

No. 19-395

In the
Supreme Court of the United States

CHRISTINA ALESSIO,
Petitioner,
v.

UNITED AIRLINES, INC.,
Respondent.

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

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether Petitioner's claim under the Hazardous Materials Transportation Act ("HMTA"), 49 U.S.C. § 5124, was properly dismissed because the HMTA does not provide for a private cause of action.
2. Whether the lower courts properly disregarded extraneous materials filed by Petitioner when considering Respondent's motions to dismiss.

**PARTIES TO PROCEEDING
AND RULE 29.6 STATEMENT**

The caption of the case contains the name of all parties. The parent company of Respondent United Airlines, Inc. is United Airlines Holdings, Inc. Other than United Airlines Holdings, Inc., no other parent or publicly held company owns 10% or more of United Airlines, Inc.'s stock.

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OPINION BELOW

The opinion of the Sixth Circuit is not published but is available at 2019 U.S. App. LEXIS 18881, and reproduced in Petitioner's Appendix at App. 1a-6a. The opinions of the District Court for the Northern District of Ohio, Eastern Division, are not published but are available at 2018 U.S. Dist. LEXIS 25120 and 2018 U.S. Dist. LEXIS 197834, and reproduced in Petitioner's Appendix at App. 7a-31a.

JURISDICTION

The judgment of the Sixth Circuit Court of Appeals was entered on June 24, 2019. The Petition for Writ of Certiorari was filed on September 19, 2019. Petitioner invokes the jurisdiction of this Court under 28 U.S.C. § 1254(1).

STATUTE INVOLVED

Hazardous Materials Transportation Act, 49 U.S.C. § 5124. (See Petition for Writ of Certiorari, pp. 3-4.)

STATEMENT OF THE CASE

Petitioner Christina Alessio (“Alessio” or “Petitioner”), proceeding *pro se*, has complained at length about her employer Respondent United Airlines, Inc.’s (“United” or “Respondent”) use of chemical cleaning products and air fresheners in the aircraft cabins within which she works as a flight attendant, which she believes to be in violation of the Hazardous Materials Transportation Act (“HMTA”).

Alessio initially filed suit against United and a number of individuals in the United States District Court for the Northern District of Ohio. (*See* Petitioner’s App. 66a-75a.) Although difficult to interpret, Alessio’s Complaint seemingly alleged: (1) violation of the HMTA, (2) a failure to accommodate a purported disability, (3) age discrimination, and (4) retaliation. *Id.*

On August 2, 2017, pursuant to Fed.R.Civ.P. 12(b)(6), United filed a motion to dismiss Alessio’s Complaint for failure to state a claim or, in the alternative, for a more definite statement. (*See* N.D. Ohio Docket No. 8, Petitioner’s App. 39a.) On February 15, 2018, the District Court issued a Memorandum Opinion and Order granting United’s motion to dismiss all of Alessio’s claims, but also granting her leave to amend her Complaint to state a cause of action for a failure to accommodate a disability under the Americans with Disabilities Act, as amended (“ADA”). (*See* Petitioner’s App. 15a-31a.)

On March 9, 2018, Alessio filed an Amended Complaint (*See* Petitioner's App. 53a-65a), and on March 26, 2018, United filed a second motion to dismiss, arguing that even when provided an opportunity to amend her original filing, Alessio still failed to state a claim under the ADA. (*See* N.D. Ohio Docket No. 28, Petitioner's App. 47a.)

During the district court proceedings, Alessio attempted to file a number of “supplements.” (*See* N.D. Ohio Docket Nos. 11, 14, 16, 17, 19-23, Petitioner's App. 40a-44a.) United moved to strike Alessio's “supplements” as non-compliant with the Federal Rules of Civil Procedure and irrelevant to the pending motion to dismiss. (*See* N.D. Ohio Docket Nos. 13, 15, 18, 24, Petitioner's App. 40a-44a.) And, on November 15, 2017, the district court granted United's motions to strike. (*See* N.D. Ohio Docket No. 25, Petitioner's App. 45a.)

On November 20, 2018, the District Court issued a Memorandum Opinion and Order granting United's second motion to dismiss. (*See* Petitioner's App. 7a-14a.) Alessio appealed the district court's dismissal to the United States Court of Appeals for the Sixth Circuit, arguing that she is entitled to: (1) certification that United follows the “Rule of Law” set forth in the ADA, and (2) certification that United is “100% in compliance with Federal Law 49 U.S. Code 5124, using chemical air-fresheners and other chemical products inside the aircraft cabin.” (*See* Petitioner's App. 51a-52a.) Alessio's appellate brief, however, did not address her purported claim under the ADA. (*See* Sixth Cir. Docket No. 8, Petitioner's App. 33a.)

Instead, in her appellate brief, Alessio focused on her HMTA claim, along with newly-asserted claims for civil-conspiracy and intentional tort. (*See id.*)

In its appellate brief, United explained that Alessio failed to state a plausible failure to accommodate claim under the ADA because she failed to identify her alleged impairment and how it substantially limits any of her major life activities; what essential functions of her position she could not perform as a result of her alleged impairment; what, if any, reasonable accommodations she contends would enable her to perform those essential functions; whether and when she requested such accommodations; and/or United's response to any such request. (*See* Sixth Cir. Docket No. 13, pp. 9-17, Petitioner's App. 34a.) Additionally, in its appellate brief, United explained that Alessio failed to state a plausible claim under the HMTA as the statute does not provide for a private civil cause of action. (*See id.* at pp. 17-19.) United also noted that Alessio's failure to plead her civil-conspiracy and intentional tort claims in the district court precluded her from raising them in the appellate forum. (*See id.* at pp. 20-21.)

The Sixth Circuit Court of Appeals issued an Order on June 24, 2019, affirming the district court's dismissal, finding that: (1) Alessio abandoned her claim under the ADA by failing to present any developed argument in her brief, (2) the HMTA does not provide for a private cause of action, and (3) Alessio is barred from asserting civil-conspiracy and intentional tort claims due to her failure to plead them in the district court. (*See* Petitioner's App. 1a-6a.) The Sixth Circuit

also noted that because the HMTA provided no private cause of action, Alessio’s argument that the district court erred in striking her supplemental filings was unavailing because it would not affect the propriety of the district court’s dismissal. (*See id.*).

Alessio filed her Petition on September 19, 2019. (*See* Petition for Writ of Certiorari.) The Petition seeks review of the dismissal of her HMTA claim only, noting that the ADA is the “wrong law” and the HMTA is the “correct law,” and indicating her intent to proceed under the HMTA only. (*See id.* at pp. i-ii, 2, 6, 13.) In addition, Alessio seemingly objects to the disregard of the extraneous materials she attempted to file at the district court and appellate court level. (*See id.* at pp. ii, 12-13.)

SUMMARY OF THE ARGUMENT

Alessio, proceeding *pro se*, asks this Court to grant certiorari to review the dismissal of her Complaint and Amended Complaint pursuant to Rule 12(b)(6) insofar as it purports to assert a claim under the HMTA. United respectfully opposes Alessio’s Petition. As a threshold matter, the question Alessio sets forth does not involve a conflict of law or present a compelling reason for this Court’s review. In addition, it is well-settled that the HMTA does not provide for a private cause of action, and Alessio has failed to articulate any authority to the contrary. Finally, Alessio’s attempt to rely on extraneous materials that were stricken by the courts below is improper as she failed to comply with the Federal Rules of Civil Procedure in submitting them and the materials were irrelevant to the legal bases for dismissal of her claims.

ARGUMENT / REASONS TO DENY PETITION

I. The Petition should be denied because there are no “compelling reasons” for granting certiorari in this case.

Supreme Court Rule 10 provides that “[a] petition for a writ of certiorari will be granted only for compelling reasons.” Sup.Ct.R. 10. Rule 10 lists the following examples of the types of cases in which the Court may grant certiorari:

- (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court’s supervisory power;
- (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
- (c) a state court or United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Id. Rule 10 expressly states, “[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.” *Id.*

Alessio’s Petition should be denied because there are no “compelling reasons” for granting certiorari in this case. This case does not involve: (1) a conflict among United States courts of appeals, (2) a conflict between a United States court of appeals and a state court of last resort, (3) a conflict on an important federal question among state courts of last resort, or (4) a conflict between this Court’s decisions and the decisions of lower courts.¹ Rather, this case involves a *pro se* appellant who fails to grasp that the claim she has asserted, i.e., a private cause of action under the HMTA, is not supported by the law. The circumstances of this case do not present “compelling circumstances” sufficient for this Court to grant certiorari.

¹ United has found few cases where plaintiffs attempt to assert private causes of action under the HMTA, undoubtedly because the statute and Congressional intent make clear no such cause of action exists. The small amount of case law addressing it is consistent with the Sixth Circuit’s ruling on this issue. *See, e.g., Riley v. Ala. Great Southern R.R.*, No. 02-1620, 2002 U.S. Dist. LEXIS 18645, *7-8 (E.D. La. Sept. 27, 2002) (finding no federal question jurisdiction existed on the basis that the HMTA does not provide a private cause of action); *see also Whitfield v. Triad Transp., Inc.*, No. 4:07CV01206, 2008 U.S. Dist. LEXIS 2385 (E.D. Ark. Jan. 10, 2008) (noting in dicta that the HMTA does not provide a private cause of action).

II. The Petition should also be denied because the HMTA does not provide for a private cause of action.

Alessio demands that United provide a “certificate of compliance” with the HMTA. Such relief is not contemplated anywhere in the HMTA, and Alessio’s attempt to file suit to obtain this remedy fails as a matter of law.

49 U.S.C. § 5124 provides for criminal penalties, including fines and imprisonment, for certain violations of Chapter 51 – “Transportation of Hazardous Materials.” 49 U.S.C. § 5123 provides for civil penalties, but those penalties may only be assessed by the government. (“The Attorney General may bring a civil action in an appropriate district court of the United States to collect a civil penalty under this section....”) There is nothing in 49 U.S.C. §§ 5123-5124 indicating that Congress intended to create a cause of action for private citizens, and no court has recognized one. The statutory language of the HMTA simply does not contain a civil enforcement mechanism through which private individuals may seek relief.

The Supreme Court has made clear that even when a federal statute has been violated and an individual harmed, which United denies in this instance, it “does not automatically give rise to a private cause of action in favor of that person.” *Touche Ross & Co. v. Redington*, 442 U.S. 560, 568, 99 S.Ct. 2479 (1979). Rather, “[p]rivate rights of action to enforce federal law must be created by Congress.” *Alexander v. Sandoval*, 532 U.S. 275, 286, 121 S.Ct. 1511 (2001). Even if Alessio had been harmed by an alleged violation of the

HMTA – which she has not – she would only be entitled to a private right of action under the statute if Congressional intent indicated a desire to create such remedy. Here, there is no indication that Congress intended to create a private cause of action under the HMTA, and Alessio’s Petition fails to present evidence of congressional intent to the contrary. As a result, Alessio cannot state a plausible claim for relief premised on this statute. Accordingly, the district court appropriately dismissed Alessio’s claim under the HMTA, and the Sixth Circuit appropriately affirmed the dismissal. (See Petitioner’s App. 1a-31a.)

III. The Petition seeks to introduce inadmissible or otherwise improper evidence for this Court’s consideration.

Finally, in evaluating the motions to dismiss filed under Rule 12(b)(6) of the Federal Rules of Civil Procedure, the district court and Sixth Circuit properly disregarded certain extraneous materials filed by Alessio as they were non-compliant with the Federal Rules of Civil Procedure, outside the scope of the pleadings, and irrelevant to whether Alessio satisfied the pleading standard.

Further, none of the extraneous materials on which Alessio relies have any bearing on the subject of her Petition, i.e., whether her claim under the HMTA was properly dismissed because the HMTA does not provide for a private cause of action. As aptly noted in the Sixth Circuit’s Order, the extraneous materials Alessio seeks to introduce have no effect on the outcome of her Petition, as they do not alter congressional intent or the statutory language of the HMTA, which establish

that it does not provide for a private cause of action.
(See Petitioner's App. 1a-6a and 49 U.S.C. §§ 5123-5124.)

CONCLUSION

For all of the foregoing reasons, this Court should deny Alessio's Petition for a Writ of Certiorari.

Respectfully submitted,

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