

No. 23-1354

IN THE
Supreme Court of the United States

JAMILAH ABDUL-HAQQ,

Petitioner,

v.

PERMANENTE MEDICAL GROUP, INC., *et al.*,

Respondents.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

PETITION FOR REHEARING

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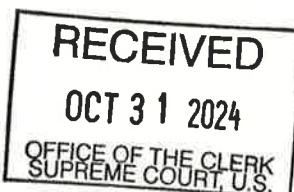


TABLE OF CONTENTS

	<i>Page</i>
TABLE OF CONTENTS	i
TABLE OF CITED AUTHORITIES	ii
PETITION FOR REHEARING	1
REASONS FOR GRANTING REHEARING.....	2
I. Unconstitutional Imbalance in Legal Representation.....	4
II. Explanation of why Appellate Circuits are Split over issues related to and failure to accommodate	8
III. New Evidence about the timeline between Termination and Retaliation	10
IV. Violation of Constitutional Rights Under the Fourteenth Amendment which parallels the California Constitution, Article I, Section 7	12
CONCLUSION	13
CERTIFICATE OF PARTY UNREPRESENTED BY COUNSEL.....	14

TABLE OF CITED AUTHORITIES

	<i>Page</i>
Cases	
<i>Colón-Fontánez v. Municipality of San Juan</i> , 660 F.3d 17 (1st Cir. 2011)	9
<i>Exby-Stolley v. Board of County Commissioners</i> , 906 F.3d 900 (10th Cir. 2018).....	8, 9
<i>Fenney v. Dakota, Minn. & E.R.R.</i> , 327 F.3d 707 (8th Cir. 2003)	9
<i>Foster v. Arthur Andersen, LLP</i> , 168 F.3d 1029 (7th Cir. 1999).....	9
<i>Gideon v. Wainwright</i> , 372 U.S. 335 (1963).....	5
<i>Goldberg v. Kelly</i> , 397 U.S. 254 (1970).....	7
<i>Haines v. Kerner</i> , 404 U.S. 519 (1972)	7
<i>Johnson v. Zerbst</i> , 304 U.S. 458 (1938).....	6
<i>Lassiter v. Department of Social Services</i> , 452 U.S. 18 (1981)	6

Cited Authorities

	<i>Page</i>
<i>Marshall v. Fed. Express Corp.,</i> 130 F.3d 1095 (D.C. Cir. 1997)	9
<i>Parker v. Sony Pictures Entm't, Inc.,</i> 260 F.3d 100 (2d Cir. 2001)	9
<i>Samper v. Providence St. Vincent Med. Ctr.,</i> 675 F.3d 1233 (9th Cir. 2012).....	9
<i>Turner v. Rogers,</i> 564 U.S. 431 (2011).....	5

Constitutional Provisions

U.S. Const. amend. V	4
U.S. Const. amend. VI	5
U.S. Const. amend. XIV.....	4, 5, 6, 12
Cal. Const. art. I, §7	12

Regulations

29 C.F.R. §1630.2(o)(p)(r)	12
California Business and Professions Code §2725.3(5)	12
California Code of Regulations (CCR), Title 2, §11067.....	12

Cited Authorities

	<i>Page</i>
California Code of Regulations (CCR), Title 2, §11068	12
California Code of Regulations (CCR), Title 2, §11069	12
California Code of Regulations (CCR), Title 22.....	1, 2, 12
Health and Safety Code, §1279.1(b)(4)(A).....	12

PETITION FOR REHEARING

This Petition for Rehearing is respectfully submitted under Rule 44.2 of the Rules of the United States Supreme Court, seeking to reconsider the denial of certiorari. Reconsideration is warranted due to significant constitutional violations and oversights in federal law, which parallel the violations of state protections that mirror federal safeguards. These violations directly affect the rights of employees with psychological disabilities, notably registered nurses like the petitioner.

A critical factor that warrants reconsideration is the retaliatory and fraudulent nature of the termination process, which was initiated on June 12, 2017—the very same day this Court denied certiorari in the petitioner's previous case involving the same defendants as in the current case.

The termination and related disciplinary actions were a pretext to unlawfully punish the petitioner for exercising her legal rights, including seeking accommodations under federal law. The close temporal proximity between the petitioner's legal actions and the retaliatory termination underscores the employer's intent to violate federal protections for disabled employees, especially under the Americans with Disabilities Act (ADA), which parallels the California Fair Employment and Housing Act (FEHA). Title 22 of the California Code of Regulations, among other regulations, was also violated.

The employer's fraudulent actions, combined with the overwhelming imbalance in legal representation (seven corporate attorneys versus a pro se petitioner), deprived the petitioner of a fair trial. This further emphasizes the

necessity for this Court's reconsideration to prevent a miscarriage of justice.

Given these grave constitutional issues and the unlawful retaliation against an employee bravely asserting her legal rights, the case warrants rehearing to ensure the protection of fundamental rights under federal law.

REASONS FOR GRANTING REHEARING

The sophisticated legal team weakened the petitioner's case by successfully exploiting technicalities to secure a summary judgment against the petitioner for the following evidence:

- both her employer and union are affiliated with the HR director involved in the investigation of her 2010 settled sexual harassment case at another hospital.
- evidence of malfunctioning computers that hindered proper patient charting
- lack of resources and competency validation necessary for nurses to provide adequate patient care backed by Title 22.
- Being disciplined for a pediatric patient she did not have
- Being disciplined for policies that do not exist
- Being disciplined twice for the same incident on 8/29/2016 then on 06/19/2017

- Being disciplined for policies from Kaiser Foundation Hospitals, not her employer; the petitioner employer, was The Permanente Medical Group.

This was central to the disciplinary actions taken against her in August 2016 was later updated in October 2016 to include alleged incidents in April 2016 and May 2016.

For the May 2016 discipline, she submitted evidence that the same charge nurse sabotaged her before May 2016 when the charge nurse assigned patients who were not physically present in the petitioner-assigned room but were still in the waiting room. Furthermore, crucial evidence—such as downtime causing antibiotics to be administered late and discrepancies in the Medication Administration Record (MAR)—was raised in district court but ultimately ignored.

Even more disturbing is that the lower courts failed to address the union's serious misconduct when direct evidence was submitted regarding

- Perjury for failure to file grievances,
- Disregard of arbitration committee directions,
- excluding the petitioner from participating in the arbitration committee hearing.
- Failure to conduct a minimum investigation

Despite the substantial direct evidence, the imbalance of legal resources/representation secured a summary judgment against the petitioner because procedural technicalities overshadowed and hindered a fair outcome.

I. Unconstitutional Imbalance in Legal Representation

Allowing seven corporate attorneys to represent the respondents while she proceeded **pro per** violates her constitutional rights to due process and equal protection under the **Fifth and Fourteenth Amendments**. The overwhelming imbalance in legal resources led to the dismissal at the summary judgment stage, preventing her case from being heard on its merits and obstructing her access to the protections offered by state and federal law.

The dismissal of her case at summary judgment without adequate consideration of her legal arguments, compounded by the unequal distribution of legal resources, constitutes a deprivation of her fundamental rights. This is inconsistent with the fair application of justice, mainly when the respondent's legal team could dominate the proceedings.

This is of paramount importance, as the evidence presented by the petitioner demonstrates that all disciplinary actions were deliberately orchestrated to target the petitioner unlawfully. The evidence provided doubt and supported fraud, yet the lower courts, influenced by a powerful legal team, disregarded the evidence and the applicable laws that substantiated the coordinated nature of disciplinary actions. The respondent's legal team Denied the wrongdoing, Attacked the petitioner's character, Reversed the blame, and misled the courts as

if she were the Offender. The DARVO strategy is used to silence victims.

Several U.S. Supreme Court cases have addressed issues related to imbalances in legal representation and the constitutional protections of due process and equal protection under the Fifth and Fourteenth Amendments. While this Court has not explicitly ruled on the exact situation of a pro se litigant facing a team of corporate attorneys, relevant precedents highlight the Court's stance on the fairness of legal proceedings, mainly when there is a significant disparity in legal resources. **The following cases address the unconstitutional imbalance in legal representation:**

Gideon v. Wainwright, 372 U.S. 335 (1963)

This landmark case established that the **Sixth Amendment** right to counsel is fundamental. The Court recognized that the lack of legal representation creates an inherent unfairness, depriving defendants of their due process rights. While this case applies to criminal law, its principle of preventing unfairness in legal proceedings due to lack of counsel.

This case supports the claim that the overwhelming legal disparity deprived ABDUL-HAQQ of a fair hearing, by dismissing her case at summary judgment.

Turner v. Rogers, 564 U.S. 431 (2011)

The Court held that due process does not always require the appointment of counsel in civil contempt proceedings that could result in imprisonment. However, the decision

emphasized that certain procedural safeguards must be in place to ensure fairness, particularly when there is a significant imbalance in legal resources. Turner highlights that, even in civil cases, courts must ensure fundamental fairness when there is an imbalance in legal representation, especially when an unrepresented party faces well-resourced opposition. Although the Court didn't mandate counsel in all civil cases, it highlighted the importance of ensuring fairness.

Lassiter v. Department of Social Services,
452 U.S. 18 (1981)

This case dealt with whether indigent parents have a right to appointed counsel in parental rights termination proceedings. The Court ruled that appointed counsel is not always required in civil cases but noted that the due process clause of the Fourteenth Amendment requires fairness in proceedings where the stakes are high. Although the ruling was against mandatory appointed counsel in all civil cases, the Court suggested that the absence of counsel in situations where the opposing party has significant resources may affect the fairness of the trial, making this case prone to due process violations.

***Johnson v. Zerbst*, 304 U.S. 458 (1938)**

This case addressed the waiver of the right to counsel in federal criminal proceedings. The Court held that a waiver of counsel must be made knowingly and intelligently, and failure to provide counsel when constitutionally required results in a violation of due process. While a criminal case, ***Johnson v. Zerbst*** reflects the broader principle that the absence of legal counsel, especially when facing

substantial opposition, could undermine the integrity of legal proceedings and violate due process. This principle supports both the petitioner's cases No. 16-8968 and No. 23-1354 that summoned the Supreme Court because, during civil proceedings, there is an extreme disparity in representation.

Goldberg v. Kelly, 397 U.S. 254 (1970)

In this case, the Court held that the termination of welfare benefits without a hearing violated due process. The Court emphasized the importance of procedural fairness, particularly when a person's ability to present their case effectively is at stake. While Goldberg involved administrative hearings, the principle of ensuring procedural fairness applies. The extreme imbalance in legal representation ABDUL-HAQQ experienced undermined HER ability to present her case effectively, violating due process and equal protection.

Haines v. Kerner, 404 U.S. 519 (1972)

The Court ruled that pro se complaints are held to less stringent standards than formal pleadings drafted by attorneys. The Court recognized that pro se litigants must be given certain procedural leeway due to their lack of legal expertise.

Although this case focuses on the leniency afforded to pro se litigants, it emphasizes the Court's recognition that unrepresented individuals are at a disadvantage compared to those with legal counsel. Facing seven corporate attorneys without legal representation created an unconstitutional imbalance.

II. Explanation of why Appellate Circuits are Split over issues related to and failure to accommodate

Despite the union's awareness of her accommodation request (Dkt 8-6 pg 9)¹; ARENAS stated, "There are also several claims that if she had gone through an accommodation meeting, this would not have led ultimately to her termination."

TPMG offered the petitioner with a disability a Last Chance Agreement instead of an accommodation. This implies that the petitioner could retain her employment despite alleged patient care violations but would forfeit her job if she requested accommodation; therefore, she was terminated.

ITS IMPERATIVE TO RESOLVE THIS ISSUE IN THIS COURT BECAUSE if an adverse employment action occurs because of the failure to accommodate, the circuits are split.

In *Exby-Stolley v. Board of County Commissioners*, the Tenth Circuit held that an adverse employment action is not necessary for a failure-to-accommodate claim under the ADA. The court reasoned that the ADA's accommodation requirement is a separate obligation from its prohibition against discriminatory adverse employment actions. *Exby-Stolley*, 906 F.3d at 914 (first citing Failure to Accommodate as a Standalone Violation)

Other circuits hold that a failure to accommodate alone is sufficient to constitute a violation, regardless of whether an adverse action like termination or demotion

1. 9th Cir. Case #22-16684

occurs. In these circuits, denying an accommodation is seen as inherently discriminatory.

The First *Colón-Fontánez v. Municipality of San Juan*, 660 F.3d 17, 32 (1st Cir. 2011) Second Circuit in *Parker v. Sony Pictures Entm't, Inc.*, 260 F.3d 100, 108 (2d Cir. 2001) require plaintiffs to show that an adverse employment action occurred, making it more difficult to win a failure-to-accommodate claim if no tangible negative job consequence follows the denial of accommodation. then citing

Cases Cited in the Split:

- *Exby-Stolley v. Board of County Commissioner*, 906 F.3d 914 (10th Cir. 2018) (no need to show adverse employment action).
- *Colón-Fontánez v. Municipality of San Juan*, 660 F.3d 17 (1st Cir. 2011) (requirement for adverse action).
- *Parker v. Sony Pictures Entm't, Inc.*, 260 F.3d 100 (2d Cir. 2001) (adverse action required).
- *Foster v. Arthur Andersen, LLP*, 168 F.3d 1029 (7th Cir. 1999) (leaning towards adverse action requirement).
- *Samper v. Providence St. Vincent Med. Ctr.*, 675 F.3d 1233 (9th Cir. 2012) (failure to accommodate as a potential standalone violation).

- *Fenney v. Dakota, Minn. & E.R.R.*, 327 F.3d 707, 711 (8th Cir. 2003) (failure to accommodate as a potential standalone violation)
- *Marshall v. Fed. Express Corp.*, 130 F.3d 1095, 1099 (D.C. Cir. 1997)). failure to accommodate as a potential standalone violation)

The core reason for this split is the varying interpretations of the ADA's language. Courts differ on whether the ADA's anti-discrimination provisions and its reasonable accommodation requirements are meant to function separately. Some courts focus more on the ADA's goal of preventing discrimination through adverse actions. In contrast, others emphasize the broader goal of ensuring disabled employees can perform their job duties with reasonable accommodations, even if no adverse action occurs.

This legal ambiguity invites different rulings across circuits, leading to uncertainty for both employers and employees. The Supreme Court needs to clarify this issue.

III. New Evidence about the timeline between Termination and Retaliation

Newly discovered evidence revealed that on June 12, 2017, Case No.16-8968 was denied certiorari in the petitioner's previous Racial discrimination case against the employer in this current case. This explains the direct correlation between the confrontation and the termination process, as on June 12, 2017, the petitioner

was aggressively pursued by Shelly Rombough, the hospital director, and Dennis Romas, the Emergency Room director, as detailed in the lower court complaint (Dkt 20, pg. 14, para. 44)². This retaliatory move initiated the petitioner's termination process. She was terminated 15 days after the hospital directors confronted her. The close timing of the certiorari denial, the confrontation by the hospital directors, the accommodation request, and the notice from the Department of Fair Employment and Housing (DFEH) all triggered the retaliatory termination. This highlights the unlawful actions taken by the employer in response to the petitioner exercising her legal rights.

This timeline is critical because it demonstrates that the employer's actions were not isolated or independent of the legal process but were directly tied to the petitioner's pursuit of justice.

The district court and the Ninth Circuit failed to acknowledge the retaliatory nature of the termination, instead dismissing the petitioner's claims at the summary judgment stage. This oversight warrants reconsideration to prevent further violations of the petitioner's rights under the Americans with Disabilities Act (ADA) and the California Fair Employment and Housing Act (FEHA).

2. Again, working through symptoms, ABDUL-HAQQ came back to work on or around June 12, 2017; the form for the requested medical information was pending and due on 06/22/2017. ABDUL-HAQQ was in the middle of training and ROMAS AND ROMBOOUGH came in the area did not speak but ROMAS stated, "there she go" to ROMBOOUGH that same day, she was called for another investigatory meeting.

IV. Violation of Constitutional Rights Under the Fourteenth Amendment which parallels the California Constitution, Article I, Section 7

The lower court's rulings in this case allowed employers and unions broad discretion to disregard the needs and rights of employees with disabilities, including those with psychological disabilities. These rulings effectively deprive disabled employees of equal protection under the law, as guaranteed by the **Fourteenth Amendment** of the U.S. Constitution and **Article I, Section 7** of the California Constitution. The failure to acknowledge and address these legal violations constitutes a deprivation of my right to be free from discrimination based on disability.

The Court's refusal to intervene and overturn these lower court rulings allows employers and unions to violate the core principles of ADA, FEHA, and Title 22 of the California Code of Regulations, California Business and Professions Code §2725.3(5), California Health and Safety Code §1276.4(e), California Code of Regulations (CCR), Title 2, §§11067, 11068, 11069, Code of Federal Regulations, Title 29, §§1630.2(o)(p)(r), Health and Safety Code, §1279.1(b)(4)(A) that protect all Registered nurses including those that are disabled, ultimately denying them access to reasonable accommodations.

Per the Fourteenth Amendment of the United States Constitution, **which parallels the California Constitution, Article I §7** ensures that individuals are not deprived of their rights without appropriate legal procedures. By allowing the imbalance of legal representation, the defendants secured a summary judgment instead of allowing the case to go to trial.

CONCLUSION

For the foregoing reasons, I respectfully request that the Court grant this Petition for Rehearing and reconsider its denial of certiorari. This case raises significant questions of federal and constitutional law regarding due process, the treatment of employees with psychological disabilities, the obligations of employers and unions under federal and state laws, and the equitable treatment of pro se litigants in complex legal disputes.

This case is not just about an individual dispute; it highlights critical oversights in the legal system that disproportionately harm disabled employees and pro se litigants. Rehearing this case will help ensure that the protections under the ADA, which parallel FEHA and other federal laws that are parallel state laws, are fully enforced and that the constitutional guarantees of due process and equal protection are upheld.

October 29, 2024

Respectfully submitted,

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**CERTIFICATE OF PARTY
UNREPRESENTED BY COUNSEL**

Pursuant to Rule 44.2, the Petitioner certifies that the Petition is restricted to the grounds specified in the Rule with substantial grounds not previously presented. The Petitioner certifies that this Petition is presented in good faith and not for delay.

October 29, 2024

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