No. 26-448

IN THE

Supreme Court of the United States

MARITZA REYES,

Petitioner,

v.

FLORIDA A&M UNIVERSITY
BOARD OF TRUSTEES,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF ON OPPOSITION

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PARTIES TO THE PROCEEDING

All parties to the proceeding are identified in the petition.

RULE 29.6 DISCLOSURE STATEMENT

The Florida Agricultural and Mechanical University Board of Trustees ("FAMU") is a Florida public body corporate, and is not publicly traded, nor does it have any subsidiaries, affiliates, or related business entities.

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Respondent, The Florida Agricultural and Mechanical University Board of Trustees ("FAMU" or "Respondent"), respectfully requests that the Petition for Writ of Certiorari be denied.

INTRODUCTION

Petitioner, a former professor at FAMU's College of Law, challenges the decision of the Eleventh Circuit Court of Appeals affirming the summary judgment entered in favor of FAMU. In the District Court, Petitioner asserted garden-variety employment discrimination and retaliation claims that she failed to support in her response to FAMU's Motion for Summary Judgment, notwithstanding having requested and received three extensions of time allowing her roughly 48 days to file her response. (Pet. App. at 5a-6a).

The District Court granted summary judgment in FAMU's favor, finding that "Plaintiff's Response does not dispute [FAMU's] Statement of the Material Facts . . . with citation to record evidence," that Petitioner's response actually "contain[ed] few citations to the record at all," and instead, chiefly relied upon the allegations in her Second Amended Complaint. (Pet. App. at 18a). The Court of Appeals affirmed, applying both the *McDonnell Douglas* framework and the "convincing mosaic" standard, and affirmed the orders denying Petitioner's motions to reopen discovery and to file a corrected response. The Court of Appeals' per curiam opinion applied well-settled law to the record before it. (Pet. App. at 6a-13a).

This Court "sparingly exercise[s]" its power to grant certiorari, and this case presents no basis for departing

from this principle's consistent application. *See, e.g.*, *Camreta v. Greene*, 563 U.S. 692, 709 (2011). For the reasons discussed below, FAMU respectfully requests that the Court deny certiorari review.

First, Petitioner presents no compelling reason for review with respect to the application of *McDonnell Douglas*. There is no conflict to resolve, and Petitioner has identified none with respect to the application of *McDonnell Douglas* at the summary judgment stage. Indeed, this Court already passed on the issue Petitioner raises, assuming *McDonnell Douglas* applies on summary judgment in *Ames v. Ohio Dep't of Youth Servs.*, 605 U.S. 303, 145 S. Ct. 1540, 221 L. Ed. 2d 929 (2025). Moreover, the Eleventh Circuit affirmed the summary judgment under both the *McDonnell Douglas* framework and the convincing mosaic standard, and Petitioner's claims failed under both. Hence, this case is not the proper vehicle for challenging *McDonnell Douglas*'s application, as it could not alter the outcome under the convincing mosaic standard. Relatedly, the basis for the challenged decision was Petitioner's failure of proof, a fact-based application of Rule 56 that renders this case unsuitable for review under this Court's own Rule 10. Second, Petitioner's qualms with the denial of her request to file a corrected response likewise provide no basis for review. That is a fact-based, discretionary decision unsuitable for review under Rule 10. The Petition should be denied.

STATEMENT OF THE CASE

I. District Court Proceedings

The Petition recites facts and allegations that are immaterial and irrelevant to the lower courts' decisions, confuse and conflate the issues in those proceedings, and mischaracterize the conclusions of both the District Court and the Court of Appeals. As Petitioner acknowledges, the District Court's summary judgment, which the Court of Appeals affirmed, was principally based on Petitioner's failure to point to record evidence supporting her claims or demonstrating that FAMU's legitimate, non-discriminatory reason for denying her a promotion was a mere pretext. (Pet. at 7-11).

For instance, Petitioner's claim of being wrongfully terminated—subsequent to her subject promotion denial—was not at issue in the lower court proceedings and, therefore, is simply not relevant here. (Pet. at 5). Rather, in her Second Amended Complaint, and solely premised on her promotion denial, Petitioner asserted seven separate discrimination claims based on race, sex, and color, plus claims for hostile work environment based on race, sex, and color, and retaliation.

After the parties conducted substantial discovery, FAMU moved for summary judgment on all counts of Petitioner's Second Amended Complaint. Petitioner filed three separate, *unopposed* motions for extension of time to respond to FAMU's summary judgment motion (Docs. 79, 82, 87), each of which the District Court *granted*. (Docs. 80, 83, 89).

Following this series of extensions, Petitioner filed her Response in Opposition to FAMU's Motion for Summary Judgment on August 19, 2024. (Doc. 91). But Petitioner's Response did not refute FAMU's Statement of Undisputed Facts or cite evidence to support her claims. *Id.* Instead, Petitioner's "Statement of Disputed Material Facts" merely lists general categories of alleged factual issues without the necessary evidentiary support. (Doc. 91 at 3-5).

Nearly a month *after* the summary judgment motion was fully briefed, Petitioner then moved to file a "corrected response" on October 2, 2024. (Doc. 102). Petitioner's motion was predicated on her alleged vision problems that rendered her response a mere "draft." Petitioner also sought to file multiple witness declarations, some of which (including her own) were obtained well *after* her response deadline and were not timely filed with the original response. *Id.*

The District Court denied Appellant's belated motion to file a corrected response or any of the supporting declarations, finding she failed to establish the elementary good cause required for an extension of time after passage of the response deadline. (Doc. 124). In reaching this decision, the District Court noted that Appellant had requested three prior extensions for the same medical reason she cited for her alleged inability to file a non-draft response. *Id.* The District Court also found a lack of diligence by Petitioner, finding her request to file the corrected response was not a good faith attempt to correct an unedited draft, but instead an attempt to supplement her Response with additional evidence she obtained *after* having the benefit of FAMU's Reply. *Id.* at 3.

On January 10, 2025, the District Court granted FAMU's Motion for Summary Judgment on all counts of the Second Amended Complaint. (Pet. App. at 14a). In granting summary judgment, the District Court found Petitioner did not dispute FAMU's Statement of Undisputed Facts with citations to record evidence and found insufficient her reliance on the mere allegations in her Second Amended Complaint. (Pet. App. at 17a-18a). The District Court found that Petitioner failed to establish a prima facie case of employment discrimination. In particular, the District Court found "Plaintiff's Response contains only argument that her denial of promotion was motivated by discriminatory animus, without citation to any record evidence for support." (Pet. App. at 22a). And it further found she had failed to explain, with record citation, how the alleged comparators qualified as "similarly situated" or how they were treated more favorably. (Pet. App. at 22a). Additionally, the District Court found FAMU met its burden of establishing a legitimate, non-discriminatory reason for denying her subject promotion, which Petitioner could not show was mere pretext—namely, "a committee report recommending against Plaintiff's promotion because Plaintiff had failed to meet the standard for production of scholarship." (Pet. App. at 23a).

The District Court addressed Petitioner's discrimination claims under *McDonnell Douglas*, as well as the convincing mosaic standard. (Pet. App. 24a-25a). But the court found that "[u]nder any standard or procedural framework," Petitioner's discrimination claims could not survive summary judgment, finding FAMU had articulated a legitimate, non-discriminatory reason for the recommendation of denial of promotion and that Petitioner had failed to "point to any such evidence, direct

or circumstantial, in the record" to show a convincing mosaic of discrimination. (Pet. App. at 24a-25a).

As for Petitioner's hostile work environment claims, the District Court correctly limited her expansive complaints to the 300 days prior to her EEOC Charge filing (on or after August 3, 2019) and declined to review her entire employment history with FAMU, dating back to 2010. (Pet. App. 26a). The District Court likewise found summary judgment appropriate on the hostile work environment claims because "the harassing conduct Plaintiff alleges—without evidentiary support—simply does not rise to the level of severity necessary to alter the conditions of [her] employment." (Pet. App. at 28a-29a).

Finally, as to her retaliation claim, the District Court found Petitioner failed to identify record evidence of any instances of retaliatory conduct or the required causal connection to her alleged protected activity. (Pet. App. at 30a).

II. Court of Appeals Proceedings

The Court of Appeals affirmed on all three issues raised by Petitioner. It first concluded the District Court did not abuse its discretion in finding that Petitioner was not diligent and in denying her motion to file a corrected response. (Pet. App. at 4a-5a). The Court of Appeals recognized that Petitioner "filed an incomplete response after receiving three prior extensions and a total of 48 days to draft her response," and then waited 44 days to move to file a corrected response, which demonstrated neither the requisite diligence nor excusable neglect. (Pet.

App. at 5a-6a). That is not a "blanket decision" lacking "fact-specific analysis," as Petitioner claims. (Pet. at 12).

In affirming the summary judgment, the Court of Appeals evaluated Petitioner's discrimination claims under both the *McDonnell Douglas* framework and the convincing mosaic standard. The court found Petitioner failed to point to any evidence establishing the named comparator was similarly situated or contravening the legitimate, non-discriminatory reason for denying her a promotion—the determination that Petitioner failed to meet the scholarship requirement for promotion. (Pet. App. 6a-9a).

The Court of Appeals reached a similar conclusion as to Petitioner's retaliation claim. In particular, it found Petitioner failed to point to any evidence showing that the motivation for denying her promotion was based on her complaints. (Pet. App. 9a-10a) ("Reyes cannot create a convincing mosaic of retaliation because the only evidence in the record concerning Edington's motivation indicates it was not discriminatory."). Finally, the Court of Appeals found that Petitioner did not even attempt to rebut the District Court's findings on her hostile work environment claim, and that she had failed to point to evidence of conduct that was sufficiently severe or pervasive. (Pet. App. at 10a). Nor had Petitioner pointed to any evidence establishing the alleged harassment was premised on her race or otherwise. (Pet. App. at 11a).

REASONS FOR DENYING THE PETITION

Certiorari review "is not a matter of right, but of judicial discretion." Supreme Court Rule 10. "A petition for a writ of certiorari will be granted only for compelling reasons." *Id.* Petitioner fails to meet this exacting standard.

Petitioner takes issue with the application of *McDonnell Douglas* on summary judgment, but does not cite or show any conflict among the Courts of Appeals. This Court has already passed on the primary issue Petitioner raises—the application of *McDonnell Douglas* on summary judgment—assuming it applied. *Ames v. Ohio Dep't of Youth Servs.*, 605 U.S. 303, 145 S. Ct. 1540, 221 L. Ed. 2d 929 (2025). Additionally, the Eleventh Circuit's decision was based on Petitioner's failure to cite record evidence supporting her claims, and in rejecting her challenge, it considered her claims under both the *McDonnell Douglas* framework *and* the convincing mosaic standard.

Petitioner's claims failed under both standards, so the application of *McDonnell Douglas* does not affect the ultimate outcome of this case. Furthermore, with respect to her request to file a corrected response, Petitioner provides no basis for review of the decisions of the District Court and Circuit Court. Petitioner has shown no abuse of discretion, let alone that the rulings conflicted with those of any other court of appeals or this Court. There being no compelling reason to grant certiorari review, the Petition is due for denial.

I. Petitioner's First Question—addressing the application of *McDonnell Douglas* on summary judgment—does not establish a compelling reason for review.

A. There is no conflict among the Circuit Courts of Appeals.

Notably, Petitioner does not maintain the Eleventh Circuit's decision raises a federal question on which there is conflict among the Courts of Appeals or state courts of last resort. Nor does Petitioner maintain that the Eleventh Circuit's decision conflicts with this Court's precedent. Under Rule 10, such conflict among the courts of appeals on the "same important matter" is a principal consideration. But there is no such conflict here.

Because Petitioner does not and cannot point to a circuit split, she instead gestures to various, separate writings criticizing the application of the *McDonnell Douglas* framework on summary judgment: a concurrence in this Court in *Ames* v. *Ohio Dep't of Youth Servs.*, 605 U.S. 303, 313 (2025); a dissent from a denial of certiorari review in *Hittle* v. *City of Stockton*, 145 S. Ct. 759 (2025); and concurring opinions in various Circuit Courts of Appeals. (Pet. at 15-18). These separate writings, however, do not equate to a cognizable conflict among the circuit courts.

Nor does Petitioner even assert that the Eleventh Circuit decided an important federal question that this Court should settle. There is, in fact, nothing to settle. In *Ames* v. *Ohio Dep't of Youth Servs.*, 605 U.S. 303, 308-309 (2025), this Court did not abandon or alter the *McDonnell Douglas* framework at the summary judgment stage; it

applied it. In doing so, the Court reiterated its "instruction to avoid inflexible applications of *McDonnell Douglas*'s first prong," explaining the "precise requirements of a prima facie case can vary depending on the context and were 'never intended to be rigid, mechanized, or ritualistic,'" because "facts necessarily will vary in Title VII cases" and "the prima facie proof required" will "differ from case to case." 605 U.S. at 310-11 (internal citations omitted).

Here, Petitioner essentially complains about the misapplication of *McDonnell Douglas* and the lower courts' conclusions that she failed to meet her evidentiary burden. Petitioner presents no conflict and no basis to revisit this Court's precedent.

B. The decisions below do not rise and fall on the application of *McDonnell Douglas,* but are premised upon Petitioner's failure of proof under both the *McDonnell Douglas* framework and the convincing mosaic standard, which is the Rule 56 standard.

The lower courts' decisions do not hinge upon application of *McDonnell Douglas* versus Rule 56. Rather, these decisions rest upon Petitioner's failure to come forward with record evidence supporting her claims in her response to FAMU's Motion for Summary Judgment. The District Court determined that "[u]nder any standard or procedural framework," Petitioner's claims failed precisely because she identified no supporting record evidence in opposition. (Pet. App. 24a-25a). The Eleventh Circuit similarly found that Petitioner "provided no evidence" the alleged comparator was similarly situated in all material

respects and "presented no evidence" that the decision to deny her a promotion was based on discriminatory intent. (Pet. App. 7a-8a).

This is dispositive: whether or not the courts below applied the *McDonnell Douglas* framework or the convincing mosaic standard, Petitioner simply failed to carry her burden of production on summary judgment under Rule 56.

These decisions do not rely on the application of *McDonnell Douglas* alone. Rather, in granting and affirming the summary judgment, the courts below considered Petitioner's claims under both the *McDonnell Douglas* framework *and* the convincing mosaic standard, and in doing so, properly considered and applied Rule 56.

Indeed, the Eleventh Circuit has explained that the convincing mosaic standard, "despite its flowery language—is a stand-in for the Rule 56 summary judgment standard applied to employment discrimination." *Ismael v. Roundtree*, 161 F.4th 752, 760 (11th Cir. 2025) (quoting *Berry v. Crestwood Healthcare*, 84 F.4th 1300, 1311 (11th Cir. 2023). The convincing mosaic standard is a "rearticulation of the summary judgment standard." *Tynes v. Fla. Dep't of Juv. Just.*, 88 F.4th 939, 946 (11th Cir. 2023) ("A 'convincing mosaic' of circumstantial evidence is simply enough evidence for a reasonable factfinder to infer intentional discrimination in an employment action—the ultimate inquiry in a discrimination lawsuit.").

This standard "is no different than the standards [the Eleventh Circuit] ordinarily appl[ies] in deciding summary judgment," in that a plaintiff presenting "enough

circumstantial evidence to raise a reasonable inference of intentional discrimination, . . . will survive summary judgment." *Id.* at 947. Regardless of the framework—*McDonnell Douglas* or convincing mosaic—courts must determine "whether there is enough evidence to show that the reason for an adverse employment action was illegal discrimination." *Jimenez v. U.S. Att'y Gen.*, 146 F.4th 972, 997 (11th Cir. 2025). So, addressing *McDonnell Douglas* in this case would have no effect whatsoever on the ultimate outcome of Petitioner's claims, and would not "clarify" the law, even if such clarification were needed—which it is not. *Cf. City & Cnty. of San Francisco, Calif. v. Sheehan*, 575 U.S. 600, 610 (2015) (citing Supreme Court Rule 10 and noting that "certiorari jurisdiction exists to clarify the law").

Here, Petitioner received the very review she claims she was denied. Petitioner lost below because she failed to point to record evidence supporting her claims; not because the lower courts applied (or misapplied) *McDonnell Douglas* or carelessly ignored Rule 56. The lower courts correctly and rigorously applied Rule 56, reaching the same result under both frameworks. That is simply the application of the rule of law to the record evidence and is the very type of decision for which certiorari "is rarely granted" under Supreme Court Rule 10.

II. Petitioner's complaints about the lower courts' exercise of discretion as to her corrected response present factually based challenges that do not support certiorari review.

In her second and third questions, Petitioner maintains the lower courts abused their discretion with respect to

her request to file a corrected (*i.e.*, non-draft) response to FAMU's Motion for Summary Judgment. Such complaints likewise provide insufficient grounds for certiorari review.

Petitioner asserts a "sudden medical emergency followed by a period of medical incapacity" established excusable neglect. (Pet. at 22). But this assertion is completely divorced from the specific facts the District Court and the Court of Appeals cited in finding Petitioner failed to establish excusable neglect. As these courts found, Petitioner was afforded three unopposed extensions of time, on top of the initial 30 days she had to prepare her response to the Motion for Summary Judgment, giving her a total of 48 days to prepare her response. (Pet. App. at 6a). Petitioner then waited 44 days to move to file a corrected response. (Pet. App. at 6a). The District Court did not "twist[ ] and turn[ ] the facts against Petitioner." (Pet. at 23). Those are simply the unvarnished facts.

Regardless, Petitioner's disagreement with the lower courts' decisions concerning her belated request to file a corrected response provides no basis for review. Petitioner does not argue, let alone demonstrate, that the governing law on this issue is in dispute. Indeed, the Eleventh Circuit applied the four factors this Court set forth long ago in *Pioneer Inv. Servs. Co. v. Brunswick Assoc. Ltd. P'ship*, 507 U.S. 380, 395 (1993): "the danger of prejudice to the nonmovant, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." *United States v. Beaufils*, 160 F.4th 1147, 1170 (11th Cir. 2025) (citing *Advanced Estimating Sys., Inc. v. Riney*, 77 F.3d 1322, 1325 (11th Cir. 1996) and *Pioneer*, 507 U.S. at 395). The

Eleventh Circuit applied these principles to the facts and concluded that a litigant who, after being afforded three extensions and waiting another 44 days to move for leave to file a corrected response, did not demonstrate excusable neglect or diligence. (Pet. App. at 5a-6a).

Petitioner does not present a conflict of law, but rather, a dispute with the lower courts' application of the governing law to the facts. Petitioner has shown no abuse of discretion, let alone that the rulings conflicted with any other court of appeals or this Court. The fact-based, discretionary ruling does not satisfy any of the criteria set forth in Rule 10. There is no compelling reason to grant certiorari, and the Petition should be denied on that basis as well.

III. Petitioner's remaining qualms do not provide any grounds for certiorari review.

While not identified as a specific question presented, Petitioner's third argument section simply re-argues her summary judgment response. Petitioner's assertions that she had "ample evidence" to defeat FAMU's summary judgment motion do not implicate any question of law, let alone a question of law in conflict. Instead, she essentially (and improperly) asks this Court to re-open this case and engage in fact-finding and re-weighing of the record evidence.

That is not a function of certiorari review. Generally, the Court does not review "erroneous factual findings or the misapplication of a properly stated rule of law." Supreme Court Rule 10. The denial of Petitioner's motion

to reopen discovery is a discretionary ruling implicating factual determinations not suitable for certiorari review.

CONCLUSION

For these reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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