

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

**In The**  
**SUPREME COURT OF THE UNITED STATES**

**Petition for Reconsideration of Certiorari to the  
United States Court of Appeals for the Fourth Circuit**

**Brandy Thompson,**

**Petitioner**

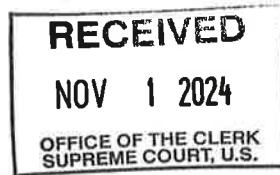
**V.**

**Lloyd Austin, III  
Respondent**

**Brandy Thompson**

**P.O. Box 1704**

**Fayetteville, NC 28302**



## **I. QUESTIONS PRESENTED**

1. Did the lower court correctly apply the burden-shifting framework in assessing the plaintiff's discrimination and retaliation claims under the Americans with Disabilities Act (ADA) and the Rehabilitation Act, including the requirement to establish her status as a "qualified individual" with a disability?
2. Did the lower court err in its determination that the plaintiff failed to meet the defendant's legitimate expectations at the time of termination, especially considering her extended absence due to disability, prior approved leave requests by the defendant, and the obligation of the defendant to provide reasonable accommodations?
3. Should the lower court have exercised supplemental jurisdiction over the plaintiff's state law claims, considering the specific circumstances and statutory waivers of sovereign immunity, and did it correctly dismiss the plaintiff's state law claims for lack of jurisdiction?
4. Did the lower court appropriately analyze the plaintiff's discriminatory discharge claim, taking into account the timing of termination relative to her disability and accommodation requests, as well as the defendant's rationale for termination?
5. Did the lower court adequately consider the proximity in time between the plaintiff's protected activity and the alleged adverse action in evaluating the retaliation claim, as well as assessing the defendant's justification for the adverse action and evidence of pretext?

## **II. PARTIES**

The petitioner is Brandy Thompson, a veteran with a disability seeking relief for discrimination

The respondent is the Secretary of the Department of Defense.

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#### IV. TABLE OF AUTHORITIES

##### Statutes

42 USCA § 12101  
42 U.S.C. § 12111(9)  
42 U.S.C.A. § 12117  
42 U.S.C.A. § 12112(a)  
42 U.S.C.A. § 12132  
42 U.S.C.A. § 12203(a)  
42 USCA § 1981a  
42 U.S.C. § 2000e-3  
42 U.S.C. § 2000e-16(a)  
42 U.S.C. § 2000e-16(b)  
42 U.S.C. § 2000e-2(m)  
42 U.S.C. § 2000e-3(a)

##### Cases

Baker v. Coxe, 52 F.Supp.2d 244 (1999)  
Atencio v. United States Postal Service, 198 F.Supp.3d 340 (2016)  
Dickens v. Hudson Sheraton Corporation, LLC, 167 F.Supp.3d 499 (2016)  
Ukeje v. New York City Health and Hospitals Corp., 821 F.Supp.2d 662 (2011)  
McIncrow v. Harris County, 878 F.2d 835 (1989)  
Hopkins v. New England Health Care Employees Welfare Fund, 985 F.Supp.2d 240 (2013)  
Jenkins v. Medical Laboratories of Eastern Iowa, Inc., 880 F.Supp.2d 946 (2012)  
McCarty v. Marple Tp. Ambulance Corps, 869 F.Supp.2d 638 (2012)  
Kendrick v. Maine Medical Center, 547 F.Supp.3d 87 (2021)  
Butler v. Washington Metropolitan Area Transit Authority, 275 F.Supp.3d 70 (2017)  
Scalera v. Electrograph Systems, Inc., 848 F.Supp.2d 352 (2012)  
Chandler v. DeJoy, --- F.Supp.3d ---- (2024)

Karlik v. Colvin, 15 F.Supp.3d 700 (2014)

Williams v. Virginia Polytechnic Institute & State University, 451 F.Supp.3d 467 (2020)

Equal Employment Opportunity Commission v. Wal-Mart Stores, Inc., 345 F.Supp.3d 1046 (2018)

Guerrero Toro v. NorthStar Demolition & Remediation, 366 F.Supp.3d 449 (2019)

Jessup v. Barnes Group, Incorporated, 23 F.4th 360 (2022)

Fox v. General Motors Corp., 247 F.3d 169 (2001)

Johnson v. City of New York, 326 F.Supp.2d 364 (2004)

Campo v. Mid-Atlantic Packaging Specialties, LLC, 564 F.Supp.3d 362 (2021)

Williams v. Geiger, 447 F.Supp.3d 68 (2020)

Echevarria v. AstraZeneca, LP, 133 F.Supp.3d 372 (2015)

Pepper v. Brown University, --- F.Supp.3d ---- (2023)

Whitlock v. Brueggemann, 682 F.3d 567 (2012)

Vadino v. A. Valey Engineers, 903 F.2d 253 (1990)

Clay v. Equifax, Inc., 762 F.2d 952 (1985)

Vadino v. A. Valey Engineers, 903 F.2d 253 (1990)

Sunset Drive Corp. v. City of Redlands, 282 Fed.Appx. 609 (2008)

Couveau v. American Airlines, Inc., 218 F.3d 1078 (2000)

Landau v. J. D. Barter Const. Co., Inc., 657 F.2d 158 (1981)

Jackson v. Federal Exp., 766 F.3d 189 (2014)

Myers v. Gulf Oil Corp., 731 F.2d 281 (1984)

Sims v. Lucas, 9 F.3d 1293 (1993)

Western States Ins. Co. v. Wisconsin Wholesale Tire, Inc., 148 F.3d 756 (1998)

U.S. v. Woods, 885 F.2d 352 (1989)

## **Other Authorities**

### **Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA**

*No. 915.002 (October 17, 2002) (available at <https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada>)*

## **Veterans and the Americans with Disabilities Act: A Guide for Employers**

*(November 27, 2020) (available at <https://www.eeoc.gov/laws/guidance/veterans-and-americans-disabilities-act-guide-employers>)*

### **Disabled Veteran Leave**

*DeCam 50-20.01 (November 30, 2018) (available at [https://corp.commissaries.com/sites/default/files/2018-12/decam-50-28.1\\_0.pdf](https://corp.commissaries.com/sites/default/files/2018-12/decam-50-28.1_0.pdf))*

### **Master Labor Agreement Between the Defense Commissary Agency and the American Federation of Government Employees**

*(August 13, 2018) (available at <https://www.afge.org/globalassets/documents/cbas/department-of-defense/c172-deca-master-labor-agreement-12-13-2023.pdf>)*

## **V. PETITION FOR WRIT OF CERTIORARI**

To the Honorable Justices of the United States Supreme Court:

I, Brandy Thompson, respectfully submit this Petition for Reconsideration of the denial of certiorari in *Thompson v. Austin*, pursuant to Supreme Court Rule 44. This petition asks the Court to reconsider due to significant legal and factual errors impacting this case, particularly regarding my rights as a disabled veteran under the ADA and Rehabilitation Act. This request for reconsideration is critical not only for me but for all veterans seeking fair treatment under federal disability laws.

## **VI. OPINIONS**

The opinions of the United States Court of Appeals for the Fourth Circuit and the District Court for the Eastern District of North Carolina are unpublished but are available upon request.

## **VII. JURISDICTION**

The decisions of the court of appeals were entered on December 18, 2023. A timely petition extension was approved on March 19, 2024. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

## VIII. Constitutional and Statutory Provisions Involved

Fourteenth Amendment, Section 1:

*All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

The Americans with Disabilities Act (ADA) is a federal law that prohibits discrimination against individuals with disabilities. This includes sectors like employment, housing, and other areas of life.

USERRA prohibits employers from discriminating against employees or applicants for employment based on their military status, including military obligations resulting from duties as part of the National Guard or Reserves. Reemployment protection for persons with or without service-related disabilities is also included.

All veterans are covered under USERRA regardless of disability status. The veteran is also protected by ADA if their disability falls under the ADA. Employers must make “reasonable efforts” to help a veteran returning to employment become qualified to perform the position they would have had if employment had not been interrupted by military service or if they sustained a disability during their military service.

Title VII of the Civil Rights Act of 1964. Title VII of the Civil Rights Act, as amended, protects employees and job applicants from employment discrimination based on race, color, religion, sex, and national origin. Title VII protection covers the full spectrum of employment decisions, including recruitment, selections, terminations, and other decisions concerning terms and conditions of employment.

Rehabilitation Act of 1973. Sections 501 and 505 of the Rehabilitation Act, as amended, protects employees and job applicants from employment discrimination based on disability. This law covers qualified employees and job applicants with disabilities. It also requires Federal agencies to provide reasonable accommodation of any known disabilities unless such accommodation would cause an undue hardship. *See* EEOC guidance on disability discrimination.

The Civil Rights Act of 1991. The Civil Rights Act of 1991 amends several sections of Title VII to strengthen and improve Federal civil rights laws and provide for the recovery of compensatory damages in Federal sector cases of intentional employment discrimination.

Vietnam Era Veterans' Readjustment Assistance Act of 1974. This law, sometimes referred to as VEVRAA, requires employers doing business with the Federal Government to take steps to recruit, hire and promote protected veterans. It also makes it illegal for these companies to discriminate against protected veterans when making employment decisions on hiring, firing, pay, benefits, job assignments, promotions, layoffs, training, and other employment-related activities.

## IX. STATEMENT OF THE CASE

As a disabled veteran, I joined the Defense Commissary Agency (DeCA) in 2016, presenting my 10-point veteran preference. Soon after, I disclosed my disabilities to my supervisor, Colleen Kemp, and requested reasonable accommodations. However, Ms. Kemp misplaced my documentation, disregarded my requests, and assigned me tasks outside my position description. This failure to accommodate resulted in missed medical appointments, heightened stress, and medical complications. Despite my efforts, including union intervention and medical advocacy, the discrimination and retaliation persisted, significantly impacting my health and well-being.

The lower courts dismissed my case, overlooking crucial evidence that demonstrated the respondent's knowledge of my disability and their legal obligation to accommodate under the ADA and Rehabilitation Act. Moreover, they failed to acknowledge the retaliatory pattern of adverse actions following my accommodation requests, ultimately granting summary judgment in error.

## X. REASONS FOR GRANTING THE PETITION

**1. Overlooked Evidence and Legal Misapplication:** The lower courts failed to properly consider my SF-50 form, a key document establishing that the Defense Commissary Agency (DeCA) was aware of my disability from the start of my employment. This oversight conflicts with established legal precedent, such as **Atencio v. U.S. Postal Service**, 198 F. Supp. 3d 340 (D.D.C. 2016), which underscores that an employer must engage in an interactive process for reasonable accommodations once aware of an employee's disability. The omission of this critical evidence misapplied the ADA's requirement for accommodations, as outlined in **42 U.S.C. § 12112(b)(5)(A)**.

**2. Inconsistent Statements and Their Legal Significance:** The respondent's contradictory claims, particularly the timeline of their awareness of my disability as supported by the supervisor's testimony and Mr. White's congressional response, conflict with my SF-50 form. This inconsistency, overlooked by the courts, undermines the agency's narrative and reflects a failure to engage in the legally mandated accommodation process. Courts in cases such as **Scalera v. Electrograph Systems, Inc.**, 848 F. Supp. 2d 352 (E.D.N.Y. 2012), highlights that inconsistencies in employer accounts can indicate a breach of the ADA's standards.

**3. Timing of Retaliation Claims:** The lower court did not adequately analyze the timing of adverse actions following my accommodation requests. In **Guerrero Toro v. NorthStar Demolition & Remediation**, 366 F. Supp. 3d 449 (E.D. Va. 2019), it was held that close temporal proximity between a protected activity (such as requesting accommodations) and an adverse employment action can establish pretext. The oversight of this timing analysis affected the court's decision on my retaliation claim, warranting reconsideration.

### 4. Circuit Split on Disability Protections for Veterans:

There exists a clear split among circuits on the application of ADA standards for veterans, particularly concerning employers' obligations for reasonable accommodations. Without guidance from this Court, disabled veterans across circuits are subjected to inconsistent interpretations of their legal protections.

**5. New or Intervening Circumstances and Public Interest:** Since the denial of my original petition, new rulings have reinforced the inconsistent application of ADA standards across different circuits. Clarification by the Supreme Court is critical to promoting uniformity in the interpretation of 42 U.S.C. § 12132 and ensuring that federal obligations are upheld consistently. This case has far-reaching implications for all disabled veterans, affirming the protections guaranteed by the ADA and Rehabilitation Act as highlighted in **Williams v. Virginia Polytechnic Institute & State University, 451 F. Supp. 3d 467 (W.D. Va. 2020)**.

**6. Broader Public Interest and Impact on Disabled Veterans:** The ADA and Rehabilitation Act aims to prevent exactly the kind of discrimination and retaliation I experienced. A ruling from the Supreme Court would clarify the scope of these protections, reinforcing the nation's commitment to fair treatment for veterans with disabilities.

#### **CERTIFICATE OF GOOD FAITH**

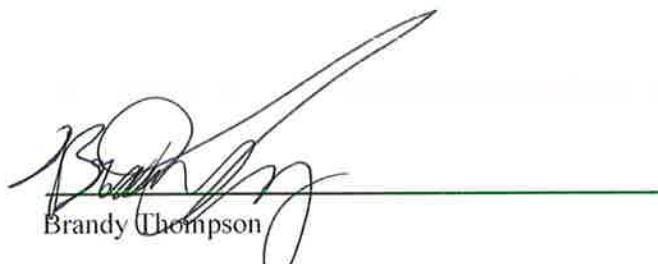
I, Brandy Thompson, certify that this petition for rehearing is presented in good faith and not for the purpose of delay. It addresses substantial and controlling matters of law and facts that were overlooked or not fully considered, which directly affect my rights as a disabled veteran under the ADA and Rehabilitation Act, as well as those of similarly situated individuals.

#### **XI. CONCLUSION**

For the foregoing reasons, I, Brandy Thompson, respectfully urge the Court to reconsider its denial of certiorari due to significant intervening circumstances, overlooked legal and factual elements, and new developments. This case serves as a vital precedent for affirming the ADA's and Rehabilitation Act's purpose and promoting consistent application of federal disability laws to protect disabled veterans.

DATED this 14th day of November 2024.

Respectfully submitted,



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**Additional material  
from this filing is  
available in the  
Clerk's Office.**

