

No. 22-7610

In the Supreme Court of the United States

OTHNEIL EVANS MARAGH,

Petitioner

V.

ROOSEVELT ISLAND OPERATING CORP., *et al.*,
RESPONDENTS

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

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

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STATEMENT OF QUESTION PRESENTED

Whether this Court should review the decision of the United States Court of Appeals for the Second Circuit affirming the entry of summary judgment by the United States District Court for the Southern District of New York in an employment discrimination action, where the decision did not present any novel issues of law?

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PARTIES TO THE PROCEEDING

Petitioner is Othniel E. Maragh, appellant below, proceeding *pro se*.

Respondents were appellees in the court of appeals. They are: Roosevelt Island Operating Corporation; Charlene Indelicato; Claudia McDade; John McManus; Rudolph Rajaballey; Sean Singh; Steven Friedman; Nancy Zee; Muneshwar Jagdharry; John/Jane Doe 1; John/Jane Doe 2; and John/Jane Doe.

OPINIONS BELOW

The Second Circuit's decision dated October 25, 2022, affirming the District Court's granting of summary judgment in Defendants-Respondents' favor has not yet been published in the Federal Reporter, but is reported at 2022 WL 14199384 and reprinted in Petitioner's Appendix (hereinafter "App.") at 3-7, adopted and incorporated as if fully set forth herein.

The Second Circuit's Order dated December 16, 2022, denying Plaintiff-Petitioner's petition for rehearing is not published or otherwise reported, but is reprinted at App. 33.

The District Court's underlying opinion granting Defendant-Respondents' Motion for Summary Judgment has not been published, but is reported at 2021 WL 3501238 and reprinted at App. 9-32.

BASIS FOR JURISDICTION

Judgment of the Second Circuit was entered on October 25, 2022. A petition for panel rehearing or rehearing *en banc* was denied on December 16, 2022. On March 16, 2023, Petitioner filed a Petition for Writ of Certiorari, and placed it on the docket on May 22, 2023.

Pro se Petitioner invokes this Court's jurisdiction pursuant to 28. U.S.C. § 1254(1). Respondents contest the Court's jurisdiction over Petitioner's Writ because it fails to establish a "compelling reason," pursuant to this Court's Rule 10, as to why this Court should consider his petition.

**CONSTITUTIONAL AND STATUTORY PROVISIONS
INVOLVED**

42 U.S.C. § 2000e-2(a):

It shall be an unlawful employment practice for an employer:

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

COUNTER-STATEMENT OF THE CASE

A. Factual Background.

Maragh, an African-American man, began working at RIOC on a part-time basis, as a paralegal and temporary employee, in August 2006. *See* App. at 9. In December 2006, he began working on a full-time basis as a Purchasing Assistant. *Id.* As early as 2006, but no later than 2011, Maragh also held the title “Inventory Clerk.” *Id.* at 8-9. From 2008 on, Maragh reported directly to Defendant Muneshwar Jagdharry, RIOC's Assistant Chief Financial Officer/Comptroller. *Id.*

In 2011, Maragh was asked to oversee a Young Adult Youth Program (“YAYP”), which served predominately low income Black and Latino males, on Friday and Saturday nights. *Id.* at 9. In early 2014, “RIOC began charging YAYP participants a \$5 facility fee each time they attended a YAYP activity.” *Id.* In March of that year, Maragh sent an email to Indelicato, then the President/CEO of RIOC, criticizing the new facility fee. *Id.*

On May 12, 2014, Jagdharry gave Maragh a formal memorandum warning him about unsatisfactory workplace performance and conduct. *Id.* The memorandum stated that Maragh was “habitually late” and responsible for “an unacceptable frequency of errors,” criticized his “unreliability and lack of diligence” and his “tendency to move away from [his] workstation and interrupt other employees with [his] personal problems,” and accused him of “harassing staff over payments for the basketball program and wasting an enormous amount of time in the process.” *Id.* It advised Maragh that if these performance issues were not corrected within three to six months, disciplinary action would be taken. *Id.* On the same

day, Maragh was also called in to meet with Jagdharry, McDade (the Director of Human Resources and Administration of RIOC), and Frances Walton (the CFO of RIOC). At this meeting, Maragh's superiors aired their frustrations with Maragh's performance and indicated their desire to see change. *Id.* at 10-11. Maragh asserted in a declaration that he "became even more focused on his job because of this meeting." *Id.* at 11. By contrast, he testified at his deposition that, due to what happened at the meeting, he "couldn't sleep at night" and "could not focus" and that the meeting "ma[de] [him] mentally checkout and [feel] psychologically beaten up from every angle." *Id.*

Three months later, on August 14, 2014, Maragh received another writeup. *Id.* It listed the topics discussed three months earlier as "[e]xcessive lateness," "[a]buses of paid time off," "[p]oor work performance," "[l]ack of attention to detail with regard to work assignments," "[f]requent wandering from your workstation and/or the administrative office," and "[f]requently disrupting or harassing other employees." *Id.* The memorandum stated that there was "need to reiterate these problematic issues" and to draw Maragh's "attention to the fact that there has been little to no improvement to any of" them. *Id.* "This pattern of behavior and continued display of a total lack of commitment by [Maragh] toward [his] position with RIOC," the memorandum declared, "is unacceptable." *Id.* It notified Maragh that he was "required to correct these deficiencies and satisfactorily fulfill [his] responsibilities within the next three (3) months or further disciplinary action will be taken." *Id.* Maragh had another meeting with Jagdharry and McDade that same day in which they reiterated that Maragh had three months to correct the problems identified in the memorandum or there would be disciplinary

consequences. *Id.* at 11-12.

On September 3, 2014, Maragh filed an internal charge of race discrimination against RIOC and various employees, his first formal allegation of maltreatment during his time at RIOC. *Id.* at 12. Shortly thereafter, Maragh filed his internal complaint with the New York State Department of Labor (“DOL”), which then launched an investigation in coordination with the Workforce Development Unit of the Governor's Office of Employee Relations (“GOER”). *Id.* Meanwhile, from mid-August to September 2014, several of Maragh's colleagues expressed concern about his “threatening and harassing workplace behavior.” *Id.*

On September 29, 2014, after consulting with DOL and GOER, RIOC placed Maragh on paid administrative leave, pending the results of an investigation by RIOC's Public Safety Department (“PSD”) into his allegedly harassing behavior. *Id.* The PSD investigation took place around the same time that DOL conducted its investigation into Maragh's claims of discrimination. *Id.* at 12-13.

Within a month, Maragh filed a formal complaint with the Equal Employment Opportunity Commission (“EEOC”), dated October 28, 2014, asserting discrimination based on race, color, and gender, and a claim of retaliation stemming from his internal complaint. *Id.* at 13. Around December 3, 2014, Maragh sent an email to DOL updating his initial internal complaint, adding five new respondents as well as new allegations: that he was called “[s]tupid,” called a racial slur, and was paid less than employees who started after him. *Id.* After months of inquiry, the DOL investigation concluded in February 2015 that Maragh's allegations of discrimination and retaliation were unsubstantiated. *Id.* In conclusion, the DOL Report noted that “[w]hile there appeared to be behaviors

[at RIOC] consistent with favoritism, ... it could not be substantiated that the difference in treatment was based on a protected status. *Id.* Conversely, RIOC's PSD found that the charges against Maragh alleging that he had harassed other employees were "credible." *Id.* On December 4, 2015, Maragh's employment with RIOC was terminated due to poor performance and the findings of the PSD Report. *Id.*

B. Proceedings Below.

1. Plaintiff-Petitioner's claims in the District Court were brought pursuant to Title VII of the Civil Rights Act of 1964 24 U.S.C. § 2000e et seq. ("Title VII"), the New York State Human Rights Law ("NYSHRL"), and the New York City Human Rights Law ("NYCHRL"). Plaintiff-Petitioner alleged that he was discriminated against, subjected to a hostile work environment, treated unfairly, suspended, and ultimately terminated because of his race and/or gender.

On January 11, 2021, Defendant-Respondents filed a Motion for Summary Judgment. *See App.* at 14. Plaintiff-Petitioner's opposition papers and exhibits were filed on April 2, 2021, and April 5, 2021. *Id.* at 15. Defendant-Respondents filed their reply papers on April 23, 2021. *Id.*

On August 5, 2021, the United States District Court for the Southern District of New York, Furman, J., granted Defendant-Respondents' Motion for Summary Judgment. *Id.* 8-32. In granting the Motion, the Court found that the evidence submitted by Plaintiff-Petitioner did "not even come close to establishing a prima facie case of gender discrimination," and further held that, although his race discrimination claim was a "closer question," he still "ultimately [fell] short" in establishing a prima facie case. *Id.* at 19. The Court also specifically highlighted Plaintiff-Petitioner's

failure to submit any admissible evidence to support assertions of race or gender discrimination “aside from his own personal belief.” *Id.* at 20. The Court further held that, pursuant to the burden-shifting framework of *McDonnell Douglas*, regardless of whether Plaintiff-Petitioner had satisfied his threshold burden, Defendant-Respondents had “easily [met] their burden of demonstrating that RIOC had legitimate, nondiscriminatory reasons to fire [him].”

2. The Court also granted summary judgment on Plaintiff-Petitioner’s hostile work environment claim as it was “based on the same evidence as his discrimination claim.” *Id.* at 27.

3. Finally, the Court exercised supplemental jurisdiction over the NYSHRL claim, and granted Defendant-Respondents summary judgment as to those counts. The Court declined to exercise supplemental jurisdiction over the NYCHRL claims, however, because “they are subject to a different standard and must be analyzed separately.” *Id.* at 30.

4. Appellant-Petitioner filed a Notice of Civil Appeal with the Second Circuit Court of Appeals on September 3, 2021, and submitted his Brief on January 14, 2022. Appellee-Respondents filed their Brief on May 4, 2022. On April 11, 2022, Appellant-Petitioner filed a Motion to Unseal “all court records,” in response to which Appellee-Respondents filed their Opposition on April 27, 2022.

5. On October 25, 2022, the Second Circuit Court of Appeals issued a Summary Order affirming the lower court’s granting of Appellee-Respondents’ Motion for Summary Judgment. *See App.* at 2-7. With respect to his race and gender discrimination claims, the Court held that the District Court properly found that Appellant-Petitioner had failed to “adduce evidence from which a rational juror

could infer that the proffered reasons for terminating him were mere pretext for race or gender discrimination.” *Id.* at 4. The Court also noted Appellant-Petitioner’s failure to demonstrate that Appellee-Respondents’ legitimate non-discriminatory reasons for terminating him were pretext. *Id.* The Court similarly held that Appellant-Petitioner failed to provide evidence that the alleged misconduct was “severe or pervasive enough such that the work environment [was] objectively hostile.” *Id.* at 5.

6. The Court also addressed Appellant-Petitioner’s appeal of the District Court’s adjudication of his NYSHRL and NYCHRL claims, finding that the lower court did not abuse its discretion in deciding to exercise supplemental jurisdiction over the NYSHRL claims, but not the NYCHRL claims. *Id.* at 6.

7. Finally, the Court held that the District Court did not abuse its discretion in denying Appellant-Petitioner’s request to unseal an audio recording and transcript he had submitted as evidence in opposition to the Motion for Summary Judgment. *Id.* The Court held that, because the District Court did not rely on the inadmissible audio recording and transcript at issue in deciding the Motion for Summary Judgment, it was within its discretion to decide to keep such evidence under seal. *Id.* at 7.

8. Following the issuance of the Court’s decision affirming the district court’s judgment, Appellant-Petitioner filed a Petition for Rehearing/Rehearing En Banc on November 8, 2022. The Court denied the Petition on December 16, 2022. *Id.* at 33.

REASONS TO DENY THE PETITION

Several reasons exist for this Court to deny Petitioner's Petition for Writ. As an initial matter, the issues *pro se* Petitioner attempts to bring before this Court for review were all inadequately preserved for appeal and/or constitute pure questions of fact that have already been decided by the District Court and then affirmed by the Court of Appeals. Further to this point, Petitioner's Writ fails to set forth any question that would satisfy the considerations governing review of certiorari as set forth in Supreme Court Rule 10. Finally, Petitioner's Writ is defective in terms of both substance and form, and should not be considered by this Court.

A. The Questions Presented by the Petition Were Not Properly Preserved for Appeal.

Petitioner seeks to bring questions before this Court that were not properly preserved upon appeal. The questions raised on appeal in these proceedings constitute fact and evidentiary issues that the Court of Appeals has affirmed.

It is axiomatic that any issues presented before this Court for review must be properly preserved for consideration. *See State Farm Fire & Cas. Co. v. U.S. ex rel. Rigsby*, 580 U.S. 26, 37 (2016); see also *Dupree v. Younger*, 598 U.S. 729 (2023).

Here, *pro se* Petitioner seeks to raise various issues regarding purported bias and ethical violations by Judge Furman that were never raised on appeal to the Second Circuit. Furthermore, Petitioner's questions regarding the Second Circuit's de novo review of the District Court's record and the evidence it relied upon in granting summary judgment to Defendant-Respondents, while

arguably a proper issue to be raised before this Court, are framed in such a way so as to purportedly implicate Petitioner's "constitutional rights and due process of law." Again, these constitutional issues were not preserved by Petitioner because they were not presented to the Second Circuit upon appeal. Therefore, Petitioner's claims are not properly before this Court. *See Dupree, supra; see also Ortiz v. Jordan*, 562 U.S. 180, 190 (2011).

**B. The Questions Presented by the
Petition Fail to Meet Criteria Set
Forth in Rule 10.**

In order to clarify the types of issues properly preserved for appeal and those issues this Court will consider, Supreme Court Rule 10 provides, in pertinent part, that "A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." U.S. Sup. Ct. R. 10. Furthermore, Petitioner fails to provide this Court with any compelling reason as to why it should exercise its discretion to grant his Petition for writ of certiorari based on the three criteria set forth in Rule 10(a)-(c).

This Court's Rule 10 provides three general categories of the "character of the reasons" it will consider in determining whether to grant a petition for writ of certiorari: (a) where a conflict regarding an important matter exists in the decisions of two or more United States court of appeals; (b) where a conflict exists regarding an important federal question among two or more state courts of last resort; and (c) where a state court of last resort or a United States court of appeals has decided an important question of federal law that has not been decided by this Court and/or has decided such

questions in a way that conflicts with relevant decisions of this Court. *See* U.S. Sup. Ct. R. 10(a)-(c).

Pro se petitioner's questions presented to the Court here fail to meet any of these criteria. Petitioner's claims here are far afield from satisfying any of the substantive factors set forth in Rule 10, such as a split in decisions between circuits or conflict in resolution of a federal question in state courts. Certainly, Petitioner has not presented any novel issues of federal law not yet decided by this Court or in conflict with any decisions of this Court.

Rather, Petitioner seeks to set five separate questions before this Court that essentially amount to a request to relitigate the entire factual record developed during lower court proceedings. Though confusing, repetitive, and vague, Petitioner's questions essentially ask this Court to review and ultimately overturn evidentiary rulings regarding an unauthenticated audio recording and a transcript thereof that the District Court ruled lacked the foundational authentication necessary for it to consider it as evidence at the summary judgment stage of the underlying proceedings. Petitioner's fourth question relatedly appears to challenge the Second Circuit's review of the record before the trial court under its *de novo* standard of review. *Kaytor v. Elec. Boat Corp.*, 609 F.3d 537, 546 (CA2 2010). Petitioner impermissibly asks this Court to essentially re-litigate the entire factual record already established by the District Court and subsequently affirmed by the circuit court of appeals.

Although this Court does have broad discretion to grant petitions that fall beyond the scope of the criteria set forth in Rule 10, any petition set before this Court must provide "compelling reasons" as to why it should be granted. Though this Court may consider whether a court below has "so far departed

from the accepted and usual course of judicial proceedings [so] as to call for an exercise of this Court's supervisory power," Petitioner has not pointed to any failure by either court below that could justify this Court exercising its discretion to grant the Petition. *See Hollingsworth v. Perry*, 558 U.S. 183, 196 (2010) (Internal citation omitted).

Essentially, *pro se* Petitioner asks this Court to consider and overturn certain factual findings and evidentiary rulings that are firmly within the sole providence of the District Court: "A district court is accorded wide discretion in determining the admissibility of evidence under the Federal Rules. Assessing the probative value of the proffered evidence, and weighing any factors counseling against admissibility is a matter first for the district court's sound judgment under Rules 401 and 403" (Internal citation omitted). *Sprint/United Management Co. v. Mendelsohn*, 552 U.S. 379, 384 (2008). Such evidentiary rulings are subject to review under an "abuse of discretion" standard. *See General Elec. Co. v. Joiner*, 522 U.S. 136, 142 (1997).

At the summary judgment stage, facts are viewed by the district court and upon a *de novo* review by appellate courts "in the light most favorable to the nonmoving party only where there is a genuine dispute as to those facts." *Scott v. Harris*, 550 U.S. 372, 380 (2007), *citing* Fed. Rule Civ. P. 56(c). "Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial." *Id.* (internal citations omitted).

Here, the sum and substance of *pro se* Petitioner's questions posed to this Court constitute nothing but an attempt to relitigate the District Court's finding that the audio recording and transcript submitted by Petitioner in opposition to Respondents' Motion for Summary Judgment was inadmissible and thus

were not properly before the court. As this Court has held, “[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.” *Id.*

To this end, Petitioner has clearly failed to raise any “compelling reasons” as to why this Court should grant his petition. As such, the Petition should be denied.

C. Petitioner’s Petition is Defective Under Rule 14.

Finally, the Petition is defective for failing to fully comply with this Court’s Rule 14 in several ways. Rule 14 sets forth the standards for the contents of a petition for a writ of certiorari and the order in which they must be presented to the Court. The Petition here is defective in almost every conceivable respect.

As an initial matter, Petitioner’s Petition fails to provide the information required by Rule 14 in the necessary order.

Further, Petitioner fails to provide this court with questions presented for review that are “not [] argumentative or repetitive,” in contravention to the requirement set forth in Rule 14(1)(a). Petitioner also fails to provide the Court with a table of contents, as required by Rule 14(c), and further fails to cite to official and unofficial reports of opinions and orders entered in the case by the lower courts in violation of Rule 14(d).

Perhaps most fatal to the Petition, however, is the fact that he fails to present the issues with the accuracy, brevity, and clarity required by Rule 14(4). Where a petition fails to comply with Rule 14, this

Court has held that such failure is grounds for denial of the petition. *See Snyder v. Phelps*, 562 U.S. 443, 449, n. 1 (2011); *see also Wood v. Allen*, 558 U.S. 290, 304 (2010).

This Court, therefore, should deny Petitioner's Petition for its failure to fully comply with Rule 14.

CONCLUSION

Petitioner's Petition should be denied by this Court for the reasons stated herein.

Respectfully submitted,

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