

No. A23-___

IN THE
Supreme Court of the United States

JEFFREY B. ISRAELITT,
Applicant,

v.

ENTERPRISE SERVICES LLC,
Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fourth Circuit

**[CORRECTED] APPLICATION FOR EXTENSION OF TIME
TO FILE A PETITION FOR A WRIT OF CERTIORARI**

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**APPLICATION FOR EXTENSION OF TIME IN WHICH TO FILE A
PETITION FOR A WRIT OF CERTIORARI**

TO: Chief Justice John G. Roberts, Jr., Circuit Justice for the United States Court of Appeals for the Fourth Circuit:

Under this Court's Rules 13.5 and 22, Applicant Jeffrey B. Israelitt requests an extension of thirty (30) days in which to file a petition for a writ of certiorari in this case. The United States Court of Appeals for the Fourth Circuit issued its decision on August 16, 2023. *See Israelitt v. Enterprise Services LLC*, 78 F.4th 647 (4th Cir. 2023); App. 1. The Court denied the petition for rehearing en banc on September 12, 2023. App 27. Unless extended, the time to file a petition for a writ of certiorari will expire on December 11, 2023. With the requested extension, the petition would be due on January 13, 2024.

This application is being filed more than 10 days before the petition is due. *See* S. Ct. R. 13.5. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1). In support of this application, applicant states:

1. This case is a serious candidate for review. It concerns whether money damages and a jury trial are available to plaintiffs alleging employment retaliation under the Americans with Disabilities Act (ADA). It requires the interpretation of the retaliation provision of the ADA, codified at 42 U.S.C. § 12203, the remedies provision of the ADA, codified at 42 U.S.C. § 12117, and the remedies provision of the Civil Rights Act of 1991, codified at 42 U.S.C. § 1981a.

2. Applicant worked as a senior architect in the Cybersecurity Solutions Group of Enterprise Services, LLC. App. 3. He requested minor accommodations for two work trips related to his *hallux rigiditis*, a painful condition that impairs his ability to walk. App. 5-7. Following his requests, Enterprise Services excluded applicant from team meetings, removed him from his only billable project, issued him a performance warning requiring him to complete a two-person multi-month project within thirty days, and then immediately fired him thereafter when it wasn't completed. *Id.*

3. After exhausting his administrative remedies, wherein the EEOC found probable cause that the employer had engaged in discrimination and retaliation, applicant sued in the United States District Court for the District of Maryland. As is relevant here, he alleged that his employer had retaliated against him in violation of Section 12203 (the ADA anti-retaliation provision). App. 19. His complaint sought monetary damages and demanded a jury trial. App. 3. The district judge denied Enterprise Services' motion for summary judgment on applicant's retaliation claim. *Id.* But shortly before trial the district court granted Enterprise Services' motion to strike applicant's request for trial by jury. *Id.* The district court acknowledged that courts in other circuits had held jury trials and awarded damages in ADA retaliation cases. However, it relied on two unpublished Fourth Circuit decisions to hold that no damages are authorized for ADA retaliation claims. The district court then conducted a bench trial and ultimately entered judgment against applicant

because it found that “Israelitt failed to prove he was fired because he asked for disability accommodations.” *Id.*

4. On appeal, the Fourth Circuit affirmed the district court. Even though Section 12203(c) of the ADA states that the remedies in retaliation cases under the Act “shall be” the remedies available in cases involving discrimination on the basis of disability (which are brought under Section 12112), the Fourth Circuit held that monetary damages, while available in the latter category of cases, “are not a remedy ‘under’ § 12117”—the ADA’s remedy provision. App. 22. It then concluded that the “statutory silence” in Section 1981a regarding ADA retaliation claims (as opposed Section 12112 claims) means that “ADA-retaliation plaintiffs cannot recover legal damages.” *Id.*

5. This case raises an important question of law on which the courts of appeals are divided. The Fourth Circuit joined the Seventh and Ninth circuits in holding that damages are unavailable in ADA retaliation cases. App. 18-19 (citing cases). The Fourth Circuit’s position conflicts with the Second Circuit, where damages and jury trials for ADA retaliation claims have long been available. *See Muller v. Costello*, 187 F.3d 298 (2d Cir. 1999); *Lovejoy-Wilson v. Noco Motor Fuel, Inc.*, 263 F.3d 208 (2d Cir. 2001); *Bilancione v. County of Orange*, 1999 WL 376836 (2d Cir. Jun. 2, 1999). Courts in the Second Circuit continue to hold jury trials and award damages in ADA employment retaliation cases. *See, e.g., Felix v. New York City Dep’t of Educ.*, 2023 WL 4706097, at *12 (S.D.N.Y. July 24, 2023); *Richter v. JBFCS-Jewish Bd. of Fam. & Child.*

Servs., 2019 WL 13277316, at *3 (E.D.N.Y. Mar. 14, 2019); *Equal Emp. Opportunity Comm'n v. Day & Zimmerman NPS, Inc.*, 2016 WL 1449543, at *6 (D. Conn. Apr. 12, 2016). The Fourth Circuit's opinion also conflicts with the longstanding position of the Equal Employment Opportunity Commission (EEOC) and the Department of Justice (DOJ). *See, e.g.*, Brief for Equal Emp. Opportunity Comm'n as Amicus Curiae Supporting Petitioner, *Israelitt v. Enterprise Services, LLC*, 78 F.4th 647 (4th Cir. 2023); EEOC, Enforcement Guidance on Retaliation and Related Issues § 8 (2016), <https://perma.cc/2J6N-R5B6>; *Equal Emp. Opportunity Comm'n v. Waterway Gas & Wash Co.*, 2021 WL 5203330, at *2-3 (D. Colo. Feb. 25, 2021); Settlement Agreement at 2, *United States v. Hal W. Brown*, No. 13-141310 (S.D. Fla. 2013), ECF No. 150 (DOJ recovering damages for retaliation plaintiffs under ADA).

Due to the circuit split on this issue, as well as the importance of this question of federal law, there is a reasonable prospect that this Court will grant the petition, such that it warrants additional time for these important questions to be fully addressed.

6. This application for a thirty-day extension seeks to accommodate applicant's legitimate needs. Applicant recently affiliated counsel at the Stanford Supreme Court Litigation Clinic. The extension is needed for members of the Clinic to fully familiarize themselves with the record, the decisions below, and the relevant case law. In light of the Clinic's many other

obligations, the Clinic would face difficulties completing all those tasks by the current due date.

For these reasons, applicant requests that the due date for his petition for a writ of certiorari be extended to January 13, 2024.

Respectfully submitted,

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