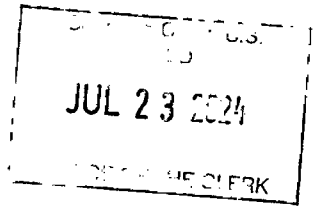
No. 24-5742

In the Supreme Court of the United States

JASMINE OLIVER, *Plaintiff- Petitioner,*
v.
AMAZON.COM SERVICES LLC, *Defendant-Respondent,*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT



PETITION FOR A WRIT OF CERTIORARI

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Question Presented

Title VII of the Civil Rights Act of 1964, as amended, U.S.C. 2000e Et Seq., outlines an employee whose sexual harassment of subordinates has created a hostile work environment amounting to employment discrimination. We hold that an employer is vicariously liable for actionable discrimination, which outlines that sexual harassment is actionable if it is severe or pervasive as to alter the conditions of the employee's employment and create a hostile or abusive working environment. The question presented is whether an employer is liable for sexual harassment that is reported by an employee anonymously, whether an employer is not liable based on the size of its organization, whether physical assault and groping by a non-supervisor constitute sexual harassment.

Under Title VII of the Civil Rights Act of 1964,78 Stat., 255, as amended 42 U.S.C. 2000e-3(a), it is unlawful for an employer to discriminate against any of his employees because the employee has opposed any practice by Title VII, or because the employee has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Title VII. The question presented is whether an employee who establishes a pretext has established a causal connection regarding protected activity and adverse action, whether employee is required to demonstrate intent under title VII for an employer to be liable for retaliation, and whether close timing demonstrates retaliation. The questions holds whether an

employer who attempts to reverse its decision of adverse action if an employee has demonstrated that the adverse action was only based on its protected activity.

The Americans with Disabilities Act (ADA), 42 U.S.C. 12101 et Seq., prohibits a covered employer from discriminating in the terms, conditions, and privileges of employment against a qualified individual with a disability including failing to make reasonable accommodations for a known physical or mental disabilities.

The question presented is whether the requirement of reasonable accommodations can be denied based on a suspicion of a threat without medical evidence, whether an employer has accommodated an employee disability if the accommodation neither accommodates the employee disability, nor enables an employee to perform essential functions of her job but is provided by the employer. Whether an employer has violated its requirements to provide an accommodation if an employee has more than one disability, which the employer is aware of but refuses to accommodate one and not the other known disabilities. Whether the employee who meets the prongs described in the ADA, regarded as, actual disability and record of disability be qualified as an individual without a covered disability. Whether an employer can refuse to accommodate based on speculation that an employee is not disabled. Whether an employee is afforded the same enjoyment as non-disabled employees in terms of accommodations. Whether an employee with an

episodic disability is disabled. Lastly, whether the interactive process is meant to be ongoing and if an employee requests for accommodations after prior accommodations if the accommodations are not enabling the employee to perform its duties has the employer failed to accommodate an employee if it knows the accommodations does not work. Whether the employer can refuse to accommodate and continue to engage in the interactive process.

Section 1981 holds that all persons within the jurisdiction of the United States shall have the same right in every state and territory to make and enforce contracts as is enjoyed by white citizens including the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship. The question presented is whether an employee who identifies a similar comparator outside of the petitioner's race, demonstrated that her employer violated the provisions that prohibit discrimination as to all terms, conditions, or privileges regarding the same right as to white citizens, or must the employee identify other factors to demonstrate that the same rights were not provided as to white citizens. Whether Metadata that states that an employee was terminated prior to the reason by the employer be evidence of pretext.

Parties to the Proceeding

The Parties to the proceeding consist of the Petitioner, Jasmine Oliver, vs respondent Amazon.com Services as outlined on the cover page.

Related Proceedings

Oliver V. Amazon.com, No.22-cv-0150, Consolidated Case filed February 07th, 2022, Judgement entered on September 14th, 2023.

Oliver V. Amazon.com No. 22-cv-0151, Consolidated Case filed February 07th, 2022, Judgement entered on September 14th, 2023

Oliver V. Amazon.com No.22-cv-0149, Consolidated Case filed February 07th, 2022, Judgement entered on September 14th, 2023

Oliver V. Amazon.com No.23-cv-02818, Case filed, Judgement entered on April 24th, 2024.

Table of Contents

Opinions Below

The opinion rendered on April 24th, 2024, by the United States Court of Appeals for the Seventh Circuit, is provided in pages 1a-10a of the appendix. The Eastern District Court of Wisconsin, opinion entered on September 14th, 2023, is provided within the appendix as 11a-30a. The opinion regarding the petitioner's motion for spoliation is contained within the appendix as 31a-50a.

Jurisdiction

The decision rendered by the United States Court of Appeals for the Seventh Circuit was entered on April 24th, 2024. This court has jurisdiction pursuant to 28 U.S.C. 1254. The Eastern District of Wisconsin has jurisdiction according to U.S.C. 1331.

Constitutional and Statutory Provisions

Statutes, regulations and rules:

Americans with Disabilities Act of 1990,

42 U.S.C. 12101 et seq.....

42 U.S.C. 12111(8)

42 U.S.C. 12111(9)

42 U.S.C. 12111(9)(A) ...

Statutes, regulations and rules-Continued:

42 U.S.C. 12111(9)(B) ....

42 U.S.C. 12112(a) (Supp. V 2011)

42 U.S.C. 12112(b) (5)(A)

29 C.F.R. App.:

Section 1630.2(m)

Section 1630.2(0)

Fed. R. Civ. P. 12(b)(6)

7th Cir. R. 40(e).

42 U.S.C 2000 et seq

42 U.S.C. 1981

42 U.S.C. 2000e-3(a)

Statement of the Case

A. BACKGROUND

The Petitioner/ Plaintiff, Jasmine Oliver (Ms. Oliver), as pro se, brought the following suit, against her former employer Amazon.com Services, which she appealed within the United States Court of Appeals within the Seventh Circuit. Ms. Oliver suit claims, failure to accommodate and retaliation in violation of the Americans with Disabilities Act (ADA), 42 U.S.C 12112 et seq; discrimination and retaliation based on sex, 42 U.S.C 2000 et seq, and discrimination and retaliation based on race in violation of 42 U.S.C. 1981 as alleged within her 69-page complaint.

Ms. Oliver began her employment with the defendant in November of 2018, as a fulfillment center associate at its Amazon.com fulfillment center located in Kenosha, Wisconsin. Amazon.com Services employs fulfillment center associates who package and ship orders to its customers. Ms. Oliver was placed on an unpaid suspension and terminated the same day that the EEOC and Equal Rights division required her participation in an investigation June 18th, 2020. Ms. Oliver was terminated just hours after submitting a response and participating with the EEOC/ Equal Rights division investigation.

During Ms. Oliver employment, she requested for several accommodations all of which were not provided. Ms. Oliver endured sexual harassment as a condition of her employment to the extent of the display of half-naked photos, threats of raping

women, groping and touching of the top of her buttock, unwelcome advances, inappropriate name references, physical assault by grabbing, and violent outbursts from harassers by throwing heavy machinery towards her head.

B. PROCEDURAL HISTORY

The Plaintiff lawsuit was filed February 07th, 2022 and was dismissed on the defendant's motion for summary judgement on September 13th, 2023.

By Judgement entered on September 14th, 2023, the district court dismissed the Plaintiff's complaint on the Defendant's motion for summary judgement. The Plaintiff filed for an appeal of the judgement rendered by the District Court on September 20th, 2023. The court of appeals issued a decision on April 24th, 2024, affirming the district court decision.

Reason for Granting the Petition

Introduction

This concerns censorious issues relating to multiple aspects of employment discrimination that an employee may face while employed with their employer such as the reporting of sexual harassment and employer liability, the reasonable requirement of accommodations of the Americans with Disability Act, retaliation following an employee's engagement of protected activity, and race discrimination.

The petitioner writes this petition in hopes that the Supreme Court along with its law clerks view the issues brought forth within this petition as a

national significance. The purpose of this petition is not to dispute facts but rather to highlight how the same set of facts determined by the court of appeals for the seventh circuit were decided differently within different circuits, which is why this petition should be granted. Even if the respondent argues that the court of appeals has not erred it further supports and doesn't change the fact that given the same circumstances other circuits reached a different decision making a grant of certiorari pertinent to bring uniformity to the courts.

This petition has been entirely composed solely by the petitioner, which is construed even while on a disability absence, so please bear with her concerning the structure of this petition. This petition does contain information that some may view as sensitive as a forewarning but discussed, so that this court would better understand the severity of issues discussed within this case. Despite having an emotional/ mental disability that does not affect the seriousness of the events discussed, which is not to say that you would treat her differently based on her disability but that you would read this petition thoroughly.

The Supreme Court should grant this petition because more than one circuit has ruled differently regarding the same issues, has national significance and because it calls for this court to exercise authority only the Supreme Court has.

CIRCUIT SPLIT DECISION

Consequently, the United States courts of appeals have entered a decision in conflict with the decision of another United States court of appeals on the same important matter regarding if an employer is deemed liable for sexual harassment that is reported anonymously.

According to the seventh circuit as decided in *Oliver v. Amazon.com*, employers shouldn't be held liable for sexual harassment that consists of a male employee groping another female employee top of their butt, showing half naked photos of themselves, physically grabbing a female employee, making advances, and throwing heavy machinery towards a female employee after rejecting their advances, and the seventh circuit has decided that because an initial complaint of sexual harassment was filed anonymously that the employer shouldn't be held liable. It is to be noted that the complaint as undisputed did not remain anonymous as Ms. Oliver reported this incident to local police, hr., and management, while identifying herself and the harasser.

The fourth circuit rendered a decision contrary to the seventh circuit in *Pryor V. United Air Lines, Inc*, which determined the fact that the source of harassing behavior is not known in no way relieves the employer of its legal obligation under Title VII to investigate the matter using all tools promptly and thoroughly at its disposal.

The seventh circuit decision sets a precedent that employers A. Are not required to investigate claims

of sexual harassment, because if they did the identification of the harasser would have been made known upon a full investigation.

B. That employers are not required to follow its own policies regarding the procedures that it provides employees on reporting sexual harassment even anonymously.

The national significance of this issue is of grave importance because employees may not have knowledge of an employee's full name or may like to report the incident anonymously due to fear of not being taken seriously or believed.

Whenever an individual reports any acts of misconduct especially sexual harassment it takes courage to speak up and take steps towards addressing unwelcome behavior that may not otherwise be investigated, and in the case of *Oliver v. Amazon.com* may continue throughout their employment.

For the purposes of context Ms. Oliver highlights the similarities between her case and that which was previously decided in the fourth circuit, which had quite different outcomes.

The seventh circuit court of appeals determined that sexual harassment that is reported anonymously prohibits an employer from being held liable, even if it knew or should have known that the sexual harassment occurred.

In *Oliver v Amazon.com*, the case currently being sought for writ of certiorari by Ms. Oliver, the

district court itself determined that the size of an organization prohibits an employer from being liable of sexual harassment, which led to the appeal with the seventh circuit court of appeals, which affirmed the district court ruling regarding sexual harassment, though the employer admitted it knew of the harassment.

If Ms. Oliver case had been heard in the United States fourth Circuit Court of appeals, the decision would have been remanded to trial because in *Pryor v. United Air Lines, Inc.*, the fourth circuit determined the fact that the source of the harassing behavior is not known in no way relieves the employer of its legal obligation under Title VII to promptly and thoroughly investigate the matter using all tools at its disposal.

Ms. Oliver is aware of her duty to provide this court with the necessary information to determine if this split decision is appropriate for the Supreme Court to intervene, which complied with S. Ct. R. 10(a).

In *Oliver V. Amazon.com*, Ms. Oliver was sexually harassed by not one male employee but two, both of, which the record within the court of appeals affirmed that the defendant Amazon.com admitted to having knowledge of both incidents of sexual harassment that Ms. Oliver experienced during her employment as a fulfillment center associate at Amazon fulfillment center located in Kenosha, Wisconsin.

On several occasions with the first male employee whose identity at the time was unknown, the

plaintiff received multiple advancements from her coworkers, which Ms. Oliver refused. The coworker not only made gestures of what he would do to get Ms. Oliver to comply with his advances, he began using vulgar language at Ms. Oliver because she refused his advances. This same employee described to Ms. Oliver that the only way to cease his inappropriate behavior was if she reported and got a restraining order and if not, he would continue.

The record entails that Ms. Oliver reported the behavior to the defendant's human resource business partner James San, who refused to take any action because he stated that he did not have a name. It is to be noted that even after the reporting of sexual harassment Ms. Oliver continued to endure sexual harassment as a condition of her employment with the defendant, as this employee refused to provide his name to Ms. Oliver.

This sexual harassment experience with just one of the employees was not only severe but pervasive and if heard in the fourth circuit and not the seventh it would have been remanded for trial because the defendant would not have been relieved from complying with its legal obligation under Title VII to promptly and thoroughly investigate the matter using all tools at its disposal.

The record reflects that the defendant has 24/7 surveillance and an internal photograph system that identifies employees by photographs, badge numbers and name, which are tools at its disposal, which it failed to utilize. Furthermore, the record reflects

that the defendant Amazon.com admitted that it failed to conduct a prompt and thorough investigation, which was an issue that was not in dispute.

During Ms. Oliver employment with the defendant, she experienced another instance of sexual harassment experienced by a male employee named Tommie Lee Robinson, which the defendant admitted that it was aware of and that it failed to conduct a prompt and thorough investigation and if Ms. Oliver case would have been heard in the fourth circuit it would have been remanded for trial.

The Eastern District of Wisconsin determined that because the defendant did not have the harassers last name that it was not liable for the sexual harassment that the defendant knew occurred and failed to investigate.

The seventh circuit court of appeals affirmed the district court's decision and determined that because it was allegedly reported anonymously the defendant was not liable for the sexual harassment, which it admitted that it was aware of.

Again, according to S. Ct. R. 10(a), the fourth circuit decision is contrary to the seventh circuit because it determined that the fact that the source of the harassing behavior is not known in no way relieves the employer of its legal obligation under Title VII to promptly and thoroughly investigate the matter using all tools at its disposal.

This issue is of immense importance and there are conflicting opinions within the circuits regarding the issue of reports of sexual harassment if the employer no longer has a duty to ensure it takes action regarding the sexual harassment or even conduct an investigation.

For context purposes Ms. Oliver, experienced being sexually harassed by another male employee named Tommie Lee Robinson during her employment with the defendant Amazon.com. Ms. Oliver was groped by Tommie, after showing her a half-naked picture of himself, grabbed by the shoulders, and had heavy machinery threw at her because she refused the advances of Tommie who referred to Ms. Oliver as his wife.

Ms. Oliver reported the sexual harassment first to the Kenosha police department, second to her manager, third to her human manager Tyrell Townsend, fourth to the defendant's loss prevention staff, fifth to the defendant's anonymous sexual harassment hotline ethics point and again to another human resource employee in writing Shannon McMillon none of which resulted in the defendant conducting an investigation or the sexual harassment ceasing.

The defendant admitted that it was aware of the harassment and admitted that it failed to investigate despite having a policy that outlines that sexual harassment is prohibited and would result in an investigation.

The record reflects that the defendant knew who the harasser identity was despite the seventh circuit determining that the report was anonymous, meaning they were unaware of the identity of the harasser and Ms. Oliver; however, in either circumstance whether the report was reported anonymously or not would not prohibit the defendant from being liable of sexual harassment it knew of.

In addition, Ms. Oliver case was decided in a manner that was so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's supervisory power because both the district court and the court of appeals noted that the case was decided in favor of the defendant Amazon because of who it is, which was based on the large size/ accomplishments of the organization.

Ms. Oliver requests that this court exercise its supervisory power in that the judicial proceedings were so far departed from the accepted and usual course of judicial proceedings when it based its decisions on the enormous size/ accomplishments of the defendant Amazon.com.

It has never occurred as usual or acceptable that an employer or any defendant would not be subject to any laws enacted by congress simply because of who they are and what they have accomplished based on the magnitude of its organization.

If a defendant needs only to be of a certain size, then the case was decided regardless of any evidence that would have allowed Ms. Oliver to proceed to trial

because Ms. Oliver is not an organization with many employees. It has never been an accepted and a usual practice for a case to be decided in a manner that doesn't hold employers/ defendants liable because of who it is.

As stated by the district court and court of appeals no jury would find the defendant liable for sexual harassment, retaliation and or race discrimination because of the size of its organization being so large.

Evan if the defendant states that it should not be held liable for sexual harassment because it claimed that they did not know who the harasser was although; there is no evidence of any of its employees stating they were unaware of the identity of the harasser it only confirms that there are split circuit decisions regarding if an employee who utilized and employer reporting procedure within its policy prohibits an employer from being liable because if failed to investigate sexual harassment it knew of despite claiming to have known the harasser and further proves why writ for certiorari should be granted to provide uniformity to important federal questions of law.

ADA

The Americans with disabilities act provide that employers are to provide reasonable accommodations to qualified individuals, which was never disputed during the summary judgement phase with the district court.

CIRCUIT SPLIT DECISION

In *Oliver v. Amazon.com*, the seventh circuit court of appeals determined that Ms. Oliver was not disabled because her disability is episodic by stating that she's disabled only when she's triggered.

The 6th circuit rendered a decision regarding anxiety and episodic disabilities that more closely aligns with the ADA, by determining the plaintiff in *Heidi Hostettler vs. The College of Wooster* was a qualified individual with an episodic disability.

Ms. Oliver alleges that she requested for multiple accommodations throughout her employment with the defendant none of which were provided. During the summary judgement phase the defendant did not refute that they failed to provide accommodations, or that Ms. Oliver was a qualified individual with a disability.

Ms. Oliver complaint asserts that Ms. Oliver is a qualified individual within the meaning of the ADA, because she met all three prongs.

Ms. Oliver complaint asserts that she has post-traumatic stress disorder, bi-polar, panic attacks, and an adjustment disorder w/ anxiety and depression.

Ms. Oliver asserts that she's disabled, affecting major activities like cardiovascular causing tachycardia, (fast heart rate), affects her breathing- which is a major life activity, her concentration, her speaking- which is a major life activity and her ability to complete day to day tasks along with other major life activities as within the appendix.

The record does not contain any expert witnesses on behalf of the defendant disputing her medical record, as required according to the motion for summary judgement with admissible evidence that Ms. Oliver is not an individual with a disability within the meaning of the ADA.

Ms. Oliver as provided within the appendix provides the court with a record of an impairment adjustment disorder with anxiety and depression from a licensed health care professional, stating that Ms. Oliver has a serious impairment with a Global Assessment Functioning (GAF) score of 50, which outlines that an individual has serious symptoms, or any serious impairment in social, or occupational functioning, which affects speaking, communication, mood, concentration and ability to perform daily tasks all of which are major life activities.

Ms. Oliver met the second prong according to the ADA because she provided a record from 2009 of a record of impairment.

Ms. Oliver met the first prong a physical or mental impairment that substantially limits one or more major life activities, by providing a statement from her treating physicians who specializes in mental health affirming that Ms. Oliver is has an impairment that substantially limits more than one major life activity and needs accommodations, as provided within the record, which should have deemed Ms. Oliver a qualified individual according to the ADA; however, the court of appeals stated that despite Ms. Oliver evidence she is not a

qualified individual with a disability because it affects her concentration which is a major life activity."

Herein is a summary of Ms. Oliver disabilities as contained within the appendix. At just 16 years old Ms. Oliver was diagnosed with multiple mental health disorders such as bipolar 1 disorder, adjustment disorder with anxiety and depression.

The National Institute of Mental Health defines bipolar disorder as a mental illness that causes unusual shifts in a person's mood, energy, activity levels, and concentration affecting an individual's ability to carry out day to day tasks.

In addition, it describes bipolar 1 disorder as manic episodes that last for at least 7 days (every day for most of the day) or by manic symptoms that are so severe that the person needs immediate medical care. Usually, depressive episodes occur as well, typically lasting at least 2 weeks. Episodes of depression with mixed features (having depressive symptoms and manic symptoms at the same time) are also possible. Experiencing four or more episodes of mania or depression within 1 year is called "rapid cycling."

For context purposes, Ms. Oliver was assessed by a licensed mental health professional as provided to the court of appeals by the district court contained within the record.

As provided to the court of appeals and the district court a licensed mental professional after a thorough

evaluation made excerpts noting that Ms. Oliver Global Assessment function between 0-100 as 50, which outlines that an individual has serious symptoms, or any serious impairment in social, or occupational functioning.

For a better understanding, Ms. Oliver adjustment disorder is accompanied by both anxiety and depression. Anxiety experiences described as agoraphobia, which is anxiety about being places or situations, from which escape might be difficult, and or in which help may not be available in having an unexpected or situationally predisposed panic attack.

Ms. Oliver, record entails a major life activity as speaking, cardiovascular, breathing, concentration, and ability to carry out day to day activities.

Despite the medical evidence demonstrating the petitioner's disabilities as it relates to the ADA, that outlines three prongs in which an individual may be qualified as disabled, the seventh circuit determined that concentrating a major life activity doesn't deem Ms. Oliver as a covered individual with a disability according to the ADA.

The district court decided that Ms. Oliver is not a qualified induvial with a disability because the defendant who provided no admissible evidence stated that they failed to provide Ms. Oliver with accommodations because they deemed her a threat to others without seeking any medical evidence to support its speculation.

The district court agreed with the defendant despite the record containing a medical evaluation from Ms. Oliver mental health physician stating that her rule compliance is good.

It is to be noted that the defendant as per the record was provided with an opportunity to speak with Ms. Oliver physician regarding her requests for accommodation and failed to contact her physician to confirm its suspicion that its African American female employee was a threat to others during the interactive process that led to the defendant failing to accommodate or engage with Ms. Oliver because it's not racially offensive to deem a black woman as a threat, or is it?

The record contains the defendant outright stating that they failed to accommodate Ms. Oliver because they refused to believe that she was disabled within the meaning of the ADA, although, they never retained an expert witness with a medical background to refute any of her medical evidence that they personally received directly from her health care providers stating that Ms. Oliver is disabled.

It is to be noted that Ms. Oliver disabilities does not affect her intellectual capabilities, which is another stereotype that suggests that all disabled individuals are either intellectually challenged and helpless members of society, which is both incorrect and highly offensive.

As noted within the record Ms. Oliver requested for an accommodation with the respondent's human

resource manager James verbally and in writing, email, with local police officers at its fulfillment center, with another human resource business partner Tyrell of the respondent, with Senior management Neil, with her direct supervisor Adam, with human resource Assistant Shannon McMillon, with various other staff between July 19th, 2019 through May 20th, 2020, which never resulted in accommodation.

Ms. Oliver sought more frequent breaks, access to soft music, flexible start and end times and a request not to be stationed near the individuals mentioned within her complaint, who had been known to spread false information regarding her perceived sexual orientation. Ms. Oliver requested accommodations of flexible start and end times would have allowed her to be moved to first shift, which would have allowed her not to be stationed near those in her complaint because it was antagonistic and triggered both her bipolar disorder, adjustment disorder and post-traumatic stress disorder. Soft music would have assisted Ms. Oliver with the mood disturbances associated with her disorders and would not have led to the circumstances that occurred prior to her termination. Ms. Oliver more frequent breaks would have allowed her to time to focus and increase concentration, by taking rests as stress has been said to trigger her disorders often causing manic episodes. It was undisputed that Ms. Oliver accommodation request would not have been a burden to the respondent, which is the only factor

that has been considered if a defendant failed to accommodate an employee.

The court of appeals determined that Ms. Oliver was accommodated for more bathroom breaks, which was not the accommodation requested by Ms. Oliver and was not for a disability within the meaning of the ADA.

Even if the court construes the bathroom breaks as an accommodation, is not an employee allowed to request for different accommodations and express that the current accommodation does not enable them to perform their job, which is what occurred when Ms. Oliver requested for additional accommodations after the defendant had supposedly accommodated her, which never accommodated her. Is the accommodation process a one and over scenario that prohibits an employee from expressing that the previously discussed accommodation does not work, which is why bathroom breaks were never requested by Ms. Oliver see accommodation form.

The court of appeals ruling suggested that an employee is only given one opportunity to request for accommodations and if the accommodation does not enable them to perform their duties, and the employee requests for additional accommodations, which the employer fails to provide then the employer has not failed to provide accommodations.

The question is whether the interactive process is meant to be ongoing and if an employee requests for accommodations even after a prior discussion of accommodations if the employer can refuse to

accommodate and continue to engage in the interactive process.

Appendix contains the complaint as well as the form completed by Ms. Oliver during her employment none of which mentions that Ms. Oliver ever requested for accommodation of more bathroom breaks because her doctor made a referral that she might need more bathroom breaks because they suspected as graphic as this may sound that she was experiencing a urinary tract infection, because of her frequent bathroom trips which was not a disability nor related to her disability of PTSD, bi-polar, panic attacks, anxiety or depression.

Although, the court of appeals made a decision based on an assumption, which could have been resolved if they had mentioned they had questions concerning the record, they would have known that Ms. Oliver never requested to be accommodated for more bathroom breaks.

Ms. Oliver question to the Supreme Court outlines has an individual been accommodated if the employers suggest bathroom breaks that does not pertain to the employee actual disability that enables them to perform their job.

In this context it seems as if an employer can make offhand suggestions that defeats the purpose of the ADA which, is to provide a reasonable accommodation for their disability such as bipolar and ptsd and not a suggestion of bathroom breaks for a curable Urinary tract Infection.

The court of appeals decided that the defendant made a suggestion of being relocated to another department that was upstairs. As the question presented to the Supreme Court has an employer accommodated an individual if the accommodation does not enable the employee to perform their job as the purpose of the ADA.

The court of appeals without oral argument made another assumption, which was neither accurate, nor correct stating that "it must have not been that bad if she didn't relocate upstairs". Ms. Oliver as within the appendix suffers from an adjustment disorder with both anxiety and depression along with bipolar all of which is based on environmental stimuli as discussed with Human Resources when it was suggested that she should relocate upstairs. Relocating upstairs would trigger her adjustment disorder which would cause her to feel as if she could not escape because its two levels from the exit and would bring on negative emotional and behavioral responses based on the change in environment, which brings Ms. Oliver back to her question presented has an employer accommodated an employee with a reasonable accommodation if the accommodation such as relocation does not enable the employee to perform their job especially if the employee has made other accommodation requests such as a change in their schedule that would enable them to perform their job.

Is the purpose of an accommodation a check lists that it marked off just to say to you did it, even if it doesn't help the employee or is the accommodation

process a means towards providing a solution that enables the employee to maintain and perform their duties?

The district court and the seventh circuit court of appeals erred because it does not align with the Supreme Court decision that determined an individual is disabled if it shows that a major life activity is affected by their disability.

RACE

The supreme court has already determined the framework, regarding discrimination race cases, which Ms. Oliver met; however, circuit decisions are split, which is why certiorari should be granted.

CIRCUIT SPLIT DECISION

Currently the circuits are split regarding the criteria for employees proving race discrimination based on similar situated employees, which differs based on the circuit in which the discrimination occurs.

In *Burrows v. Chemed Corp., 200 F. 3d 551, (3rd, 1999),* the third circuit determined that when an employer failed to follow its disciplinary progressive policy regarding a case of race discrimination, by terminating her without issuing a warning or suspension, it determined that the employee established a pretext. The court held that the employee was able to provide evidence showing similar situated employees who were not African American had received more lenient discipline for similar conduct violations. Likewise, Ms. Oliver presented evidence of employees who engaged in far

worse conduct by threatening other employees and using the same vulgar language as profanity, were not terminated, or received corrective action of suspension like Ms. Oliver.

Even the supreme court issued a decision contrary to the seventh circuit court of appeals decision in *Oliver v. Amazon,* that stated, in *Swierkiewicz v. Sorema N.A., 534 U.S. 506 2002,* determined that when an employer skipped progressive discipline according to an employer's policy, an employee met a prima facie case of discrimination and an employer's failure to follow its policy supported an inference of intent.

To support a finding of a split circuit decision in, *Sheehan V. Donlen Corp., 173, F.3d 1039 (7th Cir. 1999),* determined when an employer failed to follow its policy regarding discipline that the employee failed to establish a pretext, which further supports a circuit split decision.

The 6th circuit determined in *miles, 946 F.3d at 896* that an employer's failure to follow its own policy is insufficient to support a finding of pretext further supporting a circuit split decision that needs this court intervention to bring uniformity to the circuits.

The eleventh circuit court of appeals determined in *Lewis v. City of Union City,* that a similarly situated comparator for claims of intentional discrimination, are based on similarity in all material aspects such as same supervisor and misconduct; however, the seventh circuit determined in *Dunlevy v. Langfelder,* determined that an employee misconduct does not have to be the same and stated " An employee who

simply fails to show up to work undermines the utility's score mission just as much as an employee who shows up but periodically does a poor job." The seventh circuit determined that just because employees engaged in similar seriousness of conduct a jury might decide that race was the but for factor.

The United States court of appeals in the 8th circuit determined that similar situated employees are relevant in all aspects.

Section 1981, requires a showing of but for, and highlights that race related cases involve different treatment in terms, and conditions of employment, which are often proven by similar situated employees to prove that the terms and conditions of employment were different based on race bringing this case to national significance and would aid the courts moving forward regarding race discrimination claims if the court were to grant writ of certiorari.

According to the framework established by the supreme court, the employee must first establish a prima facie case of discrimination by showing that 1) Ms. Oliver, who is African American belongs to a protected group; 2) Ms. Oliver was qualified for her positions; 3) Ms. Oliver suffered an adverse employment action; and 4) similarly situated employees outside of their protected group was treated more favorably, which Ms. Oliver offered evidence based on this requirement. Furthermore, the burden then shifts to the employer to articulate a legitimate, non- discriminatory reason for the action.

Lastly, the burden shifts back to the employee to establish that the employer's asserted reason is a pretext for discrimination, based on the but-for causation standard.

The question is whether an employer who provides less stringent disciplinary action pertaining to its policy and a certain class of individuals, has the but for causation been met for a claim being brought under section 1981.

On or around May 16th, 2020, Ms. Oliver was threatened by another employee because of the pace in which she walked. Marissa Dyess then told Ms. Oliver that she would like to fight her after work. On May 23rd, Ms. Oliver was terminated for stating beat my ass do it then, you scheduled a fight with me none of which states that Ms. Oliver threatened to would fight Marissa or any employee.

The Eastern District of Wisconsin issued an order based on Ms. Oliver claims stating that Ms. Oliver failed to assert that the employees who engaged in similar conduct had the same supervisor.

On appeal Ms. Oliver highlights evidence within the record that asserts that both instances where employees outside of her protected class who engaged in the similar conduct had the same supervisor and were white, who were not disciplined as harshly.

The court of appeals erred because it determined that although, Ms. Oliver presented evidence of a pretext the defendant still provided a legitimate

reason for the adverse action, which based on the evidence in the appendix confirms they've erred.

Ms. Oliver provided a declaration based on two similar situated incidents regarding individuals outside of her protected class who engaged in far worse conduct and were not terminated or disciplined but for race discrimination.

Ms. Oliver provided evidence within the appendix of Vanessa Oliver and an Unnamed individual, who is white where Vanessa had an altercation based on a racially offensive tattoo of a swastika, that offended Vanessa where she approached her co-worker concerning the racially offensive tattoo. Vanessa Oliver states, that she informed her co-worker that her tattoo was racially offensive and stated that her co-worker, who is white became aggressive, threatened her and told her fuck you and fuck off. Vanessa states that this same employee, who is white, became aggressive and had altercations twice with herself, once with management and once with human resources and was not terminated despite showing a racially offensive symbol and engaging in threats for four years without disciplinary action of termination and or suspension for vulgar language, threats and or violence.

Ms. Oliver highlights that the defendant who claimed it terminated Ms. Oliver because she was disrespectful by informing another co-worker fuck you and do it then because the co-worker threatened to fight her that she should be terminated for a violation of workplace rules and policy. Ms. Oliver

demonstrated that the defendant did not comply with its rules and policy.

The court of appeals determined that the defendant provided a legitimate reason for termination, which did not constitute as a pretext for discrimination; although, the defendant's policy states that vulgar language will only amount to corrective action only and not termination. The defendant's misconduct policy is separated into two tiers, which states that vulgar language falls within category two which states that an employee would only face corrective action, while category one states that an employee would be terminated. According to policy Ms. Oliver would have only received corrective action and not termination.

The court of appeals erred because many other courts within the circuit has determined that when an employer fails to follow its own policy and applies diverse levels of discipline an employee has met its burden of demonstrating a pretext for discrimination. Ms. Oliver also, highlights another white employee who scheduled a fight with another employee, stating, "I will beat your mother fucking ass," which is vulgar language and threats of violence and was only provided a warning, which is corrective action and did not amount to termination or suspension.

Ms. Oliver also provides evidence that another employee who is white named Rachel was not suspended or terminated for attempting to fight another employee by stating, "you know it's about to

get physical right", both employees remain employed and were not suspended because they are white.

Ms. Oliver demonstrates that her termination was but for race because others who had engaged in similar conduct were not disciplined as harsh and the respondent followed its policy by not terminating employees based on its policy that states that profanity would only result in corrective action.

RETALIATION

Ms. Oliver asserted that the defendant retaliated against her, for opposing discriminatory practices by engaging in protected activity.

CIRCUIT SPLIT DECISION

Circuits are split regarding retaliation and what constitutes as a pretext regarding an employer's disciplinary action policies.

In *Burrows v. Chemed Corp., 200 F. 3d 551, (3rd, 1999),* the third circuit determined that when an employer failed to follow its disciplinary progressive policy regarding a case of race discrimination, by terminating her without issuing a warning or suspension, it determined that the employee established a pretext. The court held that the employee was able to provide evidence showing similar situated employees who were not African American had received more lenient discipline for similar conduct violations. Likewise, Ms. Oliver presented evidence of employees who engaged in far worse conduct by threatening other employees and

using the same vulgar language as profanity, were not terminated, or received corrective action of suspension like Ms. Oliver.

Ms. Oliver highlights that Amazon shifted explanations regarding its decision to terminate her by stating that Ms. Oliver threatened an employee when no evidence supported an acquisition of Ms. Oliver ever threatening anyone. Ms. Oliver also offered evidence that supported that Amazon stated that Ms. Oliver was terminated because she got into a fight, which was also false and never supported by admissible evidence. Amazon then stated that it terminated Ms. Oliver because she violated the six feet rule during covid; although, they admitted that Ms. Oliver was walking backwards and away from the employee involved in the incident which was yet another false reason for its decision. Amazon further cited that it terminated Ms. Oliver because she violated its policy warranting termination; although, its policy states that it would only amount to corrective action.

The 5th Circuit determined that an Employer's Shifting Explanations may be proof of Pretext "*Burrell v. Dr. Pepper/Seven Up Bottling Grp, Inc., 482 F.3d 408 (5th Cir. 2007).* See also *Nasti v. CIBA Specialty Chem. Corp., 492 F.3d 589, 594 (5th Cir. 2007)* ("A court may infer pretext where a defendant has provided inconsistent or conflicting explanations for its conduct."); *Burrell v. Dr. Pepper/Seven Up Bottling Grp, Inc., 482 F. 3d 408 (5th Cir. 2007)* (shifting explanations can be evidence of pretext); *Gee v. Principi, 289 F.3d 342 (5th Cir. 2002) (same)*;

The Plaintiffs complaint outlines that the defendant's decision to terminate was decided around the time of Plaintiff's participation with an EEOC investigation, which occurred in or around May 8, 2020, and the same due date of the evidence requested within the Plaintiff's personnel records by the Equal Rights Division.

Metadata within Ms. Oliver termination confirmed that the decision to terminate Ms. Oliver was determined on May 08th, 2020, prior to the incidents of profanity with Marissa Dyess. Metadata is defined by the courts as information within a document that describes characteristics such as when the document was created and last modified. How can an employer provide a legitimate reason for termination if when it decided that an employee should be terminated it did not have knowledge of the incidents of profanity or incidents with Marissa Dyess? Appendix shows that Ms. Oliver termination was decided in May that she would be terminated June 19th, 2020.

RETALIATION

The district court and court of appeals determined that the defendant had not retaliated against Ms. Oliver because of the timing of protected activity and adverse action, which the court of appeals decision conflicts with other circuits and does not align with prior supreme court decisions; therefore, they have erred. Ms. Oliver describes that she engaged in protected activity in July of 2019, when she made a complaint regarding discriminatory practices or being reassigned after a rumor circulated regarding

Ms. Oliver perceived sexual orientation. Ms. Oliver informed the defendant that she would be filing a charge with the EEOC after she made several complaints regarding discriminatory practices and sexual harassment complaints which the respondent failed to take remedial action; therefore, constituting as protected activity.

After Ms. Oliver engaged in protected activity the respondent began assigning her to disadvantage work- stations such as end packaging stations, which require more heavier lifting and often results in a lower productivity score as rate because less opportunities for packaging product results in a lower productivity score.

Within weeks of Ms. Oliver engaged in protected activity she was transferred to another position from a packager, boxing, and shipping product to both rebin and induct. Packagers are required to meet a productivity standard of 250 plus packages per hour, as opposed to the involuntary transfer to rebin 650 per hour and induct 1100 per hour. Rebin are required to take product from a conveyor belt and place them within a wall for the packagers to grab and pack, while inductors are required to grab product from a bin, scan the item, and place them in a tray for the rebiners to place in a wall for the packagers.

The district court erred in its decision because the Supreme Court in *Muldrow V. City of St. Louis, Missouri, No.22-193, 601 U.S.2024*, that lower courts cannot require a plaintiff to show a heightened level

of harm- such as significant or material harm to establish that an involuntary transfer is an adverse employment action pursuant to Title VII of the Civil Rights Act of 1964; therefore, the Petitioner, request that this court exercise its authority and allow Ms. Oliver her day in court. Ms. Oliver involuntary transfer resulted in harder work, heavier workload and only occurred after she engaged in protected activity with a causal connection of close and suspicious timing and had not occurred for an entire year prior to engaging in such activities.

In addition, Ms. Oliver engaged in protected activity again by making various complaints of discriminatory acts and engaging in protected activity by participating in an EEOC investigation and Equal Rights Division investigation, which was filed in October of 2019 and investigated/ Ms. Oliver participation began in April of 2020. The statute does describe that an employee participation in a charge of discrimination is protected activity. The questions are whether the employee's participation by protected activity only deemed protected activity when an employee files the initial charge or is protected activity ongoing during the duration of the charge of investigation.

Ms. Oliver engaged in protected activity on May 23rd, 2020, her last day of work prior to her unpaid suspension when she informed Human resources that she would be filing a charge of discrimination.

Ms. Oliver was required by the EEOC/ ERD to provide a response in relation to the respondent's

position statement with a due date of July 18th, 2020. Ms. Oliver stated that the defendant had retaliated against her because she was terminated the same day of her response to the ERD, just hours after providing a response and participating in an investigation into discrimination on June 18th, 2020.

On June 18th, 2020, Ms. Oliver received a response from the Human Resource department informing her that she would be terminated and ineligible for rehire based on a violation of workplace rules and policy.

Ms. Oliver continues to hold that the respondent retaliated against her because of close and suspicious timing of submitting a response to their position statement, which is an investigation and protected activity despite the court of appeals determination that the protected activity and adverse action were not close in timing even after being only hours of participating in protected activity. The questions holds whether an employer who attempts to reverse its decision of adverse action if an employee has demonstrated that the adverse action was only based on its protected activity. Ms. Oliver also notes that she was only offered a position with the respondent again after it had appeared that the 90-day time limit had expired for filing a complaint in federal court. The appendix highlights that the respondent offered Ms. Oliver a position in transportation, which would have both accommodated her disabilities and affirmed that Ms. Oliver, did not violate its workplace rules and

policies and would have only rehired her had she not engaged in protected activity.

It is evident based on its decision to rehire her a day after her 90 days filing requirement, on February 11th, that based on Ms. Oliver employee record that they would like to rehire her for an open position that would have accommodated her. Ms. Oliver question holds whether an employee has demonstrated that the employer has retaliated against her if it decides to rehire an employee it terminated only after they have not engaged in protected activity.

The question presented is whether an employee who establishes a pretext has established a causal connection regarding protected activity and adverse action. The court of appeals determined that Ms. Oliver was neither discriminated against nor retaliated against because the defendant provided a legitimate reason for its decision to terminate Ms. Oliver after providing multiple false reasons of its decision.

The question is whether the respondent has provided a legitimate reason for its adverse action if the reason, is false, such as stating that it terminated Ms. Oliver based on its policy, which states that the conduct Ms. Oliver engaged in vulgar language was fuck you and do it then, beat my ass then you scheduled a fight with me.

Ms. Oliver continues to hold that the defendant policy states that vulgar language would only result in corrective action and not termination as its other

serious category of misconduct, which implies that the defendant has neither followed its own policy nor provided a legitimate reason for its decision, which is a pretext but for Ms. Oliver race and her protected activity.

Conclusion

For the foregoing reasons, this Court should grant a writ of certiorari and allow Ms. Oliver to have her day in court.

Ms. Oliver understands that a writ of certiorari is not that of right but of judicial discretion and she humbly requests that the court considers the circumstances surrounding the evidence within the appendix, the record that they could be produced if a writ is granted and its potential impact to other employees who may face similar circumstances, who may be faced with being wronged and not allowed their day in court based on the circuit that they are within.

It has been a total of five years since the events surrounding this complaint began and Ms. Oliver requests for you to exercise the authority that only you possess to ensure that an employee is not denied a reasonable accommodation based on appearance, and stereotypes of being a threat, that an employee is not groped, physically assaulted and heavy machinery thrown at them while employed, and terminated for opposing a threat that was made towards them and terminated while others who are white were not.

The defendant terminated Ms. Oliver but for race and her protected activity because it determined she should be terminated prior to the incidents described.

Ms. Oliver understands that this court is the highest court and the last resort to ensure her day in court.

Dated:
07/23/2024
Milwaukee, Wisconsin
Respectfully submitted,
s/ Jasmine Oliver