

No. 23-7434

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**In the  
Supreme Court of the United States**

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SAMUEL T. WHATLEY, II,

*Petitioner,*

v.

WAFFLE HOUSE, INC.,

*Respondent.*

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

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

————— ♦ —————

Andrew F. Lindemann  
*Counsel of Record*  
LINDEMANN LAW FIRM, P.A.  
5 Calendar Court, Suite 202  
Post Office Box 6923  
Columbia, South Carolina 29260  
(803) 881-8920  
Email: andrew@ldlawsc.com

*Counsel for Respondent*

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## **STATEMENT OF THE CASE**

The Petitioner Samuel T. Whatley, II alleges in his Complaint a claim under the Fair Labor Standards Act (FLSA). By way of factual background, the Petitioner alleges that he worked two days, October 1-2, 2022, at a Waffle House location (Unit #1453) located in Summerville, South Carolina. The Petitioner describes himself in the Complaint as a “Unit Manager Trainee.” He further alleges that he was owed wages for 19 hours at \$10 per hour for a total of \$190.

The Respondent Waffle House, Inc. agrees that the Petitioner was being observed for a possible management position on October 1-2, 2022. He completed those two days of “in-unit” work for which it was agreed he would be paid \$10 per hour. At the end of the two days, he was not offered a management position. As confirmed in the Affidavit of Kathy Robinson, the Petitioner was paid the agreed upon \$10 per hour for the 19 hours of work. Initially, the Petitioner did not pick up mail containing a Waffle House check for the \$190. Subsequently, a check in the amount of \$190 was re-issued on November 22, 2022, and that check was received and negotiated by the Petitioner on December 22, 2022. A copy of the negotiated check is attached as Exhibit B to the Affidavit of Kathy Robinson, who is a Payroll Manager for Waffle House.

The parties filed cross motions for summary judgment. The magistrate judge recommended that Waffle House’s motion for summary judgment be granted and that the Petitioner’s motion for summary judgment be denied. The district court subsequently issued an Order filed September 14, 2023, adopting the report and

recommendation. The district court correctly ruled that the Fair Labor Standards Act “does not provide for a private right of action for the delay in payment Plaintiff challenges.” *Whatley v. Waffle House, Inc.*, 2023 WL 5969622, \*2 (D.S.C. 2023).

The Petitioner appealed to the Fourth Circuit Court of Appeals which affirmed the district court by an unpublished opinion entered November 24, 2020. *Whatley v. Waffle House, Inc.*, 2024 WL 399087, \*1 (4th Cir. 2024) (“We have reviewed the record and find no reversible error”).

### **REASONS FOR DENYING THE PETITION**

In his Petition for Writ of Certiorari, the Petitioner raises in the “Questions Presented” a number of issues that are largely incoherent and which are not then addressed in the section titled “Reasons for Granting the Writ.”

As indicated, the Petitioner is suing under FLSA for nineteen hours of hourly wages for which he was paid by Waffle House, although the check was re-issued after the original payment check was not claimed by the Petitioner. As the district court correctly ruled, the Petitioner’s FLSA claim is controlled by the Fourth Circuit case of *Trejo v. Ryman Hospitality Properties, Inc.*, 795 F.3d 442 (4th Cir. 2015), which holds that “[t]he FLSA is best understood as the ‘minimum wage/maximum hour law.’” 795 F.3d at 446. As the Fourth Circuit further explained, “the Act requires payment of a minimum wage and limits the maximum working hours an employee may work without receiving overtime compensation.” *Id.* (Citations omitted). “Section 216(b) provides a cause of action for violations of these two provisions,

permitting employees to seek damages ... in ‘the amount of their unpaid minimum wages’ and (in appropriate circumstances) an equal amount of liquidated damages.” *Id. citing* 29 U.S.C. § 216(b). In short, the private right of action “is available only when an employee is owed ‘unpaid minimum wages, or [ ] unpaid overtime compensation’ as a result of a minimum-wage or overtime violation.” 795 F.3d at 449 (concurrence of Harris, J.).

In the case at bar, the Petitioner is not seeking the recovery of unpaid minimum wages or unpaid overtime compensation and has not alleged a minimum-wage or overtime violation. As a result, he has not stated a claim under the Fair Labor Standards Act nor demonstrated that he has standing to pursue a claim for relief under the Act. The district court was correct, therefore, in dismissing the FLSA claim. That ruling was then correctly affirmed by the Fourth Circuit Court of Appeals.

As indicated, the Petitioner attempts to present a myriad of issues, none of which are supported by admissible evidence contained in the record, and most are conclusory, if not completely incoherent or indecipherable. Among those issues, the Petitioner complains that the district court’s order did not include information regarding a *pro se* litigant’s right to appeal. There is, however, no prejudice shown. The Petitioner filed a timely appeal to the Fourth Circuit and again to the United States Supreme Court. Moreover, the Petitioner contends that he was denied a right to a jury trial. That is not the case. The Petitioner was not denied a jury trial because his suit was appropriate for resolution on motions for summary judgment,

which he apparently acknowledged by himself filing such a motion. The Petitioner also appears to make mention for the first time of a state law claim under the South Carolina Wage Payment Act; however, no such claim was pled nor adjudicated by the lower courts. The Petitioner pled a purported FLSA claim and no other federal or state claims. The FLSA claim was correctly dismissed on the merits.

### **CONCLUSION**

For the foregoing reasons, the Respondent Waffle House, Inc. submits that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

Andrew F. Lindemann  
*Counsel of Record*  
LINDEMANN LAW FIRM, P.A.  
5 Calendar Court, Suite 202  
Post Office Box 6923  
Columbia, South Carolina 29260  
(803) 881-8920  
Email: andrew@ldlawsc.com

*Counsel for Respondent*  
*Waffle House, Inc.*

June 10, 2024