

No. 19-252

In the
Supreme Court of the United States

MICHAEL ADAM BOOTH,
Petitioner,
v.

NISSAN NORTH AMERICA, INC.,
Respondent.

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

BRIEF IN OPPOSITION

STANLEY E. GRAHAM
Counsel of Record
FREDERICK L. CONRAD III
WALLER LANSDEN DORTCH
& DAVIS, LLP
511 Union Street, Suite 2100
Nashville, Tennessee 37219-1760
(615) 244-6380
stan.graham@wallerlaw.com

Counsel for Respondent

QUESTION PRESENTED

Whether the United States Court of Appeals for the Sixth Circuit erred in affirming the District Court's grant of summary judgment to Respondent when the Petitioner admitted he was not disabled and failed to present any evidence he was disabled, Petitioner's discrimination claim was initiated after the limitations period had expired, and Respondent successfully accommodated Petitioner with employment in the same position he had held for years.

STATEMENT PURSUANT TO RULE 29.6

Nissan North America, Inc. is 100% owned by Nissan Motor Co., Ltd., a Japanese corporation which is publicly traded in Japanese securities markets and which has American Depository Receipts traded in U.S. Markets. Nissan Motor Co., Ltd. is approximately 43.4% owned by Renault S.A., which is publicly traded on Euronext Paris.

STATEMENT OF RELATED PROCEEDINGS

- *Booth v. Nissan North America, Inc.*, No. 18-5985 (6th Cir.) (opinion issued and judgment entered June 7, 2019; mandate issued July 12, 2019).
- *Booth v. Nissan North America, Inc.*, No. 3:17-cv-00755 (M.D. T.N.) (memorandum of decision issued August 17, 2018; final judgment entered August 17, 2018).

There are no additional proceedings in any court that are directly related to this case.

TABLE OF CONTENTS

QUESTION PRESENTED	i
STATEMENT PURSUANT TO RULE 29.6	ii
STATEMENT OF RELATED PROCEEDINGS ..	iii
TABLE OF AUTHORITIES	v
OPINIONS BELOW.....	1
STATEMENT OF THE CASE.....	1
I. Introduction.....	1
II. Statement of Facts	1
III. Proceedings Below.....	2
REASONS FOR DENYING THE WRIT.....	4
I. Petitioner Asserts No Compelling Reasons for a Grant of Certiorari.....	4
II. The Sixth Circuit Correctly Applied the ADA and Followed Post-Amendment Precedent. .	6
CONCLUSION.....	8

TABLE OF AUTHORITIES**CASES**

<i>Allen v. SouthCrest Hosp.,</i> 455 F. App'x 827 (10th Cir. 2011)	8
<i>Booth v. Nissan North America, Inc.,</i> No. 3:17-cv-00755, 2018 U.S. Dist. LEXIS 139882 (M.D. Tenn. Aug. 17, 2018)	1
<i>Booth v. Nissan North America, Inc.,</i> 927 F.3d 387 (6th Cir. 2019).	1, 7, 8
<i>Carothers v. County of Cook,</i> 808 F.3d 1140 (7th Cir. 2015).	8
<i>Ferrari v. Ford Motor Co.,</i> 826 F.3d 885 (6th Cir. 2016).	8
<i>Mancini v. City of Providence,</i> 909 F.3d 32 (1st Cir. 2018).	8
<i>Tinsley v. Caterpillar Fin. Servs., Corp.,</i> 766 F. App'x 337 (6th Cir. 2019)	8
<i>Toyota Motor Mfg., Ky. v. Williams,</i> 534 U.S. 184 (2002).	7
<i>Young v. UPS,</i> 135 S. Ct. 1338 (2015).	7

STATUTES

42 U.S.C. § 12102(4).	8
42 U.S.C. § 12112(a).	7

RULES

SUP. CT. R. 10	4, 5, 6
SUP. CT. R. 10(a)	4
SUP. CT. R. 10(b)	4
SUP. CT. R. 10(c)	4

OPINIONS BELOW

The opinion of the United States Circuit Court of Appeals for the Sixth Circuit is reported at *Booth v. Nissan North America, Inc.*, 927 F.3d 387 (6th Cir. 2019). The opinion of the United States District Court for the Middle District of Tennessee is reported at *Booth v. Nissan North America, Inc.*, No. 3:17-cv-00755, 2018 U.S. Dist. LEXIS 139882 (M.D. Tenn. Aug. 17, 2018).

STATEMENT OF THE CASE

I. Introduction

Petitioner’s “Statement of the Case” contains numerous misstatements, omissions of fact, misrepresentations of the district court and circuit court proceedings, and alleged facts not contained in the record. Respondent, therefore, provides the following statement of facts and summary of the proceedings below.

II. Statement of Facts

Respondent Nissan North America, Inc. (“Nissan”) continuously employed Petitioner as a production technician for over sixteen years. Petitioner suffered a work-related injury in 2004, and his physician cleared him to return to work in 2005 with certain recommended work restrictions regarding reaching above his head and flexing his neck. (Pet.’s App., pp. 3–4). Petitioner continued working in his position as a production technician for a decade, when in 2015, he requested a transfer to a different position in the factory. (Pet.’s App., pp. 3–5). Nissan denied the

request because the new position was not within Petitioner's 2005 work restrictions. (Pet.'s App., pp. 3, 5).

Soon after Petitioner's transfer request was denied, Nissan announced plans to restructure the positions on its assembly line, including Petitioner's. (Pet.'s App., pp. 3, 5–7). Petitioner's newly restructured job would have conflicted with his now eleven-year-old work restrictions, so Nissan encouraged Petitioner to update his restrictions and continued to employ Petitioner in his regular position throughout the process. (Pet.'s App., pp. 3, 6–8). Petitioner's physician updated his work restrictions to reflect Petitioner's current physical condition, and Petitioner continued his uninterrupted employment with Nissan. (Pet.'s App., pp. 3–4, 8).¹

Petitioner subsequently filed a charge with the EEC, asserting disability discrimination based on the recommendation that he return to his doctor to review and update his then decade-old work restrictions. (Pet.'s App., pp. 8–9).

III. Proceedings Below

Petitioner filed the present lawsuit in the Middle District of Tennessee, alleging, *inter alia*, that Nissan violated the Americans with Disabilities Act (the “ADA”). He claimed that Nissan discriminated against and did not accommodate him when it denied a

¹ Although Petitioner claims Nissan “revoked” his accommodation shortly after the Sixth Circuit’s decision, as of the date of this filing, Petitioner is still employed at Nissan and actively working on the production line.

transfer request and encouraged him to have his work restrictions reviewed and updated. (Pet.’s App., pp. 8–9). On motion of Nissan, District Judge Campbell granted summary judgment in favor of Nissan, dismissing Petitioner’s ADA claims because denial of a lateral transfer was not an adverse employment action, Petitioner was accommodated by being continuously employed in his current position, and suggesting an employee have his work restrictions reviewed did not violate the ADA. (Pet.’s App., pp. 25–33). Although Nissan argued that Petitioner was not disabled in front of the district court, the court did not reach that issue, having granted Nissan summary judgment on other grounds. (Pet.’s App., p. 26). Petitioner appealed.

The Sixth Circuit affirmed the district court on all counts, finding not only that Nissan had accommodated Petitioner, but also that Petitioner was not disabled and that Petitioner’s discrimination claims were time-barred. (Pet.’s App., pp. 10–19). After the full Sixth Circuit Court denied his petition for *en banc* rehearing, Petitioner filed the present Petition for Writ of Certiorari in which he challenges only the Sixth Circuit’s finding that he was not disabled.

REASONS FOR DENYING THE WRIT

I. Petitioner Asserts No Compelling Reasons for a Grant of Certiorari.

Petitioner fails to state—much less provide support for—any compelling reason for a grant of certiorari in this case. Petitioner neither alleges nor demonstrates that any of the well-established grounds defined by this Court for granting certiorari are present. Petitioner’s sole concern appears to be that the Circuit Court ruled against him on the question of whether he had a disability as defined under the ADA. The Sixth Circuit’s application of a properly stated rule of law, however, is not grounds for granting certiorari.

This Court, through Supreme Court Rule 10 and in various opinions granting certiorari, has set forth various compelling reasons for which the Court may grant certiorari.² None are present in this case:

- The decision of the Sixth Circuit does not conflict with a decision of another circuit on the issue of what constitutes a disability under the ADA.

² Supreme Court Rule 10, reflecting longstanding Supreme Court practice, states, “A petition for a writ of certiorari will be granted only for compelling reasons.” SUP. CT. R. 10. Rule 10 goes on to set forth a list, though not exhaustive, of factors that may enter into the Court’s decision whether to grant a petition for certiorari. The five factors set forth in Rule 10(a) and (c) are relevant to the issue of certiorari in this case; Rule 10(b) addresses only decisions by state courts of last resort. *See id.*

- The decision of the Sixth Circuit does not decide an important federal question that conflicts with a decision of the Tennessee Supreme Court.
- Neither the Sixth Circuit nor the District Court departed from the accepted and usual course of judicial proceedings; thus, this Court's supervisory power need not be exercised.
- The Sixth Circuit did not decide an important issue of federal law that has not, but should be, decided by this Court.
- The decision of the Sixth Circuit does not conflict with any decisions of this Court.

See SUP. CT. R. 10. Petitioner has not asserted or proved that these or any other compelling reasons are present in this case.

Far from providing any compelling reasons for granting certiorari, the Petition consists primarily of a series of large block quotes of irrelevant case law and legislative history relating to the 2008 amendment of the ADA followed by a denouncement of a fictitious strawman of the Sixth Circuit's actual opinion. But even in its arguments against a misrepresentation of the Sixth Circuit's decision, not once does the Petition point to a conflicting decision from another circuit, the Tennessee Supreme Court, or this Court or explain how the Sixth Circuit departed from the accepted and usual course of judicial proceedings. Instead, Petitioner argues only that the Sixth Circuit took too strict an interpretation of the definition of disability under the current version of the ADA when it decided he was not disabled.

In essence, the Petition is a complaint that the Sixth Circuit misapplied the ADA to the facts of Petitioner's case. Even if that complaint were true—which it is not—such a misapplication is not a compelling reason for granting certiorari. *See* SUP. CT. R. 10 (“A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.”).

Accordingly, because Petitioner fails to assert or prove any compelling reason for this Court to review the well-reasoned decision of the Sixth Circuit, his Petition should be denied.

II. The Sixth Circuit Correctly Applied the ADA and Followed Post-Amendment Precedent.

The Sixth Circuit identified the correct rules of law and applied them in the case below. The District Court did not err in granting summary judgment to Nissan, and the Sixth Circuit did not err in affirming the District Court on several independent grounds, including that Petitioner was not disabled. Even if Petitioner had been found to be disabled under the ADA, the Sixth Circuit would still have affirmed summary judgment on the independent grounds that his discrimination claim was untimely and he had been sufficiently accommodated through his continued employment. The lack of error below and the fact that accepting all of Petitioner's arguments in the Petition would still not change the ultimate outcome of his case militates in favor of denial of certiorari.

Petitioner has the burden to prove he is disabled under the ADA in order to proceed on his claims. *See Toyota Motor Mfg., Ky. v. Williams*, 534 U.S. 184, 193 (2002); *see also* 42 U.S.C. § 12112(a). While the 2008 amendment may have expanded the definition of “disability” under the ADA, it did not remove the *prima facie* requirement that a plaintiff actually be disabled. *See Young v. UPS*, 135 S. Ct. 1338, 1348 (2015). Therefore, to proceed on his claims at the district court and the Sixth Circuit, Petitioner would have had to meet the threshold burden of demonstrating that he was disabled. As the Sixth Circuit correctly found, Petitioner failed to pass this threshold.

The Petition consists largely of hyperbolic and unsupported statements about the effect of the Sixth Circuit’s opinion on the public’s interests. These statements include that it “eliminated millions of disabled employees from the Americans with Disabilit[ies] Act protection” “with the stroke of a pen,” (Pet. at 9), “creat[ed] a class of dependent, non-productive adults just after a herculean effort by both parties of Congress to expand the definition of disability,” (Pet. at 10), and “relied on pre-amendment cases that were jettisoned by Congress” “[w]ith little to no post amendment precedence.” (Pet. at 19). None of these statements are true.

In reality, the Sixth Circuit expressly discussed the 2008 amendment and found that even under its expanded definition of disability, Petitioner failed to demonstrate that he fell within that definition. *Booth v. Nissan N. Am., Inc.*, 927 F.3d 387, 393–95 (6th Cir. 2019). Moreover, the Sixth Circuit supported this

finding with citations to the amended statute and a litany of post-amendment case law from both the Sixth Circuit and several sister circuits. *See id.* at 394 (quoting 42 U.S.C. § 12102(4)); *see also id.* at 394–95 (citing *Tinsley v. Caterpillar Fin. Servs., Corp.*, 766 F. App’x 337, 341–42 (6th Cir. 2019); *Mancini v. City of Providence*, 909 F.3d 32, 42 n.6 (1st Cir. 2018); *Ferrari v. Ford Motor Co.*, 826 F.3d 885, 893 (6th Cir. 2016); *Carothers v. County of Cook*, 808 F.3d 1140, 1147 (7th Cir. 2015); and *Allen v. SouthCrest Hosp.*, 455 F. App’x 827, 835 (10th Cir. 2011)).

Contrary to Petitioner’s claims, the Sixth Circuit did not misapply the law. It correctly found that even under the 2008 amendment to the ADA, an individual fully employed at a physically demanding job on an assembly line for over a decade was not—without some other evidence—disabled under the ADA just because he had work restrictions that prevented him from performing another specific position on the assembly line. *Id.* at 394–95. That finding is a correct application of the law, and there is no conflict between it and any precedent from another circuit or this Court.

Accordingly, because the Sixth Circuit correctly applied the law to this case and Petitioner has cited no departure from the accepted course of judicial proceedings or from any settled, applicable law, the Petition should be denied.

CONCLUSION

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

Respectfully submitted,

STANLEY E. GRAHAM
Counsel of Record
FREDERICK L. CONRAD III
WALLER LANSDEN DORTCH & DAVIS, LLP
511 Union Street, Suite 2100
Nashville, Tennessee 37219-1760
(615) 244-6380
stan.graham@wallerlaw.com

Counsel for Respondent