the United States District Court for the Southern District of Florida is in direct conflict with the precedent set by the Supreme Court of the United States and other federal circuit courts." Pet. at 12. Specifically, Pyatt alleges that the district court and the Eleventh Circuit did not properly apply *McDonnell Douglas.* He argues that "Mr. Pyatt is not required to provide evidence of a similarly situated employee who was fired because an aggressive incident that was unrelated to what was occurring during his employment with AECOM with respect to the discrimination he was experiencing." *Id.* at 11. Rather, Pyatt concludes that the district court should have disregarded the only adverse action (his termination), find that he established a *prima facie* case under *McDonnell Douglas,* and that establishing a *prima facie* case entitles him to a trial. Pyatt is wrong.

The district court properly applied *McDonnell Douglas* and found that Pyatt failed to establish a *prima facie* case*:*

> Where, as here, a plaintiff lacks direct evidence of discrimination, the plaintiff's claims are analyzed under the *McDonnell Douglas*

framework. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973). Pursuant to *McDonnell Douglas*, the plaintiff bears the initial burden of establishing a prima facie case of racial discrimination. *Id.* To do so, a plaintiff must establish that: "(1) he is a member of a protected class; (2) he was qualified for the position; (3) he suffered an adverse employment action; and (4) he was replaced by a person outside his protected class or was treated less favorably than a similarly-situated individual outside his protected class." *Maynard v. Bd. of Regents*, 342 F.3d 1281, 1289 (11th Cir. 2003). If the plaintiff succeeds in establishing a prima facie case of racial discrimination, the burden shifts to the defendant to articulate a legitimate, nondiscriminatory reason for the defendant's actions. *McDonnell Douglas Corp*, 411 U.S. at 802. And if the defendant proffers a nondiscriminatory rationale, then the burden shifts back to the plaintiff to show that this basis was pretext for racial discrimination. *Id.* at 805.

Defendant argues that it is entitled to summary judgment on Count I because Plaintiff cannot establish a prima facie case of discrimination. D.E. 74, pp. 15–17. Specifically, with respect to the fourth element, Defendant argues that "Plaintiff has not and cannot identify a similarly situated non-African-American comparator who was not terminated for engaging in a significant altercation." *Id.* at 17.

In his opposition, Plaintiff responds that he "has shown multiple instances of material facts where he was treated differently than others that include unrelated work criticism." D.E. 85, p. 12. Plaintiff asserts that one such instance was the fact that "Plaintiff was told he was not allowed to come to work early nor leave late because he makes people uncomfortable in the office." *Id.* The other "instances of material facts" presumably consist of Plaintiff's contentions in his opposition that he "was removed from the roadway design group and was subjected to unusual work practices," that he "was disciplined for reporting a safety observation," that he was not "allowed to do school work in the office," that he "was not given any work to do," and that he "was forced to use PTO time when other employees had work to do and did not have to use PTO time during regular business hours." *Id.* at 8–11.

Under the first part of the analysis, and in viewing the evidence and all factual inferences in the light most favorable to Plaintiff, the Court finds that Plaintiff has failed to establish that he was treated less favorably than a similarly situated individual outside his protected class. As a starting point, to establish the fourth element of a prima facie case of

> discrimination, "a plaintiff must show that she and her comparators are 'similarly situated in all material respects.'" *Lewis v. City of Union City, Ga.*, 918 F.3d 1213, 1224 (11th Cir. 2019). Here, Plaintiff has failed to identify a single comparator, much less provide any evidence that would allow the Court to find that a genuine issue of material exists with respect to whether a proffered comparator was similarly situated to Plaintiff in all material respects. Instead, Plaintiff simply relies on unsupported and unsubstantiated allegations of how he was "the only employee" who was subject to certain working conditions and limitations.

Resp't App. A, Summ. J. Order at 10-11.

The district court also concluded that AECOM had presented legitimate, nondiscriminatory reasons for its actions:

> Yet, even if Plaintiff could establish a *prima facie* case of discrimination, Defendant still would be entitled to summary judgment because Defendant proffers legitimate, nondiscriminatory reasons for terminating Plaintiff, and Plaintiff fails to demonstrate that those reasons are merely a pretext for discrimination. First, the Court finds that Defendant offers record evidence to establish that Plaintiff's poor performance led to his termination. The declarations of Mr. Worthy and Mr. Charpentier attest to Plaintiff's performance issues during his employment with Defendant. *See* D.E. 74-2, D.E. 74-3. An employee's inadequate skill and performance is a legitimate, nondiscriminatory reason to terminate that employee. *Thomas v. Seminole Elec. Coop. Inc.*, 775 F. App'x 651, 656 (11th Cir. 2019) (affirming the district court's grant of summary judgment to the defendant-employer because the plaintiff failed to show that the defendant's "legitimate, non-discriminatory reason for terminating her—inadequate skills and performance—was pretextual"); *see also Damon v. Fleming Supermarkets of Fla., Inc.*, 196 F.3d 1354, (11th Cir. 1999) ("In this case, [the defendant] clearly offered legitimate, nondiscriminatory reasons for terminating [the plaintiff] (poor performance) . . . .").
>
> In addition, the Defendant has pointed to unrefuted evidence that demonstrates that Plaintiff was terminated due to an "unprofessional and threatening altercation" with a security guard on Defendant's work premises, in which Plaintiff "was screaming, extremely upset, and using profanity." D.E. 74, p. 17. Defendant offers the declarations of Mr.

> Garcia and Ms. Pownall to confirm that Plaintiff was terminated due to the altercation with the security guard. *See* D.E. 74-1, D.E. 74-4. "Fighting with or using abusive language towards another employee on work premises in violation of company policy plainly qualifies as a legitimate, non-discriminatory reason for terminating an employee." *Rodriguez v. Cargo Airport Servs. USA, LLC*, 648 F. App'x 986, 990 (11th Cir. 2016); *Watson v. Kelley Fleet Servs., LLC*, 430 F. App'x 790, 791 (11th Cir. 2011) ("The district court did not err when granting summary judgment because [the plaintiff] was unable to show [the defendant's] articulated reason for firing him—that he threatened violence in the workplace, which was a ground for immediate termination under [the defendant's] policies— was pretext for race discrimination or retaliation."). The Court thus finds that Defendant clearly has satisfied its burden to produce a legitimate, nondiscriminatory reason for Plaintiff's termination.

Id. at 12-13.

Finally, the district court found that Pyatt had failed to rebut AECOM's legitimate, nondiscriminatory reasons:

> The burden then shifts back to Plaintiff, who must show that Defendant's reason for terminating Plaintiff was merely pretext for racial discrimination. But Plaintiff offers no such evidence. Plaintiff's own speculation as to his own performance is insufficient to defeat summary judgment. *See Brown v. Publix Super Mkts., Inc.*, 626 F. App'x 793, 797 (11th Cir. 2015); *see also Cordoba v. Dillard's, Inc.*, 419 F.3d 1169, 1181 (11th Cir. 2005) ("Speculation does not create a *genuine* issue of fact; instead, it creates a false issue, the demolition of which is a primary goal of summary judgment."). Indeed, an employee's "own assessment of his performance as exceeding expectations [is] insufficient to show pretext." *Brown v. Synovus Fin. Corp.*, 783 F. App'x 923, 929 (11th Cir. 2019). Moreover, Plaintiff entirely fails to address the altercation with the security guard in his opposition. Accordingly, the Court finds that Plaintiff has failed to satisfy his burden under the *McDonnell Douglas* framework. Therefore, Defendant is entitled to summary judgment on Count I of Plaintiff's Amended Complaint.

Id. at 13.

Clearly, the district court properly applied the *McDonnell Douglas* framework, and the Eleventh Circuit affirmed finding that "Mr. Pyatt failed to establish a *prima facie* case of race discrimination." Resp't App. B, Opinion at 14. Pyatt is unable to show how the Summary Judgment Order or the Opinion "overrule" or misapply *McDonnell Douglas.* Pyatt has not presented any arguments showing that the district court or the Eleventh Circuit entered a decision in conflict with the decision of this Court or another United States court of appeals. No split of authority exists.

As such, the Petition should be denied because this Court "is not the place to review a conflict of evidence nor to reverse a Court of Appeals because were we in its place we would find the record tilting one way rather than the other, though fair-minded judges could find it tilting either way." *N.L.R.B. v. Pittsburgh S.S. Co.,* 340 U.S. 498, 503, 71 S. Ct. 453, 456, 95 L. Ed. 479 (1951). Moreover, this appeal involves no more than the application of well-settled principles to a familiar situation, and has little significance except for the parties. *See Powell v. Nevada*, 511 U.S. 79, 86–87, 114 S. Ct. 1280, 1284–85, 128 L. Ed. 2d 1 (1994) (dissenting opinion) ("Not only were there no special or important reasons favoring review in this case, but, as Justice Stewart once wrote: 'The only remarkable thing about this case is its presence in this Court. For the case involves no more than the application of well-settled principles to a familiar situation, and has little significance except for the [parties].'") (citing *Butz v. Glover Livestock Commission Co.,* 411 U.S. 182, 189, 93 S.Ct. 1455, 1460, 36 L.Ed.2d 142 (1973)) (dissenting opinion); *Layne & Bowler Corp. v. Western Well*

Works, Inc., 261 U.S. 387, 393, 43 S.Ct. 422, 423, 67 L.Ed. 712 (1923) ("it is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal.").

Second, Pyatt argues that the Petition should be granted because the Eleventh Circuit purportedly exhibits a pattern of disregarding this Court's precedent. Pet. at 14, 17. Pyatt states that, "The Eleventh Circuit Court of Appeals has exhibited a pattern of not applying this [C]ourts' precedent when they affirmed dismissals of cases asserting that Title VII did not prohibit sexual orientation discrimination," as well as "has previously shown that they refused to recognize this [C]ourts' precedent in *Price Waterhouse* when it ruled contrary to that decision." *Id.* Pyatt's self-serving conclusions about past decisions are irrelevant to his Petition.

Third, Pyatt argues that the Petition should be granted because the Opinion may "exacerbate racial tensions across the United States." Pet. at 16. Pyatt references George Floyd and Ahmaud Arbery and states: "Providing clarity on the law which seems to have been distorted by the lower courts in a manner that appeals to the severe racial injustice that the Petitioner has experienced will add ease the racial tensions in this country." Pet. at 16. Nonetheless, this case has nothing to do with Mr. Floyd or Mr. Arbery. Rather, Pyatt is upset because he does not like the

ruling, and is simply referencing Mr. Floyd and Mr. Arbery to somehow justify his Petition.

Fourth, Pyatt never complained to the Eleventh Circuit that the district court failed to apply *McDonnell Douglas*. In fact, Pyatt never cites to *McDonnell Douglas* in his Initial Brief. Rather, the three questions that Pyatt presented on appeal to the Eleventh Circuit were the following:

> 1. Was the Appellant's Fourteenth Amendment right to due process violated when he was not allowed to obtain discovery by limiting his ability to retrieve material facts that would have swayed the outcome of the case had the evidence been present?
>
> 2. Did the district court apply the law correctly with regards to Local Rule 16.1 (a)(2)(B) of the United States District Court for the Southern District of Florida without prejudice to the Appellant and in violation of his constitutional right to due process?
>
> 3. Did the district court apply the law correctly with regards to Fed. R. Civ. P. 56 without prejudice to the Appellant and in violation of his constitutional right to procedural due process?

Pet'r Initial Brief at 6. Pyatt's argument regarding the misapplication of *McDonnell Douglas* was not raised below and has, therefore, been waived. *See Flowers v. Mississippi,* 139 S. Ct. 2228, 2257, 204 L. Ed. 2d 638 (2019); *Wood v. Milyard,* 132 S. Ct. 1826, 1834 (2012) ("[A]ppellate courts ordinarily abstain from entertaining issues that have not been raised and preserved in the court of first instance.").

In sum, a writ of certiorari should only be granted in the face of compelling reasons. S. Ct. R. 10. Pyatt has failed to provide this Court with any compelling reasons to grant the Petition. Even a cursory review of the Petition reveals that it is

nothing more than Pyatt's personal disagreements with the district court's and the Eleventh Circuit's decisions. Accordingly, the Court should deny the Petition.

CONCLUSION

The reasoning of the district court and the Eleventh Circuit is unassailable, and, pursuant to S. Ct. R. 10, presents no basis for further review by this Court. The district court properly granted Summary Judgment in AECOM's favor, and the Eleventh Circuit correctly affirmed that conclusion. No factors exist to exercise discretion to address Pyatt's arguments since there are no legal conflicts or important public policy issues. Accordingly, AECOM respectfully requests that the Court deny the Petition.

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CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2022, I sent the foregoing document by electronic mail, regular mail, and Federal Express (overnight delivery) to:

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