

No. 23-142

In The
Supreme Court of the United States

JOE L. ADAMS JR.,

Petitioner,

vs.

ROYAL PARK NURSING AND REHABILITATION,

Respondent.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Fourth Circuit**

PETITION FOR REHEARING

JOE L. ADAMS JR.
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Rock Hill, SC 29730
858-848-7311



QUESTION PRESENTED

Whether the FNHRA provides for a federal private right of action that may be redressed under 42 U.S.C. 1983.

LIST OF PARTIES

All parties to this action are listed on the cover.

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REASONS FOR GRANTING REHEARING AND REHEARING EN BANC

Petitioner motions for the Rehearing and that it be reheard En Banc. Mr. Joe L. Adams Jr. petitioner comes before the Supreme Court of the United States to petition the court to reconsider its decision not to accept the Writ of Certiorari submitted by the petitioner. The petitioner is asking for the rehearing of the case because it was never heard in Federal District Court where it was initially filed in Charlotte NC due to the restraints that were in place the court stated that it did not have Jurisdiction over the case even though the petitioner submitted claims of violation of the Federal Nursing Home Reform Act in the initial pleadings.

Petitioner asks the court to reconsider its decision as the petitioners case is based on the violations of the FNHRA and other state violations but was dismissed because the case was filed in Federal District Court. The petitioner at the time thought that the jurisdiction issue was due to the information listed on the Death Certificate but the defense argued that Mr. Joe L. Adams Sr. was Domiciled in the Royal Park Nursing and Rehabilitation Center in Monroe NC.

Petitioner asks that the case be reheard as the Land Mark Talevski decision on June 8, 2023 changed the laws that had previously created a lack of jurisdiction for the Federal District Court in this case. The violations and eventual death of Mr. Joe L. Adams Sr. were not heard by the District Court of North Carolina

and all the injustices were never reviewed and have been committed “Under Color of Law” due to the case being filed in Federal District Court and not State Court. Mr. Joe L. Adams Sr. was receiving treatment for Alzheimer’s and Dementia when he was initially accepted at the Royal Park Nursing and Rehabilitation facility in Monroe NC. During the time that my father stayed at the facility there were problems with abuse, theft, negligence, ringworms, Covid and other infections. Petitioner contends that the Royal Park Nursing and Rehabilitation center was being paid by Medicaid and Medicare for my father’s treatment and through negligence and constant turnover of staff coupled with the Pandemic resulted in Royal Park placing my father in a hall in the back of the facility where they kept all the covid patients during the time of the pandemic. My father was kept in the facility and none of the family were allowed to visit or see him. During that time Joe L Adams Sr. developed Bed Sores that were left unattended while he was kept in isolation due to the fear stigma and panic associated with the pandemic and as the nursing home explained to Mr. Joe L. Adams Jr. that “he could go to the hospital and get another infection”.

The petitioner contacted the Department of Health and Human Services of North Carolina on many different occasions. During the isolation from April to October 2020 my father’s feeding tube was pulled out he had to go to the hospital at Atrium Healthcare in Charlotte, NC to have it replaced. Until that day Royal Park Nursing and Rehabilitation did not mention that there

was a problem with the bed sores and they did not attend the bedsores as they should have.

1. The Atrium Healthcare facility is located within less than 15 miles from Royal Park Nursing. When the ulcers began they could have had my father taken to the facility to treat the wounds but they instead tried to conceal the fact that the wounds existed and never gave any clear description of the mounting problem severity to the family.
2. When Mr. Joe L. Adams Jr. was notified in October of 2020 that his father was being taken to the hospital he immediately got up and rushed to the hospital as this represented his first time being able to see his father since the pandemic started in April of 2020.
 - a. Mr. Joe L. Adams Jr. was brought to tears to see that his father's mouth was full of what looked like Thrush and the nurse pointed out that there were bed sores.
 - i. Bed Sores with 7" depth into the skin and buttock area. These sores were severe and could have easily been avoided had that facility transferred my father to the Hospital when the bed sores were not properly responding to any of the treatment that they were administering. They could have told the family about the bed sores and gave a correct description of the problem.

3. In the Talevski decision there were more than 39 amicus briefs filed in support of the Talevski lawsuit but the Petitioner did not know how or when to petition for Amicus Briefs.
 - a. Because of decision upheld the rights of the Federal Nursing Home Reform Act there is a distinct similarity of the cases and the petitioner ask that the court please read the motion for rehearing and rehearing En Banc.
4. The Petitioner petitions the court to rehear this under rule 44.2 case due to the change in law that directly would effect the outcome of his Appeal with the Court of Appeals 4th Circuit and the District Court Decision as well as the progression of the case. The Federal District Court never heard the case or considered it due to the restrictions that were in place prior to the Landmark decision by the Supreme Court on June 8 2023 when:

“Court Upholds Right of Residents in Publicly-Owned Nursing Facilities to Sue for Violations of the Nursing Home Reform Law”. This case was filed in Federal District Court in Charlotte NC and sited several times the “Nursing Home Reform Act” but said that the court did not have jurisdiction over the case because Mr. Joe L. Adams Sr. was a resident of NC at the time of his death as well as no Jurisdiction in the case because it was filed in Federal District Court.

5. The new law that took effect on June 8, 2023 was during the 90 period to file with the Supreme Court of the United States..
 - a. If the decision had been made prior to the appeal being heard the petitioner contends that he would have never had to go to the extent of contacting the Supreme court as the Court of Appeals according to the new ruling may have likely decided on the behalf of the petitioner but because at the time the laws did not permit the suing of Nursing home under federal laws..
6. Petitioner submitted his case to the District Court of North Carolina and was told that the court did not have jurisdiction over the case because of the restrictions from 1983.
7. Petitioner contends that due to the pandemic during 2020 all the courts were closed and many cases were not heard out of fear of Covid at the time was so high that there were no court sessions and Mr. Adams did not get the consideration that he deserved.
 - a. Petitioner contends that Mr. Adams had a private room but still got Covid from the staff of Royal Park Nursing and Rehabilitation in a room alone.
 - b. Petitioner contends that when Mr. Adams was admitted into Royal Park Nursing and Rehabilitation that he had no problems with Bed Sores and there were no fractures or injuries associated with the Abuse from the facility.

8. Mr. Adams Jr. in his original pleadings with the court did site the “Nursing Home Reform Act” as well as other federal statutes that were directly associated with Medicaid and Medicare and the Nursing Home Reform Act. The court did not recognize any of the claims made by the petitioner because there was no avenue available at that time for families to sue for Federal violations.
 - a. The landmark decision was made in the interim of the case and after the decision by the 4th Circuit Court of Appeals. The decision was made as the petitioner was preparing a Writ of Certiorari to submit to the court.
9. Mr. Adams Jr. is an hourly worker and did not have the money or knowledge to get the Amicus Briefs, but feels as though because the Nursing Home Reform Act particularly has a section dedicated to Bed Sores and because the Bed Sores were the primary cause of the Death of Mr. Joe L. Adam Sr. that the courts were biased and the laws have changed during the interim of the progression of the case in Federal District Court in Charlotte NC.
10. Royal Park Nursing and Rehabilitation received federal funding directly through Medicaid and Medicare and Mr. Joe L. Adams Sr had both programs and all of his medical treatments were through Medicaid and Medicare but he was restrained in a hallway with other patients during the covid shut down and was not allowed to have proper medical

treatment that ultimately lead to the Bed Sores and loss of his life.

11. Royal Park had all resources available to allow Mr. Adams Sr. to be sent out to the Bed Sore unit of Atrium Health in Charlotte NC not even 20 miles from the facility.
12. Petitioner contends that the FNHRA enforcement was passed shortly after the petitioner filed with the Court of Appeals 4th Circuit and the District Court of Charlotte NC. The petitioner never got to have his case heard.
 - a. Petitioner contends that all the courts from the District Court to the Court of Appeals all did not hear the case or consider its contents because at the time the Supreme Court had not made the decision to uphold the Federal Nursing Home Reform Act which was the basis of the Mr. Adams Jr. claim.
13. Petitioner contends that because his case was on the cusp of the change in law that the Supreme Court Justices should rehear the case on the basis of the law now and not on the basis of the laws prior to the landmark Decision for the

The U.S. Supreme Court upholds the right of nursing home residents in publicly-owned nursing facilities to file lawsuits under 42 U.S.C. §1983 for violations of rights guaranteed under the federal Nursing Home Reform Law (FNHRA) (1987). Health and Hospital Corporation of Marion

County v. Talevski, No. 21-806 (Jun. 8, 2023)."

14. The petitioner contends that the because of the Supreme Court Ruling"

"The Supreme Court rules that the plain language of §1983 means that anyone can sue for violations of any federal law "under color of" state law. Id. 5. It rejects Health and Hospital Corporation's (HHC) argument that, historically, individuals did not have a private right to enforce federal laws. The Court describes the Thirteenth, Fourteenth, and Fifteenth Amendments to the U.S. Constitution as making a "sea change," id. 6, and the Civil Rights Act of 1871 (enacted in 1874), as creating a new federal cause of action, now codified as §1983, id. 7."

- a. Petitioner contends that if Royal Park Nursing and Rehabilitation is allowed to go forth without having to answer for the Murder of Mr. Joe L. Adams Sr. that it goes directly against the ruling when it stated that the anyone could sue for violations of any federal law "under color of" state law.
 - i. Petitioner contends that this is what happened to his father as there was no decision at the time this case was approaching maturity and the petitioner submitted the case before its expiration to the Supreme court for relief of the loss of life of his father

due to the violations of the Nursing Home Reform Act when they allowed the bed sores to go unattended till Stage IV before seeking professional help.

- ii. Petitioner contends that the Nursing home malpractice the administration of insulin to Mr. Joe L. Adams Sr. as he was not diabetic at the time he was admitted into the facility but because they were using the wrong tube feeding formula they began to administer insulin in spite of Mr. Adams bed sores that were inhibited from healing because Insulin is a retardant to healing skin and prohibited the healing of the ulcers on top of the negligence in care from Royal Park Nursing and Rehabilitation.
15. Petitioner contends that on several occasions due to the worsening Bed Sore condition that his father would have to stay at the hospital sometimes for weeks for treatment and there were several occasions when Royal Park Nursing and Rehabilitation tried to refuse admission and threatened our family with not having a bed for my father where he had his own private room.
16. Petitioner contends that Mr. Joe L. Adams Sr. suffered many injuries at the facility such as a broken nose due to the nurse not having proper help and pushed my father out of the bed where he hit his nose and broke it.

- a. Petitioner contends that when Royal Park was on 7th street in Charlotte NC that they stole my father's Gold tooth out of his mouth.
- b. Petitioner contends that my father almost lost his eye in the fall due to the nurse pushing him out of the bed.
- c. Petitioner contends that there were several problems with Ring Worms and unexplained rashes that happened to go and come.
- d. Petitioner contends that due to his father's deteriorated condition that it was almost impossible to find a new facility to take in my father and by the time it was time to transfer him to a new facility he passed away.

17. Petitioner ask for rehearing en banc of the decision as Mr. Joe L. Adams Sr. on the basis that the Medicaid and Medicare programs were both Federal programs that rules were violated multiple times through his entire stay at Royal Park Nursing and Rehabilitation.
18. The petitioner's complaint was not heard by the district court because the laws had not changed. There were restrictions that restricted the District Court from hearing the case based on the fact that there was no route available to bring suit against the nursing homes in Federal Court but because the laws were changed the petitioner ask that the

Court will reconsider its decision not to hear accept the Writ of Certiorari.

The Court next finds that the Nursing Home Reform Law can create §1983-enforceable rights, discussing the enactment of Medicare and Medicaid, the Institute of Medicine's 1987 report Improving the Quality of Care in Nursing Homes, and the Reform Law's residents' rights provisions and administrative scheme for inspections and enforcement. Id. 11-13.

19. Petitioner's case was within the 90 days that were provided to petition the Supreme Court when the law changed. The petitioner had the case bound as required by the court and submitted the request for "Writ of Certiorari" after having it prepared to the courts specification to try to meet the courts requirements first so they may hear the case.
 - a. Petitioner ask that the court consider that this case was already filed prior to the death of Mr. Joe L. Adams Sr. and was in litigation at the time of his death.
 - b. Petitioner had testimony from the Director of Nursing at Atrium Health of Charlotte NC stating that the cause of Death for Mr. Joe L. Adams Sr. was due to the Bed Sores.
 - i At the time of his release from the Royal Park Nursing Facility where Mr. Adams Sr. was transported directly

to the closest Hospital Atrium Health-care Main, his Ulcers were already inoperable.

- ii. All of Mr. Joe Adams Sr. medications and care were paid for directly through Medicaid and Medicare and they were not utilized to prevent the progression of the ulcers that were to claim his life.
 - 1. At the time of his admittance into the emergency room of Atrium Health Mr. Adams had not been out of the nursing facility since May of 2020.
 - 2. In April of 2020 the covid virus happened and prevented the courts and the Department of Social Services from conducting in person interviews on complaints.
 - a. The department of Social Services sent investigators to the Royal Park Nursing Facility but were forced to stand outside the window more than 6 ft away from Mr. Adams Sr. body and inspect the condition of Mr. Adams.
 - b. Medicaid and Medicare were supplying all the medications and transportation to **Atrium Health Wound Care at 1601 Abbey Pl Charlotte NC** that specializes in Ulcers and hard to treat bed sores.

- i. The petitioner contacted the *Atrium Health Wound Care* but was refused due to the advanced stages of the ulcers and the issues surrounding Mr. Joe L. Adams Sr. age and disabilities.
- c. Petitioner ask that the court would review this case decision and see that the facts are the same as the Talevski case as the District Court refused to hear the case and allowed it to be dismissed sighting lack of Jurisdiction but if the Talevski decision had already been rendered more consideration would have been given to the complaints and there would have been enforceable violations of the Nursing Home Reform Act and Medicaid and Medicare rules and regulations.

20. Petitioner is a Pro Se litigant and was not employed at the time when the wounds were discovered in October of 2020. At the time there was no consideration given to the case because of the lack of jurisdiction. The case was filed while Mr. Joe L. Adams Sr. was alive but he later lost his battle to his wounds and infections due to bed sores.
21. Petitioner ask that the court hear the case and review all the facts and pull the case and examples provided by the petitioner that were sealed against public viewing by request from the petitioner.

CONCLUSION

The petition for rehearing and petition for rehearing en banc should be granted.

Respectfully submitted,

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Date: 11/16/2023

CERTIFICATE OF PETITIONER

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

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AFFIDAVIT OF SERVICE

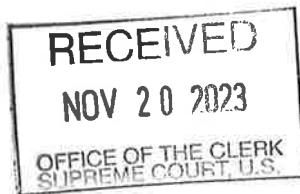
I, Renee Goss, of lawful age, being duly sworn, upon my oath state that I did, on the 16th day of November, 2023, send out from Omaha, NE 1 package(s) containing 3 copies of the PETITION FOR REHEARING in the above entitled case. All parties required to be served have been served by Priority Mail. Packages were plainly addressed to the following:

SEE ATTACHED

To be filed for:

JOE L. ADAMS JR.
721 Ogden Rd.
Rock Hill, SC 29730
858-848-7311

Subscribed and sworn to before me this 16th day of November, 2023.
I am duly authorized under the laws of the State of Nebraska to administer oaths.



State of Nebraska – General Notary
ANDREW COCKLE
My Commission Expires
April 9, 2026

Andrew H. Cockle
Notary Public

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CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the PETITION FOR REHEARING in the above entitled case complies with the typeface requirement of Supreme Court Rule 33.1(b), being prepared in New Century Schoolbook 12 point for the text and 10 point for the footnotes, and this brief contains 2994 words, excluding the parts that are exempted by Supreme Court Rule 33.1(d), as needed.

Subscribed and sworn to before me this 16th day of November, 2023.
I am duly authorized under the laws of the State of Nebraska to administer oaths.

State of Nebraska – General Notary
ANDREW COCKLE
My Commission Expires
April 9, 2026

A handwritten signature in black ink, appearing to read "Andrew H. Cockle".
Notary Public

A handwritten signature in black ink, appearing to read "Renee J. Goss".
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