

**IN THE SUPREME COURT OF THE UNITED STATES**

No. \_\_\_\_\_

MITCHELL WATERS JR,  
Applicant,

v.

THE MAYOR AND CITY COUNCIL OF BALTIMORE,  
Respondent.

**ON APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION  
FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FOURTH CIRCUIT**

**APPLICATION FOR AN EXTENSION OF TIME  
TO FILE A PETITION FOR A WRIT OF CERTIORARI**

MITCHELL WATERS JR.

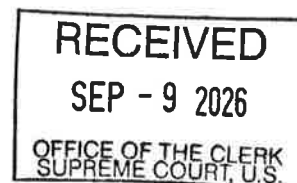
Applicant, Pro Se

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To the Honorable John G. Roberts, Jr., Chief Justice of the United States and Circuit Justice for the United States Court of Appeals for the Fourth Circuit:

Pursuant to Rules 13.5, 22, 30, and 33.2 of the Rules of the Supreme Court of the United States, Applicant Mitchell Waters respectfully requests a sixty-day extension of time within which to file a Petition for a Writ of Certiorari seeking review of the judgment of the United States Court of Appeals for the Fourth Circuit in *Waters v. Mayor and City Council of Baltimore*, No. 25-1440.

The Fourth Circuit entered judgment on June 24, 2026. No timely petition for rehearing was filed. Applicant's Petition for a Writ of Certiorari is presently due on September 22, 2026. Applicant respectfully requests a sixty-day extension. Because the sixtieth day falls on Saturday, November 21, 2026, Applicant requests that the filing deadline be extended to and including Monday, November 23, 2026.

#### **JUDGMENT FOR WHICH REVIEW IS SOUGHT**

On June 24, 2026, the United States Court of Appeals for the Fourth Circuit issued an unpublished per curiam opinion affirming the judgment of the United States District Court for the District of Maryland granting summary judgment in favor of Respondent. The Fourth Circuit's judgment disposed of Applicant's employment-discrimination claims, including claims alleging race and color discrimination, hostile work environment, and retaliation under Title VII and related federal and Maryland law. A copy of the Fourth Circuit's June 24, 2026 opinion is attached to this Application as Appendix A.

#### **JURISDICTION**

This Court has jurisdiction to review the judgment of the United States Court of Appeals for the Fourth Circuit pursuant to 28 U.S.C. § 1254(1). Under Supreme Court Rule 13.1, Applicant's time to petition for a writ of certiorari runs ninety days from entry of the judgment. Supreme Court Rule 13.5 authorizes a Circuit Justice, for good cause, to extend that time for a period not exceeding sixty days.

## **REASONS JUSTIFYING THE REQUESTED EXTENSION**

### **1. Delayed Notice of the Fourth Circuit's Decision**

Applicant was represented by counsel; District Legal Group, during the proceedings before the Fourth Circuit. The Fourth Circuit entered judgment on June 24, 2026. Applicant, however, was not notified by his former counsel of the Fourth Circuit's decision until July 17, 2026. Applicant possesses the July 17, 2026 email providing that notice.

By the time Applicant received notice, the ordinary period for seeking panel rehearing or rehearing en banc had expired. Applicant therefore did not have a meaningful opportunity during that period to personally review the decision, consult regarding whether rehearing was warranted, or begin evaluating Supreme Court review. Applicant states this circumstance to explain the practical reduction in the time available to evaluate and prepare a petition, not to assign fault to former counsel.

### **2. Need to Review the Record and Potential Questions Presented**

The contemplated petition arises from federal employment-discrimination litigation involving multiple claims and a substantial record. Additional time is necessary to review the District Court record and the appellate briefing, determine which issues were properly preserved, research the governing decisions of this Court and the courts of appeals, and formulate any Questions Presented that may warrant this Court's review.

Among the matters Applicant is evaluating are the application of Federal Rule of Civil Procedure 56 and federal employment-discrimination law at the summary-judgment stage, including the treatment of comparator evidence and the circumstances under which disputes concerning allegedly disparate treatment may be resolved as a matter of law.

### **3. Employer Response to Reported Racist and Threatening Communications**

Applicant is also evaluating the Fourth Circuit's disposition of his hostile-work-environment claim involving anonymous racist and threatening communications reported to his employer. The Fourth Circuit stated that the Baltimore City Fire Department undertook an investigation

in an attempt to identify the sender. Applicant maintains that the timing and nature of the employer's response are material and that the record reflects a substantial period between his report of the communications and later investigative activity.

Additional time is necessary to identify and review the portions of the record concerning when the communications were reported, what response occurred, when investigative activity occurred, the employer policies governing such reports, and the federal precedent governing whether an employer's remedial response was reasonably calculated to end racial harassment.

#### **4. Retaliation and Appellate-Waiver Issues**

Applicant is additionally evaluating the Fourth Circuit's determination that his retaliation argument on appeal was insufficiently developed under Federal Rule of Appellate Procedure 28. Additional time is necessary to compare the appellate briefs, the underlying record, and the District Court's disposition with the Fourth Circuit's decision and determine whether any issue arising from that ruling is properly preserved and appropriate for presentation to this Court.

#### **5. Applicant Is Seeking New Counsel**

Applicant is presently proceeding pro se and is actively seeking to retain new counsel experienced in federal appellate or Supreme Court practice to evaluate and, if retained, prepare the contemplated Petition for a Writ of Certiorari. The delayed notice of the Fourth Circuit's decision reduced the period in which Applicant could obtain his case materials, evaluate his remaining appellate options, and seek new representation.

The requested extension would provide a reasonable opportunity to retain new counsel and permit any newly retained counsel sufficient time to review the decisions below, the appellate briefs and relevant record, determine which issues were preserved, evaluate the appropriate Questions Presented, and prepare a petition complying with this Court's Rules. If Applicant is unable to retain counsel, the additional time is independently necessary for Applicant to perform these tasks pro se.

Applicant has not previously requested an extension of the deadline to file a Petition for a Writ of Certiorari in this matter. This Application is made in good faith and not for purposes of unnecessary delay.

### CONCLUSION

For the foregoing reasons, Applicant Mitchell Waters respectfully requests that the time within which to file a Petition for a Writ of Certiorari be extended sixty days from September 22, 2026. Because the sixtieth day falls on Saturday, November 21, 2026, Applicant respectfully requests that the deadline be extended to and including Monday, November 23, 2026.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mitchell Waters Jr.", written over a horizontal line.

MITCHELL WATERS JR.

Applicant, Pro Se

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Dated: September 4, 2026

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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**No. 25-1440**

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MITCHELL WATERS,

Plaintiff - Appellant,

v.

THE MAYOR AND CITY COUNCIL OF BALTIMORE,

Defendant - Appellee.

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Appeal from the United States District Court for the District of Maryland, at Baltimore.  
Albert David Copperthite, Magistrate Judge. (1:23-cv-01178-ADC)

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Submitted: April 28, 2026

Decided: June 24, 2026

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Before RUSHING and HEYTENS, Circuit Judges, and FLOYD, Senior Circuit Judge.

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Affirmed by unpublished per curiam opinion.

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**ON BRIEF:** Dionna Maria Lewis, DISTRICT LEGAL GROUP, PLLC, Washington, D.C., for Appellant; Ebony M. Thompson, City Solicitor, Michael P. Redmond, Chief Solicitor, BALTIMORE CITY LAW DEPARTMENT, Baltimore, Maryland; Eilene Brown, General Counsel, BALTIMORE CITY FIRE DEPARTMENT, Baltimore, Maryland, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Plaintiff-Appellant Mitchell Waters brought five employment discrimination claims against his employer arising from disciplinary actions. The district court granted summary judgment to Defendant-Appellees the Mayor and City Council of Baltimore (hereinafter “Baltimore” or “the City”) on all claims. We affirm in full.

I.

Waters is a Black man employed by the Baltimore City Fire Department (BCFD). The thrust of Waters’s complaint is that he was treated less favorably than non-Black peers when he was subject to BCFD’s disciplinary process. As a result, he sued the City for race discrimination, hostile work environment, and retaliation under Title VII, 42 U.S.C. §§ 1981–83, and the Maryland Fair Employment Practices Act (MFEPa). Following the district court’s decision on summary judgment, he timely appealed to this Court. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

II.

We review the district court’s decision on summary judgment *de novo*. *Bandy v. City of Salem*, 59 F.4th 705, 709 (4th Cir. 2023). Summary judgment is appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). We construe all facts and

make reasonable inferences in favor of the nonmovant. *Bandy*, 59 F.4th at 709. But “[t]he mere existence of a scintilla of evidence,” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986), or “conclusory allegations or denials, without more,” *Wai Man Tom v. Hosp. Ventures LLC*, 980 F.3d 1027, 1037 (4th Cir. 2020), are insufficient to defeat summary judgment.

### III.

We first analyze Waters’s race and color discrimination claim. We then turn to his hostile work environment claim. Finally, we address his retaliation claim. We affirm the district court in full.<sup>1</sup>

Waters’s complaint raised his claims under three statutes: Title VII, §§ 1981–83, and MFEPa. Courts apply the same analytical framework for claims under all three statutes. *See Gairola v. Va. Dep’t of Gen. Servs.*, 753 F.2d 1281, 1285 (4th Cir. 1985) (“Under Title VII and either § 1981 or § 1983, the elements of the required prima facie case are the same.”); *Haas v. Lockheed Martin Corp.*, 914 A.2d 735, 742 & n.8 (Md. 2007) (noting that MFEPa and Title VII are analogs and that Maryland state courts “traditionally

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<sup>1</sup> At summary judgment, the City argued that Waters failed to exhaust administrative remedies as to particular allegations in his complaint. The district court correctly rejected Waters’s sole counterargument that the City waived the defense by failing to raise it in the pleadings. On appeal, Waters changes tack and argues only that these incidents represent continuing violations under *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101 (2002). This argument is waived based on Waters’s failure to raise it before the district court. *See Arakas v. Comm’r, Soc. Sec. Admin.*, 983 F.3d 83, 105 (4th Cir. 2020) (“Generally, parties waive appellate review of any issue not raised below.”).

seek guidance from federal cases in interpreting [MFEPA]”). Accordingly, we assess all claims by reference to Title VII’s framework.

A.

The district court correctly granted summary judgment to Baltimore on Waters’s race and color discrimination claim. Waters claims that he was treated differently than similarly situated individuals outside of his protected class, in that (1) non-Black employees “engaged in more serious misconduct but faced either no disciplinary action or significantly less severe consequences,” (2) BCFD did not investigate complaints he made while it did investigate claims made by non-Black employees, and (3) other Black employees experienced similar disparate treatment. Opening Br. at 31–32, 35. A prima facie case of discrimination based on disparate treatment requires showing “(1) membership in a protected class; (2) satisfactory work performance; (3) [an] adverse employment action; and (4) different treatment from similarly situated employees outside the protected class.” *Perkins v. Int’l Paper Co.*, 936 F.3d 196, 207 (4th Cir. 2019). Though the City says Waters failed to establish both prongs three and four, we focus our review on prong four and find that Waters fails to establish a genuine issue of material fact as to whether he was treated differently than comparable non-Black employees.

Waters’s briefs fail to develop his argument. Waters identifies what he claims are examples of disparate treatment via numbered lists of factual allegations, but his argument is devoid of any reference to legal authority (or explanation whatsoever) demonstrating how these examples represent truly comparable conduct absent mitigating circumstances.

*See Haynes v. Waste Connections, Inc.*, 922 F.3d 219, 223–24 (4th Cir. 2019) (requiring a plaintiff to show that “the prohibited conduct in which he engaged was comparable in seriousness to misconduct of other employees outside the protected class who received less severe discipline” and the absence of “differentiating or mitigating circumstances that would distinguish their conduct or the employer’s treatment of them for it”).

Waters lists five examples of disparate treatment concerning himself and a comparator and four additional examples concerning other Black employees and non-Black comparators. Because the examples concerning other Black employees are not properly considered for summary judgment, we limit our analysis to the five examples concerning Waters.<sup>2</sup>

We begin with Waters’s first two examples. Perplexingly, both examples concern essentially the same incidents—Waters compares BCFD’s response to complaints of workplace violence made by him and made against him by non-Black employees. Waters complains that BCFD delayed one week in formally responding to his complaint, whereas non-Black employees, “when similarly situated, had their complaints of misconduct,

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<sup>2</sup> Waters says that other Black employees “experienced similar discriminatory acts,” and lists four incidents. Opening Br. at 35. But Waters points only to his own unverified complaint as evidence of each of these incidents. Neither Rule 56 nor our Circuit’s precedent allow a non-movant to “rely on matters pleaded in the complaint” to defeat summary judgment, except where the complaint is verified, in which case it is treated like an affidavit. *See Goodman v. Diggs*, 986 F.3d 493, 498 (4th Cir. 2021) (citation modified); Fed. R. Civ. P. 56(c)(1) (listing materials which may support factual positions and omitting pleadings). Waters’s complaint is not verified, but even if it were verified, it is not clear how the allegations related to *other* firefighters were “made on personal knowledge” or “would be admissible in evidence.” *See* Fed. R. Civ. P. 56(c)(4). Accordingly, we do not consider these examples.

harassment, and/or workplace violence investigated immediately.” Opening Br. at 32. But Waters fails to identify the comparable time period that elapsed before the comparison complaints were filed. Even if we assume the comparison complaints were filed the very instant the complainant reported each incident to a supervisor, we fail to see how this difference in timing is even relevant. A showing of disparate treatment requires that Waters and a comparator engaged in conduct of comparable seriousness but the comparator “received less severe discipline.” *Haynes*, 922 F.3d at 223. Waters fails to explain how a weeklong delay related to filing paperwork represents less severe discipline, and we decline to make this argument on his behalf. *See Hensley ex rel. North Carolina v. Price*, 876 F.3d 573, 580 n.5 (4th Cir. 2017).

Waters’s third example alleges that he “had late charges filed against him while transferring from one station to the next” while two non-Black firefighters “were both late under identical circumstances.” Opening Br. at 32–33. We see at least two issues with this seemingly straightforward example. First, Baltimore points out that Waters never actually received late charges and Waters concedes as much. Waters does not explain how *attempted* “late charges” constitute an adverse employment action at all, and we cannot divine how this might impact the “terms, conditions, or benefits of [his] employment.” *See Von Gunten v. Maryland*, 243 F.3d 858, 865 (4th Cir. 2001) (citation modified). Second, Waters cites only to his complaint and interrogatory responses. Of course, interrogatory responses can support a factual assertion, Fed. R. Civ. P. 56(c)(1)(A), but Waters must point to more than “conclusory allegations, mere speculation, the building of one inference upon another, or the mere existence of a scintilla of evidence,” *Dash v. Mayweather*, 731

F.3d 303, 311 (4th Cir. 2013). Reading the complaint and his interrogatory responses, it is not clear how Waters's allegations regarding the other firefighters are based on his own personal knowledge or documentary evidence as opposed to mere speculation. Waters does not explain how he knows that no supervisor made any comment about his peers' lateness, and he cites no corroborating evidence, e.g., deposition testimony or time cards, related to any of the comparator firefighters.

In his fourth example, Waters points to EVD Coster, a white employee, who was not subject to discipline following a complaint by Waters. But Waters fails to establish how the conduct by Coster for which he was not subject to discipline is "comparable in seriousness" to any conduct for which Waters did receive disciplinary action. *See Haynes*, 922 F.3d at 223. Indeed, Waters does not even specify which conduct we are meant to compare.

Waters's last example concerns "anonymous, racist, and threatening messages" he received. Opening Br. at 33. Waters claims "no investigation or intervention was conducted," and again points to complaints by Lt. Cole and Lt. DiRusso which he says "were investigated immediately." *Id.* Although these anonymous racist messages are disturbing, the anonymity renders this conduct incomparable to the other complaints. Waters characterizes BCFD's actions in response to the anonymous messages as "Smoke and Mirrors," "half-hearted," and "inauthentic." *Id.* at 34. But Waters does not identify any other instance where BCFD undertook a more serious or rigorous investigation after a peer was subject to anonymous harassment. We cannot find that BCFD's prompt

investigation of a complaint identifying a specific employee is comparable to its response to a complaint regarding anonymous conduct.

Because Waters does not sufficiently establish that he was treated differently from similarly situated employees outside the protected class, he fails to make a prima facie case of race discrimination under any of the relevant statutes. *See Perkins*, 936 F.3d at 207. Thus, the district court correctly granted summary judgment on this claim.

B.

The district court also correctly granted summary judgment to the defendants on Waters's hostile work environment claim. To state a claim for hostile work environment, Waters must establish that "(1) [he] experienced unwelcome harassment; (2) the harassment was based on . . . race[] . . . ; (3) the harassment was sufficiently severe or pervasive to alter the conditions of employment and create an abusive atmosphere; and (4) there is some basis for imposing liability on the employer." *Bass v. E.I. DuPont de Nemours & Co.*, 324 F.3d 761, 765 (4th Cir. 2003).

Waters fails to create a genuine dispute of material fact as to the claimed harassment, either in that he does not connect the conduct to race or he does not establish that it is imputable to BCFD. To support the nexus to race, Waters essentially points only to his disparate treatment argument. We found that the record does not support this theory, and neither does it support the nexus to Waters's protected status needed for his hostile work environment claim. Only the anonymous racist text messages Waters received are related to his race, but as the district court correctly noted, Waters was "unable to link [the

messages] to any of his coworkers,” J.A. 1257, and he does not establish how the messages are imputable to BCFD. “An employer may be held liable for a hostile work environment if it knew or should have known about the harassment and failed to take effective action to stop it by responding with remedial action reasonably calculated to end the harassment.” *Webster*, 38 F.4th at 415 (citation modified). The text messages were sent anonymously, and BCFD did undertake an investigation to attempt to identify the sender. Therefore, the district court did not err in granting judgment on the hostile work environment claim.

C.

Finally, we affirm the district court’s judgment on Waters’s retaliation claim. This claim requires that Waters prove “(1) that he engaged in protected activity, (2) that the employer took a materially adverse action against him and (3) there is a causal connection between the protected activity and the adverse action.” *Perkins*, 936 F.3d at 213. After articulating the legal standards governing retaliation claims for more than three pages, with respect to his own claim, Waters says merely that the district court erred by failing to “view the evidence and draw all reasonable inferences in the light most favorable to Mr. Waters,” because he has created a genuine issue of material fact as to the causal connection between the protected activity and adverse actions alleged. Opening Br. at 52. “We deem this perfunctory and undeveloped claim waived.” *Russel v. Absolute Collection Servs., Inc.*, 763 F.3d 385, 396 n.\* (4th Cir. 2014); *see also* Fed. R. App. P. 28(a)(8)(A) (requiring an appellant to contain specifically in the argument section of his brief his “contentions and

the reasons for them, with citations to the authorities and parts of the record on which the appellant relies”).

IV.

For the foregoing reasons, the judgment of the district court is

*AFFIRMED.*

**IN THE SUPREME COURT OF THE UNITED STATES**

MITCHELL WATERS, Applicant,

v.

THE MAYOR AND CITY COUNCIL OF BALTIMORE, Respondent.

**CONSOLIDATED DECLARATION AND PROOF OF SERVICE**

I, Mitchell Waters, declare that I am the Applicant in this matter and am proceeding pro se.

On September 4, 2026, I served one copy of the Application for an Extension of Time to File a Petition for a Writ of Certiorari, including Appendix A, upon counsel for Respondent by depositing copies with the United States Postal Service, with first-class postage prepaid, addressed as follows:

**Michael Patrick Redmond**

Chief Solicitor / Counsel for Respondent

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**Eilene Brown, Esq.**

General Counsel, Legal and Regulatory Affairs / Counsel for Respondent

Baltimore City Fire Department

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At or reasonably contemporaneously with the mailing described above, I also transmitted an electronic copy of the same filing to Michael Patrick Redmond at michael.redmond@baltimorecity.gov, Ebony M. Thompson at Ebony.Thompson@baltimorecity.gov, and Eilene Brown at Eilene.Brown@baltimorecity.gov.

I declare that all parties required to be served have been served.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 4, 2026.

A handwritten signature in black ink, appearing to read "Mitchell D. Waters". The signature is fluid and cursive, with a long horizontal stroke at the end.

MITCHELL WATERS

Applicant, Pro Se