

No. 18-5411

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

SUBI MEHMETI, *Petitioner*,

– against –

JOFAZ TRANSPORTATION, INC., *Respondent*.

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

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The Petitioner has not succinctly proposed a “question presented”. However, to the best of its ability, Respondent understands that Petitioner asserts the following question in the Petition:

1. Whether Respondent violated the Family Medical Leave Act?

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29 and to enable justices of the court to evaluate possible disqualification or recusal, the undersigned counsel of record for Respondent, JOFAZ TRANSPORTATION, INC., states that there are no parent corporations or any publicly held corporation which owns 10% or more of its stock.

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OPINIONS BELOW

The relevant decisions to this Writ of Certiorari are from the United States Court of Appeals for the Second Circuit issued on May 23, 2016 (case no. 15-2609, in a reported decision at *Mehmeti v. Jofaz Transp., Inc.*, 649 Fed. Appx. 112, 2016 U.S. App. LEXIS 9343), June 5, 2017 (case no. 17-721) (in an unreported decision), and on May 24, 2018 (case no. 18-477) (in an unreported decision).

STATUTORY PROVISIONS INVOLVED

This case involves the application of 29 U.S.C. § 2601 *et seq.*

STATEMENT OF THE CASE

On November 28, 2012, Petitioner commenced an action in the United States District Court for the Eastern District of New York against Respondent alleging violations of the Family Medical Leave Act (“FMLA”). In that action, on May 26, 2015, summary judgment was entered in favor of Respondent dismissing Petitioner’s FMLA claims, and the Second Circuit affirmed on May 23, 2017. *Mehmeti v Jofaz Transp.*, 2015 U.S. Dist. LEXIS 67364 (E.D.N.Y. May 22, 2015), aff’d, 649 F.App’x. 112 (2d Cir. 2016). Petitioner did not file a writ of certiorari with this Court concerning the dismissal of his FMLA claims.

On December 20, 2016, Petitioner commenced a second action in the United States District Court for the Eastern District of New York. In the second action, Petitioner restated the factual allegations that were contained in his November 28, 2012 Complaint regarding the circumstances of his termination from Respondent and asserted, for the first time, a claim under the Americans With Disabilities Act

("ADA"). On January 25, 2017, the United States District Court for the Eastern District of New York dismissed the Complaint, *sua sponte*, for failure to state a claim under the ADA because Petitioner failed to allege that he was a qualified individual with a disability within the meaning of the ADA nor that he was otherwise qualified to perform the essential functions of his job, with or without accommodation. Mehmeti v. Jofaz Transp., Inc., 2017 U.S. Dist. LEXIS 12509 (E.D.N.Y. Jan. 25, 2017). The Court noted that Petitioner, in fact, told his supervisor that he was "unable to work" and was "totally paralyzed." *Id.* The Court granted Petitioner leave to amend the Complaint. *Id.*

On February 17, 2017, Petitioner filed an Amended Complaint. On March 7, 2017, the United States District Court for the Eastern District of New York *sua sponte*, dismissed Petitioner's Amended Complaint because it still failed to allege that he was qualified to perform the essential functions of his job as required under the ADA, and the Second Circuit affirmed on June 5, 2017. Mehmeti v. Jofaz Transp., Inc., 2017 U.S. Dist. LEXIS 32766, 2017 WL 908192 (E.D.N.Y. Mar. 6, 2017). Petitioner filed a *writ of certiorari* with this Court with respect to that action. On December 4, 2017, this Court denied Petitioner's writ of certiorari. Mehmeti v Jofaz Transp., Inc., ___US___, 138 S Ct 503 (2017).

On January 16, 2018, Petitioner commenced a third action in the United States District Court for the Eastern District of New York. In the third action, like the first action, Petitioner once again alleged that Respondent violated the FMLA based on the same factual allegations that were contained in his November 28, 2012 Complaint regarding the circumstances of the termination of his employment with

Respondent. Accordingly, on February 9, 2018, the United States District Court for the Eastern District of New York dismissed Petitioner's third action under the doctrines of *res judicata* and collateral estoppel and the Second Circuit affirmed on May 24, 2018. See Petitioner's Appendix.

Petitioner's claims are barred by the doctrines of *res judicata* and collateral estoppel as he is seeking to relitigate the same issue that was decided by the United States District Court for the Eastern District of New York on May 26, 2015 which was affirmed by the Second Circuit on May 23, 2016. Petitioner failed to file a Writ of Certiorari within ninety (90) days of May 23, 2016 – the date on which the Second Circuit denied his appeal concerning his FMLA claims. See 28 U.S.C. § 2101; Rule 13 of the United States Supreme Court.

A. The Facts

Jofaz provides bus transportation to students. Petitioner was employed by Jofaz as a bus driver. Petitioner was terminated for using the bus without authorization.

B. The Opinions Below

On February 9, 2018, the United States District Court for the Eastern District of New York dismissed Petitioner's third action under the doctrines of *res judicata* and collateral estoppel and the Second Circuit affirmed on May 24, 2018. See Petitioner's Appendix.

REASON FOR DENYING THE WRIT

The Petitioner's Petition for a Writ of Certiorari should be denied. Petitioner is seeking to relitigate the same issue that was decided by the United States District Court for the Eastern District of New York on May 26, 2015 which was affirmed by the Second Circuit on May 23, 2016. His claims are barred by the doctrines of *res judicata* and collateral estoppel. Moreover, Petitioner failed to file a Writ of Certiorari within ninety (90) days of May 23, 2016.

PETITIONER'S MOTION *IN FORMA PAUPERIS* SHOULD BE DENIED

Petitioner's motion to proceed *in forma pauperis* should respectfully be denied.

Under 28 U.S.C. § 1915(a)(3), "[a]n appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith." In this case, when the United States District Court Eastern District of New York dismissed Petitioner's Complaint, the Court stated that it "certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal would not be taken in good faith and therefore *in forma pauperis* is DENIED for purpose of an appeal." See Petitioner's Appendix, citing Coppedge v. United States, 369 U.S. 438, 444-45, 82 S. Ct. 917, 8 L. Ed. 2d 21 (1962).

Subsequently, on May 24, 2018, the United States Court of Appeals for the Second Circuit denied Petitioner's motion *in forma pauperis* and denied the appeal "because it 'lacks an arguable basis either in law or in fact.'" See Petitioner's Appendix

It is respectfully submitted that this Court should, for the same reasons, deny Petitioner's motion to proceed *in forma pauperis*.

CONCLUSION

For all the above reasons, the petition for a Writ of Certiorari should be denied and Petitioner's motion to appeal *in forma pauperis* should be denied.

August 3, 2018

Respectfully submitted,

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