No. 26-5352

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED
AUG 15 2026
OFFICE OF THE CLERK
SUPREME COURT, U.S.

HARRIUS JOHNSON,

Petitioner,

v.

MIAMI-DADE COUNTY,

Respondent.

On Petition for Writ of Certiorari to the

United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

Harrius Johnson

17180 SW 94 Avenue, 702

Palmetto Bay, FL 33157

Telephone: (239) 537-6494

Email: harrysjustice2@comcast.net

Petitioner, pro se

QUESTIONS PRESENTED

1. Whether U.S. Const. art. III, Fed. R. Civ. P. 56, U.S. Const. amend. XIV and U.S. Const. amend. V due Process Clauses, and U.S. Const. amend. VII preservation clause permit a federal appellate court to affirm summary judgment on an undeveloped record after a district court's four-year-and-eight-month post-remand freeze on all hearings, discovery, and case management, while leaving unresolved preserved disputes over governmental authority, record authenticity, mandatory investigation safeguards, disavowed authorship, and material jury inferences concerning a public employee's protected property interest.

2. Whether Article III courts may apply *McDonnell Douglas* at summary judgment as a rigid evidentiary filter that weighs, divides, and rejects preserved pretext and circumstantial evidence in isolation, rather than reviewing the whole record, drawing reasonable inferences for the nonmovant, and reserving disputed inferences for the jury.

3. Whether Article III permits a federal court to rely on the law-of-the-case doctrine to avoid correcting preserved Fifth Amendment, Seventh Amendment, and Fed. R. Civ. P. 56 violations where exceptions were preserved, material facts remained for a jury, the district court imposed a post-remand discovery freeze and violated the mandate rule, and the record supported correction despite an admitted incomplete review by the Eleventh Circuit which affirmed judgment.

PARTIES TO THE PROCEEDINGS

1. Harrius Johnson – Plaintiff/Appellant, Pro Se.
2. Miami-Dade County – Defendant/Appellee.
3. Miami-Dade County Attorney's Office – Counsel for Defendant/Appellee.
4. Marlon D. Moffett – Counsel for Defendant/Appellee.
5. Leona McFarlane – Counsel for Defendant/Appellee.
6. Kathleen M. Williams – United States District Court Judge, Southern District of Florida.
7. Remer & Georges-Pierre, PLLC – Previous Counsel for Plaintiff/Appellant.
8. Javier Zapata – Counsel for Defendant/Appellee.
9. Daniella Levine Cava – Mayor, Miami-Dade County.
10. Professional Law Enforcement Association – Representation and support for Plaintiff during proceedings.
11. Captain Tyrone White – Relevant witness and internal actor in disciplinary actions.
12. Lieutenant Leonard Ricelli – Relevant comparator and witness.
13. Director J.D. Patterson – Central figure in disciplinary and termination proceedings.
14. Officer Rachel Meadors – Relevant comparator involved in internal investigations.
15. Juan Perez – Director during relevant disciplinary periods.

To the best of the Petitioner's knowledge, there are no publicly held corporations or other legal entities that have an ownership interest of 10% or more in a party to this appeal.

RELATED PROCEEDINGS

1. United States District Court (Southern District of Florida):

Harrius Johnson v. Miami-Dade County, No. 1:16-cv-21658-KMW (August 5, 2024)

2. United States Court of Appeals (11^{th} Circ.):

Harrius Johnson v. Miami-Dade County, No. 18-11479 (January 30, 2020)

3. United States Court of Appeals (11^{th} Circ.)

Harrius Johnson v. Miami-Dade County, No. 24-12676 (July 7, 2026)

TABLE OF CONTENTS

TABLE OF APPENDICES

TABLE OF AUTHORITIES

Cases

PETITION FOR A WRIT OF CERTIORARI

Petitioner Harrius Johnson respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit is reported and reproduced in the Appendix hereto as Appendix 1. (Pet. App. 1a). The opinion of the United States District Court for the Southern District of Florida (Pet. App. 19a) is published.

JURISDICTION

The judgment of the court of appeals was entered on March 19, 2026. Pet. App. 1a. The court of appeals denied petitioner's timely petition for rehearing en banc on May 19, 2026. Pet. App. 32a. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the following constitutional and statutory provisions: U.S. Const. art. III, Sec. 2, U.S. Const. amend. V, U.S. Const. amend. VII, U.S. Const. amend. XIV, Sec. 1, 28 U.S.C. § 1254(1), and 42 U.S.C. § 1983. The pertinent texts of these provisions are reproduced in the appendix.

STATEMENT OF THE CASE

Petitioner, a former Black male Police Sergeant, brought this § 1983 and Title VII action challenging his January 28, 2016, dismissal as discriminatory, retaliatory, procedurally deficient, and unlawful. After nearly a decade and two Eleventh Circuit appeals, the case ended below on May 19, 2026.

In *Johnson I*, *Johnson v. Miami-Dade County,* 948 F.3d 1318 (11th Cir. 2020), the Eleventh Circuit partly vacated summary judgment, remanded for comparator and pretext review under *Lewis*, and cautioned against mechanically applying *McDonnell Douglas* to 42 U.S.C. § 1983 claims. Petitioner was then represented by counsel. On remand, however, the district court kept the case for four years and eight months without a Fed. R. Civ. P. 16 conference, scheduling order, Rule 26 discovery, evidentiary hearing, or meaningful case management, then entered summary judgment on limited supplemental briefing. Petitioner preserved his objections through post-remand motions, 90-Day Expiring notices, mandamus, and appellate filings. Counsel withdrew on August 15, 2024. R. Doc. DE 127. Petitioner appealed pro se, on August 19, 2024, and moved for a new trial and relief from judgment on October 8, 2024, (S.D. Fla. DE 143), and the district court denied relief on October 31, 2024, (S.D. Fla. DE 148). In *Johnson II*, *Johnson v. Miami-Dade County*, No. 24-12676 (11th Cir. 2026), the Eleventh Circuit affirmed without resolving preserved evidence, emergency motions, Fed. R. App. P. 28(j) filings, or the prolonged denial of discovery, hearings, and status conferences. Petitioner sought panel and en banc rehearing on April 9, 2026; rehearing was denied on May 19, 2026, leaving the preserved post-remand record evidence unresolved.

REASONS FOR GRANTING THE WRIT

I. The Decision Below Permits Summary Judgment Despite Unresolved Preserved Constitutional, Jurisdictional, Factual Disputes, and an Incomplete Review:

This case does not ask the Court to reweigh evidence. It asks whether summary judgment may stand when an appellate court affirms without resolving preserved threshold disputes that go to the legality of the governmental deprivation itself. Those disputes are not peripheral. They concern whether the district court's four-year-and-eight-month post-remand freeze denied Petitioner any meaningful opportunity to develop the record; whether the official who signed the termination retained lawful authority after delegating disciplinary power; whether the alleged author of the disciplinary record disavowed authorship; and whether mandatory investigative and just-cause safeguards were bypassed. Those questions determine whether there was a valid governmental act capable of extinguishing Petitioner's protected property interest. U.S. Const. art. III, U.S. Const. amend. XIV, U.S. Const. amend. V, U.S. Const. amend. VII and Fed. R. Civ. P. 56, do not permit courts to treat such unresolved threshold disputes as immaterial at summary judgment. Under *Ames v. Ohio Department of Youth Services*, 605 U.S. 303 (2025), *Muldrow v. City of St. Louis*, 601 U.S. 346 (2024), *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133 (2000), *Tolan v. Cotton*, 572 U.S. 650 (2014), and *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954), review is warranted.

The constitutional injury stems from the panel's refusal to review preserved constitutional, jurisdictional, and factual disputes before allowing summary judgment to stand. U.S. Const. art. III, U.S. Const. amend. XIV, U.S. Const. amend. V, U.S. Const. amend. VII and Fed. R. Civ. P. 56 prohibit courts from resolving disputed facts, validating unauthorized governmental action, or depriving litigants of a meaningful opportunity to develop evidence—especially where a public employee's protected property interest in continued employment is at stake. That interest arose from the Collective Bargaining Agreement, Administrative Order 7-3 and Collective Bargaining Agreement, Administrative Order 7-16, the Miami-Dade County Code Ordinance 2-47, and the County Charter, which required just and proper cause, a complete and accurate investigation, and discipline by the lawful Director or Acting Director. By affirming after a four-year-and-eight-month post-remand freeze on status conferences, discovery, and hearings, the Eleventh Circuit presents an exceptional question under U.S. Const. art. III, U.S. Const. amend. XIV, U.S. Const. amend. V, U.S. Const. amend. VII, Fed. R. Civ. P. 56, and U.S. Supreme Court Rule 10(a). This case presents an exceptionally important question concerning the constitutional limits of appellate review under Fed. R. Civ. P. 56 and U.S. Const. amend. V's guarantee of due process. Specifically, it asks whether a court of appeals may affirm summary judgment after expressly acknowledging that the district court conducted an incomplete review of the record, while declining to complete a full de novo review of the preserved record itself. The decision below creates a direct conflict and splits amongst the federal courts of appeals concerning the procedural boundaries of appellate review and the constitutional protections afforded to litigants before the entry of final judgment.

The conflict is neither theoretical nor semantic. The Eleventh Circuit expressly recognized that: **"Though the Court's analysis was incomplete, the County is entitled to summary judgment nonetheless."** See *Johnson v. Miami-Dade County,* No. 24-12676, (11th Cir. 2026), **II Discussion**, at Slip Op. 6. (Pet. App. 6a). Having acknowledged that the district court failed to complete its Fed. R. Civ. P. 56 analysis, the panel nevertheless affirmed without resolving Petitioner's preserved post-remand evidence, including emergency motions and Fed. R. App. P. 28(j) submissions that directly challenged the factual basis supporting summary judgment. In doing so, the court affirmed a final judgment despite recognizing an incomplete adjudication below and without addressing whether the preserved post-remand record itself demonstrated genuine disputes of material fact requiring trial. That approach conflicts with the procedural principles recognized by other courts of appeals. The Seventh Circuit has emphasized that appellate courts are courts of review, not courts of first view, and has cautioned that where a district court fails to evaluate material portions of the summary judgment record, the proper course is to vacate and remand rather than permit the appellate court to substitute its own truncated review. See *Snyder v. King,* 745 F.3d 242, 249 (7th Cir. 2014).

Likewise, the Ninth Circuit has recognized that meaningful de novo review necessarily depends upon consideration of a complete Fed. R. Civ. P. 56 record and that unresolved material factual issues cannot be bypassed through appellate affirmance. See *Jones v. Blanas,* 393 F.3d 918, 930 (9th Cir. 2004). The Second Circuit similarly has explained that de novo review presupposes a procedurally adequate Fed. R. Civ. P. 56 determination in the district court rather than permitting an appellate tribunal to substitute its own abbreviated evaluation for an incomplete trial-court analysis. See *Farricielli v. Sessions,* 927 F.3d 102, 110 (2d Cir. 2019). In *Next Generation Logistics, Inc. v. Vanguard Logistics Services (USA), Inc.* (5th Cir. 2022), the Fifth Circuit explicitly held that district courts commit reversible error when they enforce restrictive discovery orders, ignore Fed. R. Civ. P. 56(d) motions, and jump to summary judgment without allowing sufficient discovery. The Fifth Circuit forcefully rejected such "rough justice," ruling that depriving a nonmovant of essential discovery under Fed. R. Civ. P. 56 eviscerates procedural due process under U.S. Const. amend. V and abdicates the district court's U.S. Const. art. III duty to properly adjudicate cases before entering summary judgment.

Collectively, these authorities confirm that appellate courts review completed judicial determinations; they do not affirm judgments after acknowledging that the trial court's analysis was incomplete. U.S. Const. amend. V requires a meaningful opportunity to be heard before deprivation of a protected interest, and the Federal Rules implement that guarantee through uniform procedures authorized by the Rules Enabling Act. Here, after remand, the district court allowed no discovery, Fed. R. Civ. P. 16 conference, hearing, or meaningful case management for approximately fifty-six months before entering summary judgment. Petitioner preserved those defects through post-judgment motions, appellate briefing, emergency motions, and Fed. R.

Civ. P. 28(j) submissions. Yet the Eleventh Circuit acknowledged that the district court's analysis was incomplete and still affirmed without resolving whether the preserved post-remand record showed genuine disputes of material fact. If a court of appeals may affirm final judgment despite an incomplete Fed. R. Civ. P. 56 analysis and unresolved preserved evidence, due process becomes discretionary rather than uniform. The question therefore extends beyond this case: whether U.S. Const. art. III permits appellate affirmance after an admitted incomplete Fed. R. Civ. P. 56 review while preserved evidence bearing on genuine factual disputes remains unaddressed. Its resolution will define the scope of de novo appellate review, the constitutional minimum required before final judgment, and the uniform administration of Fed. R. Civ. P. 56. As this Court emphasized in *Highmark Inc. v. Allcare Health Management System, Inc.*, 572 U.S. 559 (2014), appellate courts must apply the proper standard of review without displacing the role assigned to the tribunal below. The decision below did just that: it converted appellate review into a substitute for the district court's unfinished adjudication, allowed final judgment to stand on an admittedly incomplete record, departed from the accepted course of judicial proceedings, and denied Petitioner the fair process guaranteed by U.S. Const. art. III and U.S. Const. amend. V. Petitioner, proceeding *pro se*, now seeks this Court's review and asks whether a judgment may stand on an admittedly incomplete Fed. R. Civ. P. 56 review, when post-remand preserved evidence existed before affirmance.

II. The Decision Below Exceeds the Constitutional Limits of Appellate Review and Warrants This Court's Supervisory Intervention:

This Court has long recognized that U.S. Const. art. III assigns distinct constitutional functions to trial and appellate courts. Trial courts resolve factual disputes in the first instance; appellate courts review judgments within the limits set by the governing standard of review. In *Pullman-Standard v. Swint*, 456 U.S. 273, 291–92 (1982), the Court explained that when factual issues have not been properly resolved below, an appellate court may not decide them for itself but must remand to the tribunal charged with factfinding. Likewise, *Anderson v. City of Bessemer City*, 470 U.S. 564, 573–75 (1985), confirms that appellate courts exceed their proper role when they substitute their own assessment of the evidence for that of the tribunal responsible for evaluating the record. The Eleventh Circuit departed from those principles. It acknowledged that "the Court's analysis was incomplete," yet affirmed summary judgment because "the County is entitled to summary judgment nonetheless." Rather than vacating and remanding for completion of the required Fed. R. Civ. P. 56 adjudication, the panel affirmed final judgment while preserved record evidence, Fed. R. Civ. P. 28(j) submissions, and emergency motions remained unresolved. The Constitution's text, structure, and original public meaning confirm that appellate courts may not collapse the distinct judicial functions of law declaration and fact adjudication. U.S. Const. art. III vests the judicial power in courts, but it does not license an appellate tribunal to supply factual determinations that Fed. R. Civ. P. 56 and the Seventh Amendment reserve to the trial court and, where facts are genuinely disputed, to the jury.

That separation was no incidental feature of the constitutional design. It reflected the founding generation's settled understanding, drawn from the Anglo-American jury tradition, that liberty is secured when the judge's province and the jury's province remain distinct. Madison's warning in *The Federalist No. 47*, in *The Federalist Papers* 301, 301–08 (Clinton Rossiter ed., 1961), against the accumulation of separated powers applies with full force when an appellate court affirms on an incomplete Fed. R. Civ. P. 56 analysis rather than performing the de novo review the Constitution and governing law require. Hamilton likewise explained in *The Federalist No. 81*, in *The Federalist Papers* 481, 481–91 (Clinton Rossiter ed., 1961), that appellate jurisdiction concerns the correction of legal error; it does not authorize an appellate court to displace the fact-finding function assigned by constitutional text, history, and tradition to trial courts and juries.

The structural defect was compounded by the case's post-remand history. For four years and eight months after remand, the district court allowed no discovery, held no hearings, convened no status conferences, and otherwise froze the proceedings before entering summary judgment against Petitioner. Instead of requiring the district court to complete its adjudicative work, the Eleventh Circuit declined to revisit those post-remand proceedings and affirmed it despite acknowledging that the district court's analysis was incomplete. In effect, the panel substituted appellate affirmance for the complete trial-court adjudication required by

U.S. Const. art. III and Fed. R. Civ. P. 56. This decision raises an important question about the constitutional limits of appellate authority. The Seventh, Ninth, and Second Circuits recognize that when a district court fails to evaluate material portions of the summary-judgment record, the proper course is to vacate and remand, not for the appellate court to supply the missing analysis. The Eleventh Circuit held, "It appears that the District Court erroneously believed that Johnson's failure to evince pretext doomed his discrimination and retaliation claims." *Johnson v. Miami-Dade County*, No. 24-12676, slip op. at 6. (Pet. App. 6a). Here, the panel identified legal error in the district court's Fed. R. Civ. P. 56 analysis, but affirmed instead of remanding for further proceedings consistent with Fed. R. Civ. P. 56, U.S. Const. amend. V, and U.S. Const. amend. VII. That panel decision foreclosed the roadmap to justice.

The decision below took the opposite approach: it affirmed despite acknowledging an incomplete district -court review, departed from the accepted course of judicial proceedings, and created uncertainty about the constitutional scope of appellate review under Fed. R. Civ. P. 56. The Eleventh Circuit also stated that "a 42 U.S.C. § 1983 or Title VII plaintiff's failure to demonstrate pretext does not automatically entitle the defendant to summary judgment." *Johnson v. Miami-Dade County*, No. 24-12676, slip op. at 6. (Pet. App. 6a). Yet Petitioner submitted four emergency motions and four Fed. R. Civ. P. 28(j) filings preserving substantial pretext evidence and material factual disputes. The panel did not accept, consider, or resolve those filings. Instead, it weighed comparator discipline, witness relevance, Patterson's distrust of Captain White, and whether falsification existed, while declining to review the post-remand evidence submitted for appellate consideration.

By relegating the emergency motions and Fed. R. Civ. P. 28(j) filings to footnote 7 and conducting no complete de novo review, the panel failed to satisfy its Fed. R. Civ. P. 56, Fifth Amendment, and U.S. Const. art. III obligations. (Pet. App. 18a). The consequences extend beyond this case. If left undisturbed, the decision permits appellate courts to affirm dispositive judgments while acknowledging that the trial court's Fed. R. Civ. P. 56 analysis was incomplete. That approach erodes the U.S. Const. art. III separation between trial and appellate functions, weakens the procedural safeguards guaranteed by U.S. Const. amend. V, and undermines uniform federal summary-judgment practice. This Court's intervention is warranted under U.S. Supreme Court Rule 10 to restore the constitutional boundaries of appellate review, preserve national uniformity, and reaffirm that an appellate court may not sustain final judgment on an admittedly incomplete adjudicative record. This prevents courts from becoming triers of fact.

i. **The Panel Left Unresolved Whether the Termination Was Ultra Vires:**

Alexander Hamilton stated the governing principle plainly: "There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void." *The Federalist* No. 78, at 466 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

The Eleventh Circuit's de novo review was incomplete, and its failure to address the alleged ultra vires termination presents a threshold due-process problem. If Director Patterson had delegated disciplinary authority to Acting Director Juan Perez and no longer had authority to terminate Petitioner, the termination could not lawfully extinguish Petitioner's protected property interest. (Pet. App. 133a). Petitioner preserved evidence that Patterson was on terminal leave and had delegated authority under Miami-Dade County Administrative Order 7-16, which provides: "Only the Department Director or, in his absence, the person officially designated by him to act in his behalf as 'acting director,' is authorized to dismiss an employee or reduce an employee in grade. These forms of discipline are non-delegatable." (Pet. App. 37a-62a). Petitioner preserved evidence that Patterson delegated authority to Acting Director Juan Perez before Petitioner's termination was enforced. (Pet. App. 241a). Petitioner contends that after Patterson's delegation and absent an official return to active duty, Patterson could not share, reclaim, or exercise termination authority. The Eleventh Circuit had this evidence before it in four uncontested emergency motions, 11th Cir. Docs. 56-59, and in Petitioner's Motion for Rehearing and Rehearing En Banc. (Pet. App. 137a-140a). Yet the panel did not decide whether Patterson had lawful authority to sign or issue the termination papers. (Pet. App. 37a-72a; 75a-77a). Nor did it address preserved disputes over whether Patterson investigated or verified the charges, or whether the alleged disciplinary author's denial of authorship created jury questions under Fed. R. Civ. P. 56 and the Seventh Amendment. That authority dispute is material: if the terminating official lacked lawful power, the termination could not provide constitutionally valid process. (Pet. App. 62a- 82a). Petitioner preserved evidence.

The post-remand freeze compounded the defect. For four years and eight months, the district court allowed no discovery, hearing, status conference, or meaningful case management before entering summary judgment on a restricted record. During that period, Captain Tyrone White—the alleged author of the termination materials—died before Petitioner could re-depose him or test the record. Petitioner preserved this issue after learning Respondents allegedly disclosed White's death in *White v. Miami-Dade County*, No. 1:18-cv-21862, but not here. (Pet. App. 73a). The panel never decided whether that nondisclosure and discovery freeze denied Petitioner a meaningful opportunity to develop evidence on authorship, authenticity, falsification, and pretext, or whether the district court violated Fed. R. Civ. P. 56, due process, and the Seventh Amendment.

The inconsistency is stark. In *Johnson I*, the Eleventh Circuit recognized that Petitioner's evidence could permit a jury to infer falsification of the August 2015 termination discipline. *Johnson v. Miami-Dade County*, 948 F.3d 1318, 1328 (11th Cir. 2020). In *Johnson II*, the panel treated the same preserved evidence as insufficient, stating there was no proof of "falsification" and that Petitioner "has not identified such evidence." See *Johnson v. Miami-Dade County*, No. 24-12676, at 15 ¶4, 16 ¶¶1-3. (Pet. App. 101a-106a). The panel below became a trier of fact and weighed evidence.

The question is whether a court of appeals may affirm summary judgment while leaving unresolved preserved evidence that the terminating official lacked lawful authority, the disciplinary record was unreliable, and the employer's stated reason was disputed. It may not. Summary judgment requires courts to credit the nonmovant's evidence and draw all justifiable inferences in his favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *Tolan v. Cotton*, 572 U.S. 650, 657–60 (2014). Government actors also must follow binding procedures that limit their authority. *Service v. Dulles*, 354 U.S. 363, 388–89 (1957). The constitutional injury arose when the Eleventh Circuit affirmed without addressing preserved claims that the district court denied discovery, hearings, status conferences, and meaningful record development for four years and eight months, then resolved material jury inferences against Petitioner despite his U.S. Const. amend. VII and U.S. Const. amend. XIV objections. (Pet. App. 215a-220a; 164a-181a).

The preserved record showed three conflicts that precluded summary judgment:

A. **Absence of corrective investigation:** The head executive official testified that he had no communication with the accusing supervisor before finalizing termination, undermining any claimed independent review under Administrative Order 7-3. (Pet. App. 235a-236a); and *Johnson v. Miami-Dade County*, 948 F.3d 1318, 1327-28 (11th Cir. 2020); see *Staub v. Proctor Hospital*, 562 U.S. 411 (2011).

B. **Disputed authorship:** The supervisor alleged to have authored and initiated the termination discipline denied under oath that he wrote or recommended the operative Disciplinary Action Report, creating a material dispute over the employer's records. (Pet. App. 107a-108a; 111a; 118a; 121a; 101a-106a).

C. **Improper appellate fact-finding:** Although the panel acknowledged that the district court's "convincing mosaic" analysis was incomplete, it weighed conflicting evidence *de novo* rather than remanding for jury resolution, under the Seventh Amendment and Fed. R. Civ. P. 56 provisions. *Johnson v. Miami-Dade County*, No. 24-12676, slip op. at 6–7 (11th Cir. Mar. 19, 2026).

The Eleventh Circuit deemed "conjecture" Petitioner's claim that Respondents failed to interview two witnesses to the termination discipline and ignored mandatory investigative safeguards. See *Johnson v. Miami-Dade County*, No. 24-12676, slip op. at 16 (11th Cir. Mar. 19, 2026); (Pet. App. 107a-111a; 114a-117a; 157a-162a). Those emails were submitted after remand to the district court and again to the Eleventh Circuit as preserved Fed. R. Civ. P. 56 and U.S. Const. amend. VII evidence supporting Petitioner's claim that the termination discipline—S.D. Fla. DE 69-34, the Disciplinary Action Report—was falsified and should have been evaluated by a jury. Rather than conduct a complete relevance review, the panel used *McDonnell Douglas* to foreclose evidence that created genuine disputes of material facts for a jury. (Pet. App. 101a-106a). **Does *McDonnell Douglas* supersede U.S. Const. amend. VII?**

The panel then resolved the factual issue itself rather than asking whether a jury could draw the inference. It credited a March 8, 2019, chronology while discounting evidence that Patterson's distrust of Captain White began in 2013, before Petitioner's 2015–2016 adverse actions. (Pet. App. 163a). The panel repeated that error with circumstantial evidence, isolating comparator discipline and dismissing excluded witnesses and evidence as "speculation." Slip op. at 14, 16. That fragmented review conflicts with Fed. R. Civ. P. 56's requirement of whole-record review and all reasonable inferences for the nonmovant. See *Johnson v. Miami-Dade County*, No. 24-12676, slip op. at 12–14 (11th Cir. Mar. 19, 2026); (Pet. App. 86a-90a). The decision conflicts with *Muldrow v. City of St. Louis*, 601 U.S. 346 (2024), and *Ames v. Ohio Department of Youth Services*, 605 U.S. 303 (2025), which reject judge-made limits beyond Title VII's text, and with *Anderson, Reeves*, and *Tolan*, which bar weighing evidence at summary judgment. The Eleventh Circuit also left unresolved whether Patterson retained authority after delegating discipline to Acting Director Juan Perez. If Patterson lacked authority under Administrative Order 7-16, the termination was ultra vires and could not lawfully extinguish Petitioner's property interest. (Pet. App. 233a-234a; 112a-113a).

This Court has long required agencies to follow their own mandatory procedures. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267–68 (1954), and *Service v. Dulles*, 354 U.S. 363, 388–89 (1957), hold that agencies are bound by the safeguards they adopt. The Eleventh Circuit departed from that precedent by affirming summary judgment without resolving the preserved authority and procedural-compliance issues. (Pet. App. 58a - 61a).

This Court's recent decision in *Trump v. Cook*, 609 U.S. ___, at 4 (2026), reinforces that when the government creates a protected **"for cause"** removal framework, it must provide notice, an opportunity to respond, and compliance with that framework before imposing a valid deprivation. *Trump v. Cook*, No. 25A312 (U.S. June 29, 2026), slip op. at 4–10. Petitioner invokes *Trump v. Cook* only for that procedural principle, not as controlling the employment relationship here. The CBA similarly provides: **"No employee shall be disciplined except for a just and proper cause."** (Pet. App. 36a). The preserved record supported Petitioner's claim that, after Patterson delegated termination authority under Administrative Order 7-16, he allegedly lacked power to terminate Petitioner. If so, the exit meeting was invalid and the termination void ab initio. (Pet. App. 213a-214a). Petitioner preserved these post-remand issues in four emergency motions, but the Eleventh Circuit relegated them to footnote 7 and denied them without analysis. 11th Cir. Docs. 56-58, filed Dec. 31, 2025, and 59-60, filed Mar. 7, 2026. By affirming despite preserved disputes over Patterson's authority, disciplinary authorship, mandatory investigation safeguards, White's unreported death and unavailability, and jury-reserved Fed. R. Civ. P. 56 inferences, the Eleventh Circuit allowed an allegedly unauthorized termination to stand without resolving threshold questions warranting review under *Loudermill*. (Pet. App. 241a). **Why did the panel deem these issues speculation and conjecture?**

ii. An Evidentiary Framework Cannot Displace the Threshold Question of Governmental Authority:

This case raises a question that reaches beyond employment-discrimination doctrine. Before a court applies *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), to ask whether an employer offered a legitimate, nondiscriminatory reason, it must first decide whether the challenged governmental action was taken by an official with lawful authority to act. When the act is alleged to be ultra vires, that threshold question precedes burden shifting. *McDonnell Douglas* assumes a legally cognizable employment action; it cannot supply authority the official did not possess. The panel never resolved that antecedent vacancy. See Four Emergency Motions Filings: Docs. 56-59 and Doc. 60, Fed. R. Civ. P. 28(j). These post-remand issues were preserved but deemed as waived and relegated to footnote 7 by the Eleventh Circuit.

The preserved post-remand record raised that issue directly. Petitioner asserted that disciplinary authority had been delegated to a new executive official and that mandatory investigative safeguards were ignored. (Pet. App. 241a). The relevant question was therefore not merely whether Respondent later articulated a legitimate reason under *McDonnell Douglas*, but whether a valid governmental act existed for that framework to evaluate. The panel also failed to address testimony that the final termination decision relied on the "missing phone" incident, which Patterson connected to termination, but which was absent from the controlling disciplinary charge. (Pet. App. 239a-240a). Those unresolved disputes required jury consideration, not summary judgment. (Pet. App. 97a-100a). This Court has long held that agencies are bound by the rules governing their own authority. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954); *Service v. Dulles*, 354 U.S. 363 (1957); *Vitarelli v. Seaton*, 359 U.S. 535 (1959); *Yellin v. United States*, 374 U.S. 109 (1963). The panel committed structural errors by applying *McDonnell Douglas* while bypassing lawful authority, procedural compliance, and whether Respondent's reason rested on a valid disciplinary record. See *Johnson v. Miami-Dade County*, No. 24-12676, slip op. at 4–5 (11th Cir. Mar. 19, 2026); 11th Cir. Docs. 49, 50, 51, and 64.

Under the *Accardi* doctrine, foundational legitimacy is the first inquiry. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954), holds that agencies must follow their own internal rules and procedures. *Service v. Dulles*, 354 U.S. 363 (1957), confirms that once an agency adopts procedures governing termination, those procedures bind the agency and limit its authority. Petitioner preserved due process here, yet the panel below did not resolve the preserved evidence presented.

The question, then, was whether the agency terminated Petitioner without a complete and accurate investigation and whether the terminating executive official had lawful authority to act. (Pet. App. 122a-142a; 205a-214a).

Petitioner contends the courts below never answered that antecedent question. Instead, they applied *McDonnell Douglas* and Fed. R. Civ. P. 56 while leaving unresolved the decisionmaker's legal authority, compliance with mandatory procedures, and the effect of the post-remand record. The issue is not whether *McDonnell Douglas* is defective in ordinary discrimination cases. It is whether an evidentiary framework may replace a threshold inquiry into governmental authority and procedural validity. That question implicates U.S. Const. art. III, due process, and the distinction between reviewing governmental action and assuming its legality without first determining whether it was authorized. (Pet. App. 37a-46a; 63a-72a; 213a-214a). **Should the panel below have applied Rule 56 to resolve those issues?**

iii. The Four-Year-and-Eight-Month Freeze Denied Petitioner a Meaningful Opportunity to Develop the Record

The post-remand freeze created a separate constitutional defect. For four years and eight months, the district court allowed no discovery, held no hearing, convened no status conference, and provided no meaningful case management before entering summary judgment on the undeveloped record that resulted from that freeze. (Pet. App. 215a-220a). **Are district courts allowed to freeze all hearings and discovery?**

That sequence conflicts with both Fed. R. Civ. P. 56 and due process. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986), permits summary judgment only *after adequate discovery*, while *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950), *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965), and *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976), require notice and a meaningful opportunity to be heard. The nine-page briefing limit compounded the harm by restricting Petitioner's response after discovery had never opened.

iv. The Panel Failed to Conduct De Novo Review of the Preserved *Monell* Municipal-Liability Claim

Subsection C addresses the process that prevented record development. This subsection addresses a separate preserved claim that remained unresolved even on the record that existed. In *Johnson I*, the Eleventh Circuit recognized that Petitioner adequately pleaded municipal liability based on "a widespread practice or custom of racial discrimination or retaliation." *Johnson v. Miami-Dade County*, 948 F.3d 1318, 1326 (11th Cir. 2020). Yet *Johnson II* affirmed summary judgment without substantively addressing the preserved *Monell* theory or the supporting record. (Pet. App. 90a-98a).

Petitioner preserved that independent § 1983 theory in the initial brief, corrected reply brief, rehearing petition, summary-judgment motion, and statement of material facts. He alleged that final municipal policymakers, including the Mayor and Board of County Commissioners, maintained, ratified, or allowed a custom or practice that caused the constitutional deprivation after notice of the alleged violations. The panel nevertheless treated the disputes as newly raised or waived under law of the case. *Johnson v. Miami-Dade County* ("*Johnson II*"), No. 24-12676, slip op. at 17–18 (11th Cir. Mar. 19, 2026). That omission matters because *Monell* liability is distinct from the *McDonnell Douglas* burden-shifting framework. By analyzing the appeal almost entirely through burden shifting, the panel left an independent constitutional theory unanswered. 11th Cir. Doc. 64 at 29-31 Motion for Rehearing and Rehearing En Banc April 9, 2026. (Pet App. 91a - 94a).

That failure presents an U.S. Const. art. III question: when a litigant preserves and supports an independent 42 U.S.C. § 1983 municipal-liability claim, may a court of appeals affirm summary judgment without addressing the claim or explaining why it fails? *De novo* review is incomplete when the court resolves only burden shifting while leaving a preserved constitutional theory unanswered. The omission also affected the pretext analysis because the municipal-liability theory turned in part on whether policymakers ratified or relied on a disciplinary rationale the record undermined. The stolen-cellphone evidence was therefore part of the same unresolved record showing pretext, procedural irregularity, and possible municipal ratification. (Pet. App. 79a, 83a, 88a-89a, 99a).

v. <u>The Stolen-Cellphone Evidence Created a Material Pretext and Convincing-Mosaic Dispute</u>

The incomplete de novo review and unresolved record also included a central pretext issue: Patterson testified that Petitioner's termination was tied to the "missing phone" or stolen-cellphone incident. (Pet. App. 239a-240a). That testimony mattered because the incident was not part of the controlling termination discipline. Whether Patterson relied on an uncharged and later-unfounded incident was a jury question under Fed. R. Civ. P. 56 and the Seventh Amendment, yet the panel did not meaningfully address it. Should a jury be allowed to infer as the trier of facts here?

Q: "With that particular DAR, that was the final DAR that was the straw that broke the camel's back, as to your decision to terminate Mr. Johnson." (Pet. App. 239a-240a). **Could a reasonable jury infer from Patterson's answer that the missing cellphone influenced the termination, and was that preserved issue before the panel?**

The panel disregarded evidence that the true termination reason was the missing or stolen-cellphone incident, which the Miami-Dade State Attorney's Office later deemed unfounded. (Pet. App. 143a-156a). The issue was whether Patterson relied on a reason outside the controlling Disciplinary Action Report and contrary to Administrative Orders 7-3 and 7-16. The cellphone incident was absent from the official termination discipline. (Pet. App. 239a-240a; 119a-120a; 79a, 83a, 88a, 89a). Yet the panel accepted Respondents stated reason as legitimate and nondiscriminatory without deciding whether Patterson's testimony supported a jury inference of pretext or whether White's disavowal undermined the disciplinary record. That omission made the Eleventh Circuit's de novo review incomplete and caused both structural and constitutional injury. **Patterson's adverse termination decision was causally connected to the missing cellphone incident. Under Rule 56, the panel's de novo review was incomplete.** (Pet. App. 39a, 40a, 131a, 132a).

A: "Yeah, but I think also in between was the other one where he—where the phone went missing—or something like that. So, every DAR said something."

The district court recognized the stolen-cellphone investigation in *Johnson I*, S.D. Fla. DE 98 at 3–5 but omitted it and related comparator evidence from the post-remand summary-judgment order in *Johnson II*, S.D. Fla. DE 126 at 1-12, Aug. 5, 2024. By affirming without addressing that record, the panel left unresolved whether the stated termination reason relied on grounds outside the controlling discipline, creating a material dispute under Fed. R. Civ. P. 56, U.S. Const. art. III de novo review, and the Seventh Amendment. (Pet. App. 119a-120a, 99a). These omissions illustrate the broader problem: by isolating pretext evidence, dismissing circumstantial proof as conjecture, and affirming without whole-record review, the panel treated *McDonnell Douglas* as a rigid filter rather than a flexible guide, contrary to Fed. R. Civ. P. 56. This conflicts with this Court's instruction that *McDonnell Douglas* is "a procedural device, not a substantive standard of liability." *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 506 (1993).

vi. <u>The Decision Deepens a Circuit Conflict Reference the Application of Fed. R. Civ. P. 56 and the Proper Use of *McDonnell Douglas Framework*</u>

The decision below deepens a conflict over whether *McDonnell Douglas* remains a flexible evidentiary guide at summary judgment or may be used as a rigid filter to defeat claims by separating comparator, pretext, and circumstantial evidence into isolated categories. In *Johnson II*, the Eleventh Circuit took the latter approach. It required a comparator matching "in all material respects," discounted pretext evidence, and rejected circumstantial proof as "unsupported conjecture," rather than evaluating the whole record under Fed. R. Civ. P. 56 and *Reeves*. *Johnson v. Miami-Dade County*, No. 24-12676, slip op. at 15–17 (11th Cir. Mar. 19, 2026); *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 150–53 (2000).

The conflict is not semantic. It concerns whether courts may segment circumstantial evidence at summary judgment, or whether Fed. R. Civ. P. 56 requires a whole-record review that draws reasonable inferences for the nonmoving party.

Other circuits take the latter approach. The Fourth Circuit treats *McDonnell Douglas* as a flexible guide and rejects "piecemeal evaluation" of discrimination evidence. *Guessous v. Fairview Property Investments, LLC*, 828 F.3d 208, 216–18 (4th Cir. 2016). The Fifth Circuit permits materially similar, not identical, comparators and holds that summary judgment is improper when competing reasonable inferences exist. *Goudeau v. National Oilwell Varco, L.P.*, 793 F.3d 470, 474–76 (5th Cir. 2015). The Sixth Circuit recognizes that circumstantial evidence may independently defeat summary judgment through a "convincing mosaic," even where a plaintiff does not satisfy every prima facie element. *Tennial v. United Parcel Service, Inc.*, 840 F.3d 292, 304–05 (6th Cir. 2016).

The same whole-record principle appears in the Seventh, Eighth, Ninth, and Tenth Circuits. The Seventh Circuit warns that courts may not "carve up the evidence into discrete categories" at summary judgment. *Coleman v. Donahoe*, 667 F.3d 835, 862–63 (7th Cir. 2012). The Eighth Circuit asks whether the full record permits a reasonable inference of discrimination. *Torgerson v. City of Rochester*, 643 F.3d 1031, 1043–45 (8th Cir. 2011) (en banc). The Ninth Circuit rejects rigid prima facie gatekeeping when circumstantial evidence supports an inference of unlawful motive. *Cornwell v. Electra Central Credit Union*, 439 F.3d 1018, 1028–30 (9th Cir. 2006). And the Tenth Circuit, applying *Reeves*, requires courts to evaluate the "record as a whole" rather than disaggregate evidence into artificial categories. *Smothers v. Solvay Chemicals, Inc.*, 740 F.3d 530, 538–40 (10th Cir. 2014).

Taken together, those decisions reflect a consistent rule: at summary judgment, courts must treat *McDonnell Douglas* as a flexible evidentiary aid and evaluate circumstantial evidence cumulatively under Fed. R. Civ. P. 56. *Johnson II* departed from that rule by separating comparator, pretext, and circumstantial evidence, then rejecting each category despite preserved disputes over disciplinary authorship, supervisory authority, the completeness of the investigation, and the legitimacy of the stated reason for termination. See *Johnson II*, slip op. at 15–17; *Johnson I*, 948 F.3d at 1327–30; (Pet. App. 101a-106a).

The conflict is constitutional, not merely methodological. By applying *McDonnell Douglas* in segmented fashion, the Eleventh Circuit displaced the jury's role, contravened Fed. R. Civ. P. 56, and permitted contested constitutional deprivations to be adjudicated without full-record review. Other circuits treat *McDonnell Douglas* as a flexible, nonexclusive guide; the decision below used it as a dispositive filter. That divide affects U.S. Const. art. III review, U.S. Const. amend. VII jury function, and procedural fairness in civil-rights cases. It also confirms the concern identified by Justices Thomas and Gorsuch in *Hittle v. City of Stockton* that the judge-made *McDonnell Douglas* framework lacks textual grounding and has generated confusion in summary-judgment practice.

The decision also conflicts with the Eleventh Circuit's own recognition in *Johnson I* that 42 U.S.C. § 1983 constitutional claims should not be collapsed into the Title VII burden-shifting framework. Senior Judge Tjoflat warned that it is "improper to use *McDonnell Douglas's* burden-shifting framework, which utilizes presumptions based on the statutory Title VII scheme, to analyze § 1983 claims which are necessarily constitutional in nature." *Johnson v. Miami-Dade County*, 948 F.3d 1318, 1330 (11th Cir. 2020) (Tjoflat, J., specially concurring).

Yet *Johnson II* panel below did exactly what Senior Judge Tjoflat warned against, who indeed sat on both *Johnson I* and *Johnson II* panels, in concurrence.

That same error carried into the post-remand proceedings. Petitioner repeatedly objected that the district court allowed no discovery, evidentiary hearing, status conference, or meaningful case management before entering summary judgment on an undeveloped record. The panel treated those objections as waived or barred by law of the case, even though the alleged injuries arose after remand and were preserved in post-judgment motions, mandamus filings, emergency motions, and Fed. R. Civ. P. 28(j) submissions. (Pet. App. 221a-232a; 164a-181a). These objections were not newly raised; they consistently existed after remand. Yet the Eleventh Circuit concluded otherwise, contrary to the established record and through an incomplete de novo review. See *Johnson II*, slip op. at 17. By accepting the district court's incomplete review instead of remanding for a proper Fed. R. Civ. P. 56 determination, the Eleventh Circuit made its own de novo review incomplete and deepened the resulting constitutional injury and structural defect. (Pet. App. 126a-133a).

Based on its incomplete de novo review, Eleventh Circuit stated that challenges to the district court's discovery and evidentiary orders had "either already been decided or waived as a consequence of the law-of-the-case doctrine." *Johnson II*, No. 24-12676, slip op. at 17–18. But Petitioner's objection was different: the post-remand freeze allegedly deprived Petitioner of any meaningful opportunity to develop the record before summary judgment. (Pet. App. 221a-226a).

That treatment eliminated review of the process that produced the judgment. Due process requires a meaningful opportunity to be heard, and Fed. R. Civ. P. 56 permits summary judgment only after the nonmoving party has had a fair opportunity to develop and test material facts. Here, the district court allegedly prevented factual disputes from being developed, while the Eleventh Circuit later dismissed those disputes as conjecture. That inversion turns Fed. R. Civ. P. 56 from a screening device into a substitute for jury fact-finding. By recasting preserved post-remand objections as pre-remand or waived, the Eleventh Circuit avoided the central question: whether summary judgment may rest on a record the district court prevented Petitioner from developing. (Pet. App. 221a-226a).

Had discovery been permitted, Petitioner could have examined material witnesses on authorship, authenticity, investigation irregularities, delegated authority, and pretext. Instead, judgment entered on an undeveloped record, and the panel did not resolve the emergency motions or Fed. R. Civ. P. 28(j) submissions identifying those constitutional objections. The prejudice became irreversible when Captain White died during the discovery freeze. Respondents allegedly disclosed that death in White's separate federal litigation but not in Petitioner's pending case, despite White's relevance to authorship, falsification, and pretext. 11th Cir. R. Docs. 49-51, Fed. R. Civ. P. 28(j) filings submitted July-August 2025. (Pet. App. 73a, 126a).

Petitioner preserved those issues in post-remand filings, Fed. R. Civ. P. 28(j) submissions, emergency motions, and rehearing petitions. (Pet. App. 38a, 48a, 53a).

The constitutional injury therefore arises not only from the affirmance of summary judgment, but from judicial approval of a four-year-and-eight-month freeze that prevented development of the very evidence the Eleventh Circuit later deemed insufficient. That sequence implicates Rules 16, 26, and 56, the Fifth and Fourteenth Amendments' guarantee of a meaningful opportunity to be heard, and the Seventh Amendment's reservation of disputed facts to the jury. (Pet. App. 139a- 140a).

Certiorari is warranted to decide whether federal courts may foreclose discovery for nearly five years after remand, enter summary judgment without adversarial evidentiary development, and then shield that process from review by recasting preserved post-remand constitutional claims as waived or barred by law of the case. Did the panel affirm both an incomplete district court and de novo review?

The defect is not ordinary evidentiary disagreement. It is the Eleventh Circuit's incomplete de novo review refusal to resolve preserved structural, jurisdictional, and factual conflicts after sworn testimony, documentary evidence, and post-remand irregularities undermined Respondent's asserted rationale. (Pet. App. 101a-106a). Why were the post-remand emergency motions and 28(j) filings excluded from the final decision, held in abeyance 78 days, and deemed waived, without being resolved, before affirming the district court's incomplete review?

U.S. Const. art. III requires courts to adjudicate preserved controversies rather than avoid them procedurally. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177–78 (1803). That duty became critical when the remand record undermined *Johnson I*s premise that Patterson independently evaluated both Johnson's and White's versions of events, before termination. *Johnson I*, 948 F.3d at 1329–30. Patterson testified otherwise:

Q: "So, you had no communications with Tyrone White prior to making a decision to terminate Harrius Johnson?"

A: "No." (Pet. App. 235a-236a). **Did Patterson's answer preserve a Seventh Amendment jury inference? A jury could infer that Patterson did not communicate.**

That admission undermined the independent-investigation rationale. Under *Staub v. Proctor Hospital*, 562 U.S. 411, 421 (2011), an employer cannot avoid liability when the decisionmaker acts as a conduit rather than conducting an independent evaluation. The panel in *Johnson I* held: "Johnson's argument would fail because Patterson considered both Johnson's and White's versions of the events before finalizing Johnson's termination in January of 2016." See *Johnson v. Miami-Dade Cnty.*, 948 F.3d 1318, 1327 (11th Cir. 2020). If Patterson testified that he did not communicate with White, then *Staub's* "cat paw theory" supported Petitioner's ability to survive summary judgment, and the evidence developed after remand conflicted with the premise of *Johnson I*. Yet in *Johnson II*, the Eleventh Circuit invoked the law-of-the-case doctrine to avoid correcting the legal error created by *Johnson I*'s mistaken premise and incomplete review. See *Johnson v. Miami-Dade County*, No. 24-12676, slip op. at 17 (11th Cir. Mar. 19, 2026).

Captain Tyrone White's separate disavowal of authorship deepened the defect:

Q: "Did you write and author Harrius Johnson's dismissal?"

A: "No, I did not." (S.D. Fla. White Dep. Doc. DE 67-13 at 257:24–25).

The Eleventh Circuit, through its incomplete de novo review, allowed the Respondent to represent White as the author through both appeals, although the record showed White denied being the author. (Pet. App. 101a-106a).

Q: "Did you recommend termination based on it?"

A: "No, I did not . . . [the incidents] were not calls for termination." (S.D. Fla. DE 67-13 White Dep. at 254:14–17; 257:24–25).

These statements were preserved for jury consideration, yet the panel did not assess their significance under Fed. R. Civ. P. 56 and the Seventh Amendment.

Those admissions conflict with the panel's conclusion that "there is no evidence that White falsified anything." *Johnson II*, No. 24-12676, slip op. at 15–16. Petitioner identified the disputed disciplinary materials in Fed. R. Civ. P. 28(j) and emergency filings, but the panel treated the evidence as speculative rather than asking whether a jury could draw a reasonable inference. White testified that, during the disciplinary meeting, Petitioner was not "threatening, intimidating, yell, or use profanity", and instead "comported himself as a professional." S.D. Fla. R. DE 67-13, White Dep. at 252–253. (Pet. App. 80a). That account contradicted the termination discipline. S.D. Fla. DE 69-34, DAR. **A jury should have been allowed to evaluate that testimony against the termination record under Fed. R. Civ. P. 56 and the Seventh Amendment.**

Q: "Who wrote and authored Harrius Johnson's final DAR for his dismissal?"

A: "I could not tell you that." (S. D. Fla. White Dep. DE 67-13 at 190:19–21).

The panel never adjudicated that testimony. It dismissed the preserved evidence as "speculation or conjecture" while refusing to let a jury evaluate sworn testimony undermining the disciplinary process. *Johnson II*, slip op. at 16 ¶1. That fact-weighing conflicts with the Seventh Amendment and *Reeves*, 530 U.S. at 150–51.

The panel compartmentalized each evidentiary conflict and concluded that the whole record could not support retaliation. But Title VII and § 1983 do not authorize extra-statutory evidentiary barriers that prevent juries from considering materially disputed circumstantial evidence. This Court recently rejected judge-made limitations beyond statutory text. *Muldrow v. City of St. Louis*, 601 U.S. 346, 355–58 (2024); *Ames v. Ohio Dep't of Youth Servs.*, 605 U.S. ___, slip op. at 6–11 (2025).

The Fourteenth Amendment violation is equally substantial. Petitioner's property interest arose from the CBA, administrative orders, and mandatory safeguards requiring "just and proper cause" and "a complete and accurate investigation." Administrative Order 7-3 states that discipline "must be supported by a complete and accurate investigation." 11th Cir. Doc. 56, Ex. D at 47-49. Article 9 of the CBA provides: "No employee shall be disciplined except for a just and proper cause." (Pet. App. 36a). Under *Perry v. Sindermann*, 408 U.S. 593, 601–03 (1972), and *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 541–46 (1985), those guarantees created protected property interests the panel failed to resolve. (Pet. App. 86a-90a).

The panel acknowledged the absence of a complete investigation, un-interviewed witnesses, and uncorroborated allegations, yet treated those failures as legally irrelevant. *Johnson II*, slip op. at 16 ¶1. That reasoning conflicts with *Accardi*, 347 U.S. at 267–68, because mandatory investigative and just-cause safeguards cannot be disregarded while affirming a deprivation of a protected property interest. (Pet. App. 36a, 78a, 205a-206a). Did the panel allow due process deprivations?

The Eleventh Circuit then insulated these conflicts through law of the case. But prudential doctrines cannot bar correction of manifest injustice caused by materially false or destabilized factual premises. *Arizona v. California*, 460 U.S. 605, 618 n.8 (1983); *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 817 (1988).

Once the record contradicted *Johnson I*'s assumptions, the panel could not affirm while avoiding those contradictions. 11th Cir. Doc. 59-1, filed Mar. 12, 2026.

The constitutional injury is that the Eleventh Circuit used *McDonnell Douglas* as a substitute for U.S. Const. art. III adjudication, displacing Fed. R. Civ. P. 56, the Seventh Amendment, and Fourteenth Amendment due process protections in Title VII and § 1983 litigation. Does *McDonnell Douglas* supersede constitutional rights? **Did the panel's incomplete de novo review deny Petitioner his due process?**

***Johnson I* Mandate:**

"First, we conclude that the district court must reevaluate Johnson's comparators evidence under the new standard that we announced in *Lewis v. City of Union City,* 918 F.3d 1213 (11th Cir. 2019) (en banc), which was decided after the district court ruled in this case." See *Johnson v. Miami-Dade County,* 948 F.3 1318 (11th Cir. 2020). Did the district court violate the "Mandate Rule"?

Johnson I required renewed comparator review under *Lewis*, but the remand record also undermined the premise for rejecting Petitioner's cat's-paw theory: Patterson testified he had no communication with Captain White before termination. *Johnson v. Miami-Dade County*, 948 F.3d 1318, 1327–28 (11th Cir. 2020); (Pet. App. 235a-236a). **This statement raises pretext for a jury to infer.**

Petitioner does not ask this Court to reweigh the facts. He asks whether U.S. Const. art. III, Fed. R. Civ. P. 56, and the Seventh Amendment allow an appellate court to eliminate a jury issue previously recognized in *Johnson I* by treating the same preserved evidence as nonexistent or speculative in *Johnson II*.

The panel used law of the case to avoid review of post-remand injuries: no hearings, discovery, status conferences, or meaningful case management before summary judgment. (Pet. App. 170a). Instead of examining the entire record and drawing inferences for Petitioner, it affirmed while leaving unresolved disputes over authorship, authority, investigative integrity, discovery deprivation, property-interest due process, and the four-year-and-eight-month freeze. (Pet. App. 126a-132a; 135a-140a).

The panel also confined review to comparator evidence under *McDonnell Douglas* and ignored other preserved evidence of pretext. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802–04 (1973), is an evidentiary framework, not a license to disregard non-comparator evidence. A prima facie case plus evidence allowing disbelief of the employer's reason may support intentional-discrimination liability. *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 147–48 (2000). At summary judgment, courts must view the record favorably to the nonmovant and avoid weighing evidence. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 255 (1986); *Tolan v. Cotton*, 572 U.S. 650, 657 (2014). The panel did the opposite. (Pet. App. 127a-138a).

The Eleventh Circuit's *de novo* review departed from settled summary-judgment rules by misreading the chronology and resolving jury inferences.

Fed. R. Civ. P. 56 asks only whether a genuine factual dispute exists. Courts must review the whole record, draw reasonable inferences for the nonmovant, and avoid weighing credibility. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. at 255; *Tolan v.*

Cotton, 572 U.S. at 657–60; *Reeves v. Sanderson Plumbing Products, Inc.,* 530 U.S. at 150–51. The Eleventh Circuit departed from those rules here.

The panel characterized Petitioner's pretext evidence as "unsupported conjecture," reasoning that Patterson's distrust of White appeared only in a 2019 deposition. *Johnson v. Miami-Dade County*, No. 24-12676, slip op. at 16 (11th Cir. Mar. 19, 2026). It also concluded that "there is no evidence that White falsified anything." *Id.* Both conclusions misread the chronology and conflict with *Johnson I*'s recognition that falsification was jury-relevant. Rule 56 and discovery apply here.

The preserved record showed Patterson's distrust of White predated Petitioner's January 29, 2016, termination and continued through the relevant period:

Q: "Did you believe you didn't trust Mr. White's integrity as of 2013?"

A: "Yes."

Q: "As of today, March 8, 2019, do you trust Tyrone White?"

A: "No."

(Pet. App. 163a, 129a-131a).

Viewed under Fed. R. Civ. P. 56, that testimony allowed a jury to infer that Patterson relied on reports attributed to an official whose integrity he questioned. Petitioner also preserved evidence that Respondents knew of White's credibility issues through *White v. Miami-Dade County* but failed to disclose them here, implicating Fed. R. Civ. P. 26(e), 60(d), Fed. R. Evid. 608, due process, and jury-trial rights. 11th Cir. Docs. 49, 50, 51, 56, 57, 58, 59, 60, and 64. 11th Cir. R. Doc. 59 at 5-

20, Pet. Emergency Mot. to Vacate March 12, 2026. Although the panel held the emergency motions and Fed. R. Civ. P. 28(j) filings in abeyance for 78 days before deciding the appeal, it ultimately did not review the evidence and instead relegated those preserved filings to footnote 7. What evidence was presented in those motions?

In White's simultaneous litigation case against the Respondent, Judge Gayles addressed Patterson's trust in White and Patterson's decision to terminate White:

"Patterson signed his concurrence with the recommendation for termination on August 26, 2013. Patterson testified that [he] decided to terminate Plaintiff's employment because he did not trust Plaintiff's integrity after the incident. Plaintiff's employment was terminated on August 28, 2013." 11th Cir. Docs. 51-4 p.4; 59-1 at 8-11. Did the panel consider Judge Gayles's statement in a separate case about White?

The panel instead isolated the 2019 deposition date, ignored Patterson's admission that his distrust began years earlier, and drew the inference for Respondents. That approach contradicts Fed. R. Civ. P. 56. *Johnson v. Miami-Dade County*, No. 24-12676, slip op. at 16 (11th Cir. Mar. 19, 2026); (Pet. App. 163a).

The error was structural. Whether Patterson's longstanding distrust of White undermined the disciplinary process, supported an inference of retaliatory pretext, or cast doubt on Respondent's justification are questions of weight, credibility, and competing inference. Under the Seventh Amendment and Fed. R. Civ. P. 56, those determinations belong to the jury—not an appellate court conducting *de novo* review.

The panel compounded that error by acknowledging that Respondent failed to conduct the complete investigation required by mandatory disciplinary procedures yet minimizing that defect. In doing so, it overlooked the constitutional significance of departure from a mandatory investigative framework under *United States ex rel. Accardi v. Shaughnessy.* When an agency disregards procedures governing deprivation of a protected property interest, those departures may support an inference of arbitrariness, pretext, or discriminatory intent. 11th Cir. Doc. 58-1 at 5-20. The panel discarded preserved evidence that the Respondent withheld evidence of Patterson's delegated authority, payroll attendance records, and failed to disclose the death of Captain Tyrone White post-remand in violation of Fed. R. Civ. P. 56, 37, and 25. Even after Petitioner raised and presented a Rule 60(d)(3) claim to the Eleventh Circuit, the panel declined to review or decide the supporting evidence.

The decision conflicts with *Anderson, Reeves, Tolan,* and *Accardi.* Certiorari is warranted to reaffirm that *de novo* review may not reshape chronology, reject nonmovant inferences, or resolve jury questions. Administrative Orders 7-3 and 7-16 required discipline to rest on a complete and accurate investigation and limited dismissal authority to the Director or officially designated Acting Director; the panel never decided whether Respondents departed from those safeguards. 11th Cir. Docs. 58-1 at 5-18, 58-3 at 51-60, 58-5 at 63 Part I, and 58-6 at 66-68 Pet. Emer. Mot. for Sanctions and Criminal Referrals.

The same error infected the mandatory-investigation issue: *Johnson I* assumed independent review, while *Johnson II* failed to address evidence that Patterson never communicated with White and that no complete investigation occurred.

This contradiction matters because it left unresolved disputes over authorship, authority, investigation, and access to hearings or discovery—issues central to U.S. Const. art. III review, Fed. R. Civ. P. 56, and the Seventh Amendment. Petitioner also alleged that municipal officials acting under color of state law violated mandatory procedures, deprived him of property rights, denied equal treatment, and exceeded municipal limits. (Pet. App. 107a, 90a-98a). In *McDonald v. Santa Fe Trail Transportation Co.*, this Court held that disciplinary standards must be applied equally regardless of race. *McDonald v. Santa Fe Trail Transp. Co.,* 427 U.S. 273, 283 (1976). Did the panel determine who authored the termination discipline?

The constitutional significance of *McDonald* extends beyond comparator analysis: disciplinary standards must be applied uniformly. Petitioner preserved evidence that Respondents selectively denied him the complete and accurate investigation required before discipline and termination, while white and non-Black comparators received those protections. Administrative Order 7-3 required that "discipline must be supported by a complete and accurate investigation." (Pet. App. 107a-111a, 86a-90a). The panel deemed the missing-investigation evidence conjecture and never decided whether selective abandonment of mandatory procedures showed disparate treatment under *McDonald* and the Fourteenth Amendment. (Pet. App. 101a-106a). Nor did it account for *Ames v. Ohio Department of Youth Services*, 605 U.S. 303 (2025), which forbids judge-made asymmetrical evidentiary burdens. By collapsing constitutional claims into *McDonnell Douglas*, the panel failed to enforce limits on arbitrary state power.

CONCLUSION

As Madison warned, "The accumulation of all powers, legislative, executive, and judiciary, in the same hands . . . may justly be pronounced the very definition of tyranny." — *The Federalist* No. 47, at 298 (James Madison) (Clinton Rossiter ed., 2003).

The Eleventh Circuit affirmed despite acknowledging that the district court's Fed. R. Civ. P. 56 review was incomplete. In doing so, it left unresolved preserved post-remand issues central to the judgment's validity, including Petitioner's emergency motions and Fed. R. Civ. P. 28(j) filings; payroll and attendance records showing Patterson was on terminal leave after delegating authority to another director; Captain White's sworn denial that he authored the termination discipline; and the district court's four-year-and-eight-month freeze on discovery, hearings, and status conferences. Those unresolved matters raised threshold questions about whether Petitioner received a meaningful opportunity to develop the record, whether the disciplinary instrument remained valid after its alleged author disavowed it, whether the procedural freeze violated Fed. R. Civ. P. 56 and due process, and whether Patterson retained lawful termination authority after delegating that power under Administrative Order 7-16. (Pet. App. 241a). By failing to answer those questions, the panel conducted an incomplete de novo review and allowed final judgment to stand despite preserved constitutional, jurisdictional, and factual disputes. That failure violated U.S. Const. art. III, Fed. R. Civ. P. 56, and U.S. Const. amend. VII and U.S. Const. amend. V. (Pet. App. 37a – 44a).

The petition therefore presents a recurring and exceptionally important federal question: whether U.S. Const. art. III, Fed. R. Civ. P. 56, U.S. Const. amend. VII and U.S. Const. amend. V permits a court of appeals to affirm summary judgment after acknowledging an incomplete district-court Fed. R. Civ. P. 56 analysis while leaving preserved material disputes unresolved. It also asks whether the panel's affirmance of the district court's four-year-and-eight-month post-remand freeze on discovery and court proceedings denied Petitioner a meaningful opportunity to be heard and develop a complete record. (Pet. App. 54a-59a, 117a-118a).

For these reasons Certiorari should be granted.

Dated: August ___, 2026

Harrius Johnson
Petitioner, pro se
17180 SW 94 Avenue Unit 702
Palmetto Bay, FL 33156
Tel. 239-537-6494
Harrysjustice2@comcast.net