No. 24-359

In the Supreme Court of the United States

ADRIANA ALVAREZ,

PETITIONER,

v.

TEXAS WORKFORCE COMMISSION,

RESPONDENT.

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

PETITION FOR A WRIT OF CERTIORARI

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Petitioner *Pro Se*

QUESTIONS PRESENTED

Although Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating against an employer "on the basis of religion," 42 U.S.C. §§ 2000e-2(a)(1), (2), which identifies the meaning of religion "religion includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's religious observance or practice without undue hardship on the conduct of the employer's business." This prolonged case began when Texas Workforce Commission's ("TWC") personnel disqualified unemployment benefits, and it is seeking a chargeback of unemployment benefits that Adriana Alvarez had already received.

One year ago, in *Groff v. DeJoy*, 143 S. Ct. 2279 (2023), this Court reinforced that an employer suffers an "undue hardship" in accommodating an employee's religion exercise whenever doing so would require the employer "to bear more than a de minimis cost." *Id.* § 2000e(j).

The questions presented are:

1. Whether TWC's employees may avail themselves of sovereign immunity as a bar to a claim for damages under Title VII, the First Amendment and Fourteenth Amendment?

2. Whether the Eleventh Amendment sovereign immunity can deprive any person of *** property, without due process of law; or deny to any person within its jurisdiction the equal protection of the laws, as required by the Fourteenth Amendment?

3. Whether this Court should dismiss the more-than-de-minimis-cost procedure for refusing Title VII religious accommodation as reinforced in *Groff v. DeJoy*, 143 S. Ct. 2279 (2023)?

PARTIES TO THE PROCEEDINGS BELOW

Pro Se Petitioner Adriana Alvarez was the Plaintiff in the district court and the Appellant in the court of appeals in No. 23-50677.

Respondent Texas Workforce Commission was the Defendant in the district court and the Appellee in the court of appeals in No. 23-50677.

RELATED PROCEEDINGS

This case appears from and is related to the following proceedings in the U.S. District Court for the Western District of Texas El Paso Division and the U.S. Court of Appeals for the Fifth Circuit:

- *Alvarez* v. *Texas Workforce Commission*, No. EP:23-cv-00147-DCG (W.D. TX), judgment entered August 21, 2023.
- *Alvarez* v. *Texas Workforce Commission*, No. 23-50677 (5th Cir.), petition for rehearing en banc denied on March 13, 2024, and judgment entered March 21, 2024.

Within the meaning of this Court's Rule 14.1(b)(iii), the following is a directly related proceeding in the U.S. District Court:

- *Alvarez* v. *Brokers Logistics Ltd.*, No. EP:23-cv-00148-DCG (W.D. TX), case is still open.

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Petitioner Adriana Alvarez respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

This petition seeks review of the Fifth Circuit's recent decision in *Alvarez* v. *Texas Workforce Commission (5th Cir. 2024).* The district court's opinion is unreported.

STATEMENT OF JURISDICTION

The Fifth Circuit denied the petition for rehearing en banc on March 13, 2024. The judgment of appeals' opinion was filed on March 21, 2024. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS

The First Amendment provides in part:

> Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; *** and the right to petition the Government for a redress of grievances.

The Fourteenth Amendment provides in part:

> §1 No State Shall *** deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 2000e-2(a)(1) provides in part:

> It shall be an unlawful employment practice for an employer to *** discriminate against any individual with respect to terms, conditions, or privileges of employment, because of such individual's religion.

42 U.S.C. § 2000e(j) provides:

> The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

STATEMENT

I. Background

Alvarez is a Christian who was saved by God's mercy. Alvarez learned through reading the Word of God that to honor God she cannot obstruct her breath nor cover her face. Alvarez's former employer was Brokers Logistics, Ltd. ("Brokers") where for approximately 9 years, she handled business and personal confidential information as some of her employment duties. Alvarez notified her former employer that wearing a face covering violated her sincerely held religious beliefs. Days later, Alvarez was suspended without pay. In good faith, Alvarez provided religious accommodations, one of the various reasonable accommodations offered was to work from home.

On February 4, 2022, Brokers refused to act in accordance with Federal and State laws and denied Alvarez's religious accommodations. On February 6, 2022, Alvarez emailed Brokers' team to appeal their denial of her religious accommodations and offered the team to contact her if additional information was needed to revise their decision. On February 7, 2022, Alvarez's employment was wrongfully terminated. The only cause that led to her unlawful termination was her religious accommodation request. Brokers claimed that they were unable to confirm that Alvarez has a sincerely held religious belief that prevents' Alvarez from wearing a face covering and wrongfully denied Alvarez's religious accommodation because it would impose an undue hardship. A few weeks later, on May 2, 2022, Brokers was no longer requiring wearing face coverings.

As a result of Alvarez's unlawful termination, Alvarez submitted a claim for unemployment benefits to the TWC. The determination on payment of unemployment benefits was mailed on February 9, 2022, granting unemployment benefits to Alvarez. On or about March 28, 2023, despite hearings and evidence provided through several appeals regarding Alvarez's sincerely held religious beliefs, TWC's personnel issued its final decision disqualifying Alvarez for unemployment benefits and charging back the unemployment benefits she had already received. TWC's personnel accepted Brokers' allegations as evidence to disqualify the unemployment benefits. Substantial evidence was not provided to demonstrate the allegations of misconduct and voluntarily leaving without good cause.

TWC's personnel decision in favor of Brokers was based solely on Brokers' assumption without considering Alvarez's testimony. The fact that other employees were successfully accommodated to work from home or other places and to work without a face covering is clear evidence that TWC's personnel did not enforce any reasonable methods to achieve compliance with laws.

Alvarez filed suit asserting violations of Title VII of Civil Rights Act of 1964, 42 U.S.C. § 2000e-2, et seq. ("Title VII") and continues seeking remedy of TWC's administrative wrongful decision. This Court has the power to order fair remedy for Alvarez, to whom constitutional rights have been violated. According to the Texas Unemployment Compensation Act ("TUCA") and its strict requirements for judicial review, under § 301.045 Equal Employment Opportunity Policies state: "The executive director or the executive director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to *** religion. The policy statement must include personnel policies, including policies relating to evaluation, selection, training of personnel, that show the intent of the commission to avoid the unlawful employment practices described by Chapter 21; and an analysis of the extent to which the composition of the commission's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law."

On February 16, 2024, three circuit judges held that the district court did not err in dismissing Alvarez's claim without prejudice because "the Eleventh Amendment prohibits a private citizen from bringing suit against a state in federal court." However, the issue in this lawsuit against TWC's administrative decision, must be carefully analyzed, whether the sovereign is the fair reason to deny unemployment benefits regarding religious beliefs or the lack of reasonable methods to ensure that all personnel decisions complied with state and federal laws. See *Hafer v. Melo*, 502 U.S. 21 (1991).

Judicial review of an administrative decision pertaining to Title VII requires due process otherwise individuals could be deprived of their civil rights without a fair cause. Furthermore, the administrative decision to carefully consider the right to earn a living without religious discrimination requires judicial review of the lower court's decision to analyze if substantial evidence was considered as per Tex. Lab. Code 212.202; *Mercer v. Ross*, 701 S. W. 2d 830, 831 (Tex. 1986). The Fifth Circuit denied the petition for rehearing en banc despite the related facts that justified review whether lower courts erred to dismiss this case for the alleged employment misconduct. The court of appeals erred by failing to consider Alvarez's explanation and allowing her to defend her arguments solely because the administrative decision is protected by the Eleventh Amendment.

II. Proceedings Below

A. Proceedings in the district court

The lawsuit against TWC is for aggrieving Alvarez by a final decision, charging back unemployment benefits that were legally entitled received. Alvarez was seeking review of TWC's administrative decision, and the case was dismissed without prejudice, finding that her claim against TWC was barred by sovereign immunity under the Eleventh Amendment.

B. Proceedings in the court of appeals

The Court of appeals affirmed the district court's dismissal of the lawsuit against TWC.

EXCEPTIONAL REASONS FOR GRANTING THE PETITION

For the following reasons it is exceptional important to grant this petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

1. Whether TWC's employees may avail themselves of sovereign immunity as a bar to a claim for damages under Title VII, the First Amendment and Fourteenth Amendment? "The First Amendment does not prevent the government from and with care, and adopted by the people as the organic law of the State" and, when enforcing it, we should "not allow for interstitial and interpretative gloss... by the other branches of the government that substantially alters the specified lawmaking regiment" detailed in the Constitution (Matter of King v. Cuomo, 81 N.Y.2d 247, 253, 597 N.Y.S.2d 918, 613 N.E.2d 950 [1993])." (Harkenrider v. Hochul, 38 NY 3d 494 [2022].) Moreover, the Texas Labor Code under section 212.201(a) states that a party aggrieved by a final decision of the TWC may obtain judicial review of the decision by bringing a suit for review against the TWC.

The absent party in this case, Brokers Logistics Ltd, in which a separate related case was filed against Alvarez's former employer as noted, see open Civil No. *Alvarez* v. *Brokers Logistics Ltd. ("*Brokers*")*, No. 3:23-cv-00148-DCG. Misjoinder of parties is not ground for dismissing an action as stated in the Fed. R. Civ. declining to express a view. See *Pleasant Grove City v. Summum*, 555 U.S. 460, 467-469 (2009). Our Constitution is "an instrument framed deliberately P. No. 21. Therefore, Brokers is not required in this case and complete relief is possible among the existing party.

2. Whether the Eleventh Amendment sovereign immunity can deprive any person of *** property, without due process of law; or deny to any person within its jurisdiction the equal protection of the laws, as required by the Fourteenth Amendment? The panel erroneously affirmed that the Eleventh Amendment prohibits a private Citizen from suing a state. This Court did not identify that the federal government waived its sovereign immunity when the Federal Tort Claims Act ("FTCA") passed. The FTCA recognizes liability for the negligent or wrongful acts or omissions of its employees acting within the scope of their official duties and the defendant bears any resulting liability. Furthermore, defamation is a tort. Every tort involves behavior that the law considers incorrect. The only cause of action that led to her unlawful termination was Alvarez's religious accommodation request. Without substantial evidence to prove that any accommodation would have created an undue hardship for Brokers. Regardless of the lack of evidence, TWC's personnel disqualified the unemployment benefits and is seeking a chargeback of the unemployment benefits Alvarez had already received.

Under Tex. Lab Code 207.044 Misconduct neglect that jeopardizes the property of another does the legal standard liability. The panel mistakenly found that the district court did not err in dismissing Alvarez's claims. In consequence, the panel's opinion impairs Supreme Court example that if government officials attempt to enforce an unconstitutional law, sovereign immunity does not prevent Citizens whom the law harms from suing staff members in their individual capacity for injunctive relief. See *Chisholm v. Georgia,* 2 U.S. 419 (1793), also see *Fitzpatrick v. Bitzer,* 427 U.S. 445 (1976). Furthermore, the Eleventh Amendment does not prevent a state agency nor its employees from adjusting their duties in avoiding information and fairly considering both parties' evidence and arguments. Instead, TWC's personnel decision was based on Brokers' allegations without any evidence assuming authority to charge back unemployment benefits. However, the ability to the Eleventh Amendment sovereign immunity should have limits, see King v. Cuomo, supra., where the King concluded that the practice "undermined the integrity of the law-making process as well as the underlying rationale for the demarcation of authority and power in this process" (id., at 255, 597 N.Y. S.2d 918, 613 N.E.2d 950)." (Campaign For Fiscal Equity, Inc. v. Marino, 87 NY2d 235, 239 [1995].) Courts have the authority to review unconstitutional acts. Furthermore, the Courts can interfere with internal practices and procedures to analyze its compliance with the Constitution. "Our precedents are firm that the Courts will always be available to resolve disputes concerning the scope of that authority which is granted by the Constitution"

(Saxton v. Carey, 44 N.Y. 2d 545, 551, 406 N.Y.S. 2d 732, 378 N.E. 2d 95; New York State Bankers Assn. v. Wetzler, 81 N.Y. 2d 98, 102, 595 N.Y.S.2d 936, 612 N.E.2d 294; see also, Myers v. United States, 272 U.S. 52, 116, 47 S. Ct. 21, 25, 71 L. Ed. 160;Matter of New York State Inspection, Sec. & Law Enforcement Empls. v. Cuomo, 64 N.Y.2d 233, 239, 485 N.Y.S. 2d 719, 475 N.E. 2d 90)." (King v. Cuomo, 81 NY2d at 251.) Courts have the authority to review cases to determine whether compliance with the Constitution, even when actions are based on internal requirements, which is the decision of the unlawful termination. In addition to lost of employment, lost wages for months in 2022, Alvarez has been harmed by paying court fees, preparing documents, not having a normal life, lost many hours of sleep, therefore, the importance to the resolution of this case is crucial to discover if the different amendments interpretations are appropriate. In this situation, TWC's personnel acted contrary to any federal law and contrary to the Constitution, and its unlawful behavior allows suits in federal courts.

3. Whether this Court should dismiss the more-than-de-minimis-cost procedure for refusing Title VII religious accommodation as reinforced in *Groff v. DeJoy*, 143 S. Ct. 2279 (2023)? Requiring substantial evidence for refusing Title VII accommodations has been properly applied. Yet, in this case by merely alleging that working from home and not allowing an employee to practice her sincerely held religious beliefs to not cover her face alleging that granting the reasonable accommodation may cause an undue harship for the company. TWC' personnel agreed with Brokers' decision and ruled in its favor. When the reason for the discharge is neglect that endangers property of the employer, the neglect must be intentional or must show carelessness that demonstrates a disregard for the consequences.

Practice a sincerely held religious belief does not constitute misconduct to disqualify an individual from unemployment benefits. Similarly, the boundary between the right to practice a religion and company policies can be vague when the temporary requirements do not uphold the law. Alvarez's employment termination was on February 7, 2022. Brokers was no longer requiring wearing face coverings as of May 2, 2022. Additionally, see *Ex Parte Young*, 209 U.S. 123 (1908), which allowed lawsuits against state officials to obtain prospective relief against violations of the First Amendment and Fourteenth Amendment.

A review of the Fifth Circuit's decision would impact all aspects of religious observance, practice and sincerely held beliefs nationally. Totally, the opportunity to review the decision can influence thousands of Americans of all faiths throughout the United States and more importantly, it can prevent individuals enforcing unconstitutional laws.

I. This Court Should Revisit TWC's Administrative Decision

Article III, Section 2, of the Constitution annulled the state's sovereign immunity and granted federal courts the right to hear disputes between private citizens and states. As a result, personnel wrongful decisions are subject to judicial review, see *Chisholm v. Georgia,* 2 U.S. 419 (1793).

According to the Texas Unemployment Compensation Act ("TUCA") Section 201.012 misconduct means:

> "Mismanagement of a position of employment by action or inaction, neglect that jeopardizes the life or property of another, intentional wrongdoing or malfeasance, intentional violation of a law, or violation of a policy or rule adopted to ensure the orderly work and the safety of employees. The term misconduct does not include an act in response to an unconscionable act of an employer or supervisor."

All company policies must uphold state and federal laws. Successfully accommodating other employees and denying the religious accommodation of another employee because the employer was unable to confirm that Alvarez has a sincerely held religious belief that prevents her from wearing a mask is a perfect example of religious discrimination. Without any evidence, Brokers denied her religious accommodation because it *may* impose an undue hardship. On February 4, 2022, Alvarez had to choose between: (1) the right to freely exercise her religion, See *Groff v. DeJoy*, 143 S. Ct. 2279 (2023); (2) the right to earn a living without being allowed to practice her religion in public areas at work. TWC's personnel agreed with Brokers and did not require any evidence nor reconsider the case to analyze if the face covering was still in place after Alvarez's appeals. It was not considered that Brokers' temporary policy ended on May 2, 2022. The statement in *Trans World Airlines, Inc.* v. *Hardison*, 432 U.S. 63, 84 (1977), that an employer suffers "undue hardship" anytime a religious accommodation inflicts "more than a de minimis cost" lacks any support in Title VII's content. "Hardship" ordinarily means "a condition that is difficult to endure," or "something hard to bear." The Random House Dictionary of the English Language 602 (1968).

And to define "substantial costs," Congress also specified that the "hardship" must be "undue."

If the alleged "undue hardship" and procedure not considered or required to report that "the accommodation must impose significant costs on the company." *Small* v. *Memphis Light, Gas & Water*, 952 F.3d 821, 827 (6th Cir. 2020) (Thapar, J., joined by Kethledge, J., concurring), cert. denied, 141 S. Ct. 1227 (2021).

It was not considered that Brokers' temporary policy ended on May 2, 2022. Nevertheless, was not taken into consideration that other employees were successfully accommodated. TWC erroneous disqualification of unemployment benefits conflicts with Title VII's context and history. The lower Court's decision therefore is incorrect and should be revisited by this Court. The lack of consideration on the alleged undue hardship intensely limits its preliminary force because "the precedential sway of a case is directly related to the care and reasoning reflected in the court's opinion." Garner et al., The Law of Judicial Precedent 226 (2016); see *Hohn* v. *United States*, 524 U.S. 236, 251 (1998) (Court "felt less constrained to follow [a statutory] precedent where, as here, the opinion was rendered without full briefing or argument").

II. The erroneous decision that misconduct can be construed merely by assumptions presented

Title VII required the employer to prove "undue hardship on the conduct of the employer's business." 42 U.S.C. § 2000e(j). Additionally, it "has long recognized that the government may (and sometimes must) accommodate religious practices and that it may do so without violating the Establishment Clause."

See Hosanna-Tabor Evangelical Lutheran Church & Sch. V. EEOC, 565 U.S. 171, 189 (2012) (First Amendment "gives special solicitude to the rights of religious organizations."

A recent case that was reversed to lower district court argued that "the policy interfered with their fundamental right to refuse medical treatment." See Health Freedom Defense Fund, Inc. v. Alberto Carvalho, No. 22-55908 (9th Cir. 2024). And yet, TWC and lower courts have ruled against a fair process despite the lack of evidence. TWC's administrative decision was based on misconduct without a good cause. It may not be a good cause for the employer and TWC for an individual to practice her religion or they may not know if Alvarez's sincerely held religious beliefs are sincere.

III. TWC's administrative decision is an excellent opportunity to address the Eleventh Amendment's exceptions

The United States Supreme Court has the authority to allow lawsuits to compel a person to act fair on behalf of states despite the sovereign immunity, similarly in this case the State agency's personnel acted opposite to any federal law and contrary to the Constitution, see Ex Parte Young, 209 U.S. 123 (1908). In a decision issued in June 2022, the Court ruled that "state sovereign immunity does not prevent states from being sued under federal law related to the nation's defense" see Torres v. Texas Department of Public Safety, 597 U.S. 580 (2022).

IV. This Court's decision will have a critical impact on thousands of Americans of all faiths throughout the United States

The result of disqualifying unemployment benefits after it was granted for a good cause pertaining to faith, strengthens the need for review. By requiring TWC's administrative personnel to correct their wrongful decisions and have a fair significant result on a Christian single parent.

APPROPRIATE RELIEF

Should the Court finds that the administrative decision did not follow the constitutional procedures as required by the Fourteenth Amendment, Alvarez seeks relief and respectfully request this Court that the decision from TWC and lower courts be reversed in favor of the Petitioner without a chargeback of the unemployment benefits she received. Additionally, any other relief the Court deems fair.

CONCLUSION

The Court should grant the petition for writ of certiorari.

Respectfully submitted.

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