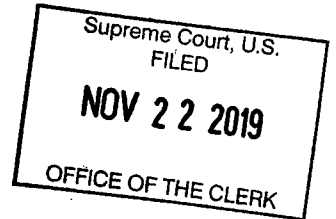


19-6981

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

ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES



\_\_\_\_\_  
VLADIK BYKOV — PETITIONER  
(Your Name)

vs.

\_\_\_\_\_  
STEVEN G. ROSEN, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

\_\_\_\_\_  
U.S. COURT OF APPEALS FOR THE 9TH CIRCUIT  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

\_\_\_\_\_  
VLADIK BYKOV  
(Your Name)

\_\_\_\_\_  
8827 NE 137th Place  
(Address)

\_\_\_\_\_  
KIRKLAND, WA 98034  
(City, State, Zip Code)

\_\_\_\_\_  
425-830-1214 - Cell  
(Phone Number)

## QUESTION(S) PRESENTED

#1. Is absolute immunity a bar to declaratory relief under 42 U.S.C. § 1983?

#2. Does Title II of the Americans with Disabilities Act require a plaintiff to allege and prove discriminatory motive by defendants, who intentionally discriminated against the plaintiff, in order to obtain compensatory damages?

## LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

STEVEN G. ROSEN and his marital community.

BRIAN ROGERS and his marital community.

MICHELINE MURPHY and her marital community.

MARCUS NAYLOR and his marital community.

CITY OF SEATTLE.

## RELATED CASES

Bykov v. Steven G. Rosen, et al. No. 2:15-CV-00713-JCC, U.S. District Court for the Western District of Washington. Judgment entered on January 23rd, 2018.

Bykov v. Steven G. Rosen, et al. No. 15-35929, U.S. Court of Appeals for the 9th Circuit. Judgment entered on June 29th, 2017.

Bykov v. USDC-WAWSE, No. 18-70022, U.S. Court of Appeals for the 9th Circuit. Judgment entered on March 26th, 2018.

Bykov v. Steven G. Rosen, et al. No. 18-35121, U.S. Court of Appeals for the 9th Circuit. Judgment entered on July 11th, 2019.

Bykov v. Micheline Murphy, et al. No. 18-2-04639-4 SEA, King County Superior Court, State of WA. Case stayed pending outcome of litigation in the federal courts.

## TABLE OF CONTENTS

OPINIONS BELOW .....	1
JURISDICTION.....	7
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	8
STATEMENT OF THE CASE .....	9
REASONS FOR GRANTING THE WRIT .....	10
CONCLUSION.....	11

## INDEX TO APPENDICES

APPENDIX A	Decisions of the U.S. Court of Appeals for the 9th Circuit.
APPENDIX B	Decisions of the U.S. District Court, Western Washington.
APPENDIX C	Order by 9th Circuit denying Petition for Rehearing.
APPENDIX D	
APPENDIX E	
APPENDIX F	

## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Pulliam v. Allen, 466 U.S. 522, 541-42, 104 S.Ct. 1970 (1984.)	10
Supreme Court of VA v. Cons. Union of U.S., Inc, 446 U.S. at 735, 100 S.Ct. 1967, 64 L.Ed.2d 641 (1980)	10
Delano-Pyle v. Victoria County, Texas 302 F.3d at 575 (5th Cir. 2002)	10

## STATUTES AND RULES

42 U.S.C. § 1983 "Civil Rights Act of 1871"

42 U.S.C. §§ 12131-12165 "Title II of the Americans with Disabilities Act"

## OTHER

IN THE  
SUPREME COURT OF THE UNITED STATES  
  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

1.

## JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was JULY 11th, 2019.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: AUGUST 27th, 2019, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 1983 "Civil Rights Act of 1871"

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

42 U.S.C. §§ 12131-12165 "Title II of the Americans with Disabilities Act"

Section 12132: "Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."



### **STATEMENT OF THE CASE**

In 2015 I filed a lawsuit under 42 USC § 1983 and Title II of the ADA against a Seattle Municipal Court judge (Judge Steven G. Rosen) and probation officer (Mr. Brian Rogers), alleging that they had violated my constitutional rights and discriminated against me on the basis of my mental disability, as a result of Judge Rosen's 2012 decision to incarcerate me for 150 days for my refusal to voluntarily sign a medical release form, which would have given them access to my medical records of my mental disability.

Even though I sought declaratory relief and asked the U.S. District Court to determine whether my constitutional rights were violated, the U.S. District Court, nonetheless, dismissed my constitutional claims - on the basis that the judge and probation officer were absolutely immune from all of my claims. Yet, I had argued that absolute immunity was immunity only from money damages and asserted that I would still be entitled to declaratory relief. Still, the District Court judge dismissed my claims for declaratory relief, without considering and deciding whether my constitutional rights were violated.

As to my claims that defendants Judge Rosen and Mr. Rogers discriminated against me (on the basis of my mental disability) the U.S. District Court determined that I had failed to allege any facts showing discriminatory motive. Yet, there was no factual dispute that Judge Rosen and Mr. Rogers had discriminated against me on the basis of my mental disability, since their decision to obtain my medical records was made precisely on the basis that the medical records were of my mental disability. Judge Rosen and Officer Rogers were attempting to obtain my records because they were medical records of my mental disability and they wanted to understand my disability. In fact, Judge Rosen had explained, in open court, that he would not have attempted to obtain my medical records if they had not been records of my mental disability. I argued that whatever the motivation may have been, Judge Rosen and Officer Rogers intended to discriminate against me on the basis of my mental disability. However, the District Court ignored my argument.

The District Court's dismissal of my discrimination claims was made on the belief that proof of discrimination under Title II of the A.D.A. requires proof of discriminatory motive - even if there was intentional discrimination on the basis of a disability - as there had been in my case. Neither Judge Rosen, nor Officer Rogers, disputed my allegations that they had intentionally discriminated against me on the basis of my mental disability.

In 2015 I filed an appeal to the 9th Circuit, arguing that absolute immunity is not a bar to declaratory relief and that I had sufficiently alleged intentional discrimination. In turn, the 9th Circuit vacated the dismissal of my constitutional and discrimination claims against Judge Rosen and Officer Rogers. However, on remand, the U.S. District Court - once again - dismissed my constitutional claims (for declaratory relief) on the basis of absolute immunity and dismissed my discrimination claims on the basis that I had failed to allege any facts showing discriminatory motivation.

In 2017 I filed a second appeal to the 9th Circuit, arguing that absolute immunity is not a bar to declaratory relief and that I had alleged intentional discrimination. However, this time, the 9th Circuit affirmed the District Court's dismissal of my constitutional claims - without explanation - and affirmed the dismissal of my discrimination claims - on the basis that I had failed to allege discriminatory motivation. Thus, the 9th Circuit decided that absolute immunity is a bar to declaratory relief and that in order to seek compensatory damages under Title II of the ADA, a plaintiff must allege and prove discriminatory motivation, which, allegedly, I did not do.

## REASONS FOR GRANTING THE PETITION

My petition for certiorari should be granted to resolve two extremely important legal issues. The first issue is whether absolute immunity is a bar to declaratory relief under 42 U.S.C. § 1983. That is an extremely important issue because it effects people's right to seek redress of harm as a result of constitutional violations. Judges, like other government employees, should, at least in some way, be held responsible for their actions. Without at least the ability to seek declaratory relief, judges and probation officers (and perhaps others) will know that if they violate the law, a victim will have absolutely no recourse in law to vindicate their constitutional rights.

In my case, the U.S. District Court dismissed my constitutional claims for declaratory relief on the basis of absolute immunity and the 9th Circuit affirmed their dismissal. However, the U.S. Supreme Court has ruled that absolute immunity is not a bar to declaratory relief. *Pulliam v. Allen*, 466 U.S. 522, 541-42, 104 S.Ct. 1970 (1984.) Also see *Supreme Court of Virginia v. Consumers Union of United States, Inc.*, 446 U.S. at 735, 100 S.Ct. 1967, 64 L.Ed.2d 641 (1980) (“...we have never held that judicial immunity absolutely insulates judges from declaratory or injunctive relief with respect to their judicial acts.”)

I hope that this Court grants this Writ in order to resolve the important question of whether, in fact, absolute immunity is a bar to suits for declaratory relief, against state gov't officials, under 42 U.S.C. § 1983. In this case, the 9th Circuit decided that it is - without explaining why.

The second important issue to decide is whether Title II of the ADA requires proof of discriminatory motive, in order to be able to seek and obtain compensatory damages. That is a very important question, since in most cases it will be difficult, if not impossible, to know (and to prove) what the subjective intent was of the person who committed discrimination. Requiring plaintiffs to prove discriminatory motive will result in a dismissal of an extremely large number of discrimination cases - probably most of them. Yet, there is nothing in Title II that even suggests that proof of motive is required.

Nonetheless, in my case, the U.S. District Court dismissed my discrimination claims, and the 9th Circuit upheld the decision, on the basis that I failed to allege facts to show discriminatory motive. On the other hand, the 5th Circuit requires only proof of discriminatory intent. See *Delano-Pyle v. Victoria County, Texas* 302 F.3d at 575 (5th Cir. 2002) (“...in order to receive compensatory damages for violations of the...[A.D.A.] a plaintiff must show intentional discrimination.”) Thus, there seems to be a division between the sibling U.S. Circuit Courts of Appeals.

I hope that this Court grants this Writ in order to resolve the important question of whether, in order to pursue a claim under Title II of the A.D.A., one must allege and prove discriminatory motivation - or whether allegation and proof of intentional discrimination (as I have done) is sufficient.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Vladik Bykov

Date: November 22nd, 2019