

24-5653
No. _____

ORIGINAL

in the **Supreme Court of the United States**

AARON ABADI,

Petitioner,

v.

MARINA DISTRICT DEVELOPMENT COMPANY, LLC D/B/A BORGATA

HOTEL CASINO & SPA, AND MICHAEL SCHULTZ,

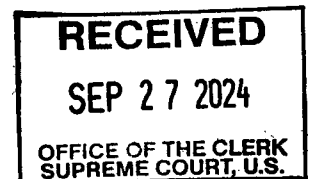
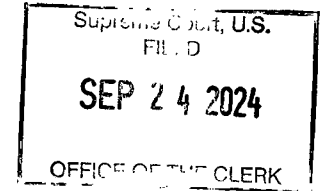
Respondents.

On petition for writ of certiorari to review a decision by the U.S. THIRD CIRCUIT COURT OF APPEALS, affirming the UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY decision to dismiss the Complaint.

PETITION FOR WRIT OF CERTIORARI

Petitioner:

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QUESTION PRESENTED

In response to the COVID-19 pandemic, government agencies and private corporations implemented mask mandates in public accommodations, following CDC guidance that exempts individuals with disabilities who cannot wear masks. Under the Americans with Disabilities Act ("ADA"), public accommodations are required to conduct individualized assessments to determine whether an individual poses a "direct threat" to the health or safety of others.

Question: Can a public accommodation categorically rely on CDC guidance to label an individual with a disability who cannot wear a mask as a "direct threat," thereby denying access, without conducting the individualized assessment mandated by the ADA, even when the same guidance explicitly exempts such individuals from mask requirements?

I. PARTIES TO THE PROCEEDING

The parties to this proceeding are as follows:

Aaron Abadi, with name, address, and contact info listed above, as Petitioner.

Defendant, Marina District Development Company, LLC d/b/a Borgata Hotel Casino & Spa ("Borgata"), owns and operates a hotel, casino, and spa in Atlantic City, NJ. Marina District Development Company, LLC is wholly owned by Marina District Development Holding Company, LLC, a subsidiary of MGM Resorts International, a publicly traded company incorporated in Delaware with headquarters in Nevada.

Defendant Michael Schultz serves as Chief of Security at Borgata.

II. CORPORATE DISCLOSURE STATEMENT

Plaintiff/Petitioner is a pro se litigant, and not a corporation.

III. STATEMENT OF RELATED PROCEEDINGS

This petition was brought due to the decision by the Third Circuit Court of Appeals in the case Abadi v. MARINA DISTRICT DEVELOPMENT COMPANY, LLC D/B/A BORGATA HOTEL CASINO & SPA, AND MICHAEL SCHULTZ, Case:

24-1188 Document: 19 - Date Filed: 08/29/2024. Rehearing and En Banc were denied 9/20/2024.

That Appeal was of a case in the lower court, the UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY, that was dismissed by the judge; Abadi v. Marina Dist. Dev. Co., LLC, et al. Civil Action No. 22-0314, on January 29, 2024.

There are no other cases directly related to this case, that Applicant is aware of.

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PETITION FOR WRIT OF CERTIORARI

Aaron Abadi respectfully petitions for a writ of certiorari for this Court to review the judgments of the U.S. Third Circuit Court of Appeals and the U.S. District Court for the District of New Jersey in this case.

VI. OPINIONS BELOW

The Third Circuit's opinion is not reported but can be found at Abadi v. Marina District Dev. Co, LLC et al; Case: 24-1188 Document: 19 - Date Filed: 08/29/2024. This is reproduced here at Appendix page 1a. The District Court's opinion is available as Abadi v. Marina Dist. Dev. Co., LLC, et al. Civil Action No. 22-0314, on January 29, 2024, and is reproduced here at Appendix page 10a.

VII. JURISDICTION

This petition was timely as the Order denying Rehearing & En Banc was issued September 20, 2024 (Addendum Page 8a), and this was submitted well within the 90-days.

This Court has jurisdiction under 28 U.S.C. §1254, which states the following: "Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree..."

party to any civil or criminal case, before or after rendition of judgment or decree...”

VIII. PROVISIONS, STATUTES, & REGULATIONS

ADA – 42 U.S. Code § 12182 - Prohibition of discrimination by public accommodations

(a)General rule

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

(b)Construction (1)General prohibition (A)Activities

(i)Denial of participation

It shall be discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity.

(ii)Participation in unequal benefit

It shall be discriminatory to afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals.

ADA - 28 C.F.R. § 36.208 Direct threat.

(a) This part does not require a public accommodation to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of that public accommodation when that individual poses a direct threat to the health or safety of others.

(b) In determining whether an individual poses a direct threat to the health or safety of others, a public accommodation must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: The nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.

IX. STATEMENT OF THE CASE

1) Defendant, Marina District Development Company, LLC d/b/a Borgata Hotel Casino & Spa (“Borgata”), owns and operates a hotel, casino, and spa in Atlantic City, NJ. Defendant Michael Schultz (“Schultz”) serves as Chief of Security at Borgata. Alleged discrimination occurred under Mr. Schultz's authority as Chief of Security at Borgata.

2) The COVID-19 pandemic, which originated in Wuhan, China, spread globally in late 2019, leading to widespread illness and death throughout 2020 and into 2021.

3) In response, the Centers for Disease Control and Prevention (“CDC”) issued evolving guidance, recommending the wearing of masks in public spaces. This guidance was periodically updated as the situation progressed.

4) Most, if not all, mask mandates and guidance, including those from the CDC, recognized exemptions for children under the age of two and individuals with disabilities preventing mask use.

5) The Americans with Disabilities Act (“ADA”) issued specific guidance regarding mask policies for individuals with disabilities. This guidance, titled "The ADA and Face Mask Policies," (Second Amended Complaint Exhibit B - Case 1:22-cv-00314-CPO-MJS Document 9-1 Filed 10/24/22 Page 9 of 129) identifies certain disabilities, including sensory processing disorders, that can make wearing a mask difficult or impossible. It notes, for example, that individuals with autism may experience sensory overload, anxiety, and panic from covering their nose and mouth with fabric.

6) Although I, the Petitioner, do not have autism, I suffer from sensory processing disorder (“SPD”), which similarly causes significant distress when something covers my face. This condition is well-documented in my medical records. Documents presented to the Courts (2nd Amended Complaint Exhibits C & D – District CT Case 1:22-cv-00314-CPO-MJS Document 9-1 - Page 32 & 33 of 129) include a doctor’s letter, and a medical chart.

7) I have dealt with this condition throughout my life. Wearing items such as glasses, sunglasses, or hats causes severe sensory overload, making them intolerable. I also experience significant discomfort from wearing neckties or starched shirts, particularly anything around the face or head.

8) This is not simply a matter of discomfort; sensory overload due to SPD results from the brain misinterpreting sensory input. When I attempt to wear a mask, the experience quickly becomes unbearable, compelling me to remove it. This condition is accompanied by headaches and other physical symptoms, rendering me completely unable to wear a mask.

9) Based on ADA guidelines, I qualify for an exemption from mask mandates. The ADA's guidance on face mask policies (see above) clearly outlines that sensory disabilities like mine should be accommodated, as they significantly limit major life activities when triggered.

10) The ADA's definition of disability (28 CFR § 36.105) includes any "physical or mental impairment" affecting major body systems, including the sensory system. My disorder, which affects the sense of touch, falls squarely within this definition, as it severely limits my ability to function in everyday life.

11) Touch is a vital sensory function that allows humans to detect pressure, vibration, temperature, and pain. The impairment of this sensory system, particularly around the face, limits many major life activities, making my condition a recognized disability under the ADA.

12) My doctor's letter also confirmed that I had already contracted and recovered from COVID-19 and was no longer contagious. The CDC itself has acknowledged that reinfection is rare (2nd Amended Complaint Exhibit E - District Ct Case 1:22-cv-00314-CPO-MJS Document 9-1 Filed 10/24/22 Page 38 of 129). Therefore, under these circumstances, I could not reasonably be considered a "direct threat" as defined by disability laws, which would permit discriminatory actions.

13) The Equal Employment Opportunity Commission (EEOC) has similarly emphasized that only individuals with active COVID-19 or its symptoms may be considered a direct threat (referred to in the ADA document referenced above).

14) The EEOC's guidance confirms that the presence of COVID-19 or its symptoms, and not merely the absence of a mask, constitutes a direct threat. Therefore, the argument that I posed such a threat lacks any reasonable basis.

15) If, for argument's sake, one were to claim that anyone without a mask poses a direct threat, then it would logically follow that everyone with a mask is not a threat. This line of reasoning is unsound, especially considering that many commonly worn masks provide limited or questionable protection. Treating me differently based solely on mask use constitutes discrimination.

16) The medical community, including the CDC, NIH, and WHO, has continually updated its stance on the effectiveness of masks in preventing the spread of COVID-19. To date, no peer-reviewed study conclusively proves that common mask types provide significant protection. While masks may offer some benefit, the scientific consensus remains uncertain, and I do not seek to litigate this issue unless the Court or Defendants raise it.

17) Under the ADA, a public accommodation can deny access only after conducting an individualized assessment to determine whether a person with a disability poses a direct threat.

18) Defendants, Borgata and Schultz, discriminated against me, conspired to perpetuate this discrimination, and failed to make any effort to accommodate my disability.

19) Borgata denied Plaintiff entry to its hotel, stores, and casino, citing its mask mandate despite his disability.

20) Plaintiff had planned a specific trip to Borgata from May 15-18, 2021, for the purpose of religious observance.

21) The trip was canceled due to Borgata's refusal to accommodate Plaintiff's disability.

22) Plaintiff asserts that Borgata's actions constituted discrimination based on his disability.

23) Plaintiff filed a complaint with the New Jersey Division of Civil Rights, which ultimately declined to pursue the matter. Plaintiff contends that Borgata's policies amount to unlawful discrimination against individuals with disabilities.

24) While Borgata later lifted its mask mandate for vaccinated guests, it continued to restrict access for unvaccinated individuals.

25) As an unvaccinated individual, Plaintiff remained barred from entering Borgata's facilities.

26) Plaintiff seeks damages for each day of discrimination endured as a result of Borgata's policies. Legal precedent supports the awarding of damages for each instance of discriminatory conduct.

27) Plaintiff alleges that the discrimination by Borgata spanned at least twelve days, with the possibility of further instances beyond that period.

28) Disabled individuals have the right to be free from discrimination, and all people have the right to be treated with dignity. My rights were unjustly stripped from me that day.

29) The actions of the Defendants caused me significant anxiety and distress.

30) The District Court dismissed my case in its entirety.

31) The Lower Courts' decisions heavily relied on the notion that the Centers for Disease Control & Prevention provided guidance justifying the Defendants' actions, which labeled the Plaintiff as a direct threat due to his inability to wear a mask. The Third Circuit Court of Appeals affirmed that decision. However, Plaintiff contends that both the lower and Circuit Courts overlooked key facts and legal precedents.

32) The CDC guidelines have always provided exemptions for individuals' with disabilities who are unable to wear masks, which includes adults with medical conditions like the Plaintiff. The Americans with Disabilities Act (ADA) also incorporates these exemptions, which are corroborated by the CDC's own guidance. For instance, the State of New Jersey, in its own mask mandate, directly cites the CDC guidelines, stating that individuals unable to wear masks due to medical

conditions may enter public premises without needing to provide documentation (second amended complaint; Exhibit A - Case 1:22-cv-00314-CPO-MJS Document 9-1 Filed 10/24/22 Page 1 of 129). This contradicts the Courts' assertions that the Defendants' adherence to CDC guidance justified their actions. The Plaintiff should not have been denied access to the facilities based on his inability to wear a mask.

33) Furthermore, the Courts' failure to address the direct threat standard under the ADA regulations is a significant oversight. According to 28 C.F.R. § 36.208(b), an individualized assessment must be conducted to determine whether an individual poses a direct threat, based on objective evidence and current medical knowledge. In this case, the Plaintiff had previously contracted COVID-19 and presented a doctor's letter confirming that he was no longer contagious. The CDC's guidance at the time stated that reinfection was rare, making it imperative for the Defendants to perform an individualized risk assessment. Yet, they failed to engage in any such assessment, instead relying solely on the absence of a mask as an automatic indication of a direct threat.

34) In light of these facts and legal errors, Plaintiff respectfully requests that this Court thoroughly reexamine the case and overturn the erroneous rulings.

X. WHY THE COURT SHOULD GRANT THIS WRIT

1) Applicant hereby petitions this Court, the highest Court in the land, for a writ of certiorari, to review the questions presented. The following are the reasons why this Court should review and resolve these questions.

2) The Supreme Court is selective in its caseload, taking only a small percentage of petitions. However, the issues presented in this case are of profound national significance, particularly regarding disability discrimination under the Americans with Disabilities Act (ADA) and the systemic bias against pro se litigants in the lower courts. This case against Borgata and Schultz exemplifies how both concerns intersect and highlights why the Court's intervention is necessary to correct the errors of the lower courts.

A. Misinterpretation of CDC Guidance on Disability Exemptions

3) The lower courts dismissed this case primarily based on an incorrect understanding of the CDC's COVID-19 mask guidance. Both the district and circuit courts ruled that Defendants' denial of access to the plaintiff, a disabled individual unable to wear a mask, was justified under the CDC guidelines. However, these courts overlooked key provisions in the CDC guidance that specifically exempted individuals with disabilities who could not wear masks. This is a crucial oversight, as it forms the basis of the plaintiff's discrimination claim.

4) The CDC's guidance throughout the pandemic allowed for exemptions, particularly for those with disabilities. Borgata and Schultz were required to accommodate individuals like the plaintiff, but instead, they refused to grant access, violating both ADA provisions and CDC exemptions. This misinterpretation of CDC guidelines is an error with broad implications for how courts assess disability discrimination during public health emergencies, and it warrants Supreme Court review.

B. The Lower Courts' Bias Against Pro Se Litigants

5) This case also underscores a broader issue: the lower courts' deep-seated bias against pro se litigants. The plaintiff, representing himself in this matter, was subjected to dismissive treatment by the courts, which failed to engage with the substance of his arguments or the relevant legal standards. Pro se litigants already face steep challenges, and when those challenges are compounded by judicial bias, the integrity of the judicial process is undermined.

6) The plaintiff's claim was dismissed without proper consideration of the CDC guidance, the ADA's requirement for individualized assessments, or the fact that he was not contagious at the time of the incident, as confirmed by medical documentation. This pattern reflects the judiciary's disregard for cases brought by non-lawyers, especially when coupled with discrimination claims. The Supreme

Court's review of this case could reaffirm the importance of equal access to justice for all, regardless of representation.

C. Failure to Conduct an Individualized Assessment Under ADA

7) The ADA requires public accommodations to conduct an individualized assessment of whether a disabled person poses a direct threat, based on current medical knowledge. In this case, Borgata and Schultz were legally required to assess the plaintiff's risk of transmitting COVID-19 individually, rather than applying a blanket policy of exclusion for those not wearing masks. The plaintiff had recovered from COVID-19, and according to CDC guidelines, the risk of reinfection was minimal. Despite being informed of this, Borgata and Schultz failed to conduct any assessment of the plaintiff's situation.

8) Both the district and circuit courts ignored the ADA's mandate for individualized assessments. Their rulings effectively allowed Borgata and Schultz to bypass its legal obligation to engage with the plaintiff's disability and the actual medical risk he posed. This failure to uphold the ADA is a significant legal error that could have far-reaching consequences for disability rights, especially in situations where public health is invoked to justify discriminatory treatment.

D. Broader Implications for Public Health and Disability Rights

9) This case raises critical questions about the balance between public health measures and disability rights. While the courts have generally deferred to businesses' application of public health guidance during the pandemic, that deference cannot come at the expense of fundamental ADA protections. As the plaintiff's case demonstrates, businesses and lower courts have often used public health guidance as a shield to avoid compliance with ADA requirements, without fully considering the nuances of that guidance.

10) The Supreme Court has the opportunity to clarify how public accommodations should apply health guidelines in a way that respects the rights of disabled individuals. This is particularly important as the country continues to face evolving public health challenges. Without proper guidance from this Court, there is a risk that disabled individuals will continue to face exclusion and discrimination under the guise of public health concerns.

XI. CONCLUSION

This case presents the Supreme Court with the opportunity to address serious legal and systemic issues: the misapplication of CDC guidance, the disregard for the ADA's individualized assessment requirement, and the broader prejudice against pro se litigants. The lower courts failed to adequately protect the

rights of a disabled individual who was denied access to a public accommodation, and their rulings set a dangerous precedent that weakens ADA protections nationwide.

Given the importance of disability rights, public health considerations, and access to justice for pro se litigants, the Supreme Court should grant certiorari to correct these errors, provide clarity on the proper application of public health guidelines, and ensure that disabled individuals are afforded the full protections guaranteed under the ADA.

WHEREFORE, Petitioner requests that this court grant this writ of certiorari, and respond and resolve the questions and issues herein.

Respectfully submitted on September 24, 2024,



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