

No. _____

24-5903

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

OCT 08 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ASEM FAROOQ

— PETITIONER

(Your Name)

vs.

Managers of Manheim et al

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

5th Circuit Court of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ASEM FAROOQ

(Your Name)

P.O. Box 82

(Address)

Cedar Hill, Tx - 75104

(City, State, Zip Code)

(719) 749-1587

(Phone Number)

QUESTION(S) PRESENTED:

1. Does the Seventh Amendment's right to a jury trial in civil cases apply to employment discrimination claims, and if so, why was it not applied in this case of discrimination by Manheim Company?
2. Does a defendant's false claim that an employee's actual termination was a resignation, as demonstrated by the evidence included in this writ, constitute defamation of character under federal law?
3. Do federal courts have an obligation to protect military reservists from employer retaliation and termination under federal law when they are enlisted in the reserve military?
4. What constitutes perjury under federal law, and does the intentional concealment of deposition transcript pages by defendant qualify as perjury?
5. Are federal courts permitting perjury and deceit by corporate attorneys in civil cases involving former employees, and what remedies exist to address if such misconduct happens?
6. Where a corporation violates rules announced in *Torres v. Texas Dept & Phillips v. Starbucks Corp.*, by terminating an employee that was a federally protected class member of the reserves and disabled minority, under what circumstances does the employer arbitrarily dismiss employment with the company and thereby purge the taint from the *Torres & Phillips* violation?

LIST OF PARTIES

☐ All parties appear in the caption of the case on the cover page.

☒ All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

donna bolt, lynette bowles, abul yarbo, etc.

RELATED CASES:

- **Carder v. Continental Airlines, Inc.**, 636 F.3d 172 (5th Cir. 2011)
- **Davis v. Advocate Health Center Patient Care Express**, 523 F.3d 681 (7th Cir. 2008)
- **Dees v. Hyundai Motor Mfg. Alabama, LLC**, 605 F. Supp. 2d 1220 (M.D. Ala. 2009)
- **Gordon v. Wawa, Inc.**, 388 F.3d 78 (3rd Cir. 2004)
- **Harrell v. Donahoe (USPS)**, 638 F.3d 975 (8th Cir. 2011)
- **Hill v. Michelin North America, Inc.**, 252 F.3d 307 (4th Cir. 2001)
- **Huhmann v. FedEx Corp.**, 874 F.3d 1102 (9th Cir. 2017)
- **Leisek v. Brightwood Corp.**, 278 F.3d 895 (9th Cir. 2002)
- **McLain v. City of Somerville**, 424 F. Supp. 2d 329 (D. Mass. 2006)
- *Phillips v. Starbucks Corp.*, 361 F. Supp. 3d 122 (S.D.N.Y. 2019)
- *Torres v. Texas Department of Public Safety*, 142 S. Ct. 2455 (2022)

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APPENDIX B – Company Emails Confirming Termination by Manheim Management of Reservist.

APPENDIX C - Social Media witness Confirmation By Former Co-worker At Manheim Of Reservist Termination By The Managers At Manheim.

APPENDIX D – District Court Opinion.

APPENDIX E – Deceit / Perjury Of Manheim Corporate Lawyer’s Lying To Federal Court & Judge(s) About Discrimination.

APPENDIX F – Appellate Court Opinion.

TABLE OF AUTHORITIES CITED:

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• <i>Angiuoni v. Town of Billerica</i> , 838 F. Supp. 2d 20 (D. Mass. 2011)	13
• <i>Bradley v. Harcourt, Brace & Co.</i> , 104 F.3d 267 (9th Cir. 1996)	13
• <i>Baldwin v. City of Greensboro</i> , 714 F.3d 828 (4th Cir. 2013)	13
• <i>Dixon v. City of Forks</i> , 2011 WL 2358043 (W.D. Wash. June 14, 2011)	13
• <i>Erickson v. United States Postal Service</i> , 571 F.3d 1364 (Fed. Cir. 2009)	13
• <i>Francis v. Booz, Allen & Hamilton, Inc.</i> , 452 F.3d 299 (4th Cir. 2006)	13
• <i>Foster v. Dravo Corp.</i> , 420 F. Supp. 380 (E.D. Pa. 1976)	13
• <i>Gagnon v. Sprint Corp.</i> , 284 F.3d 839 (8th Cir. 2002)	13
• <i>Hannah v. American Airlines, Inc.</i> , 2014 WL 3966373 (S.D. Tex. Aug. 13, 2014)	13
• <i>Landis v. Pinnacle Airlines, Inc.</i> , 2011 WL 344291 (E.D. Tenn. Feb. 1, 2011)	13
• <i>Madden v. Rolls-Royce Corp.</i> , 563 F.3d 636 (7th Cir. 2009)	13
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• <i>Murphy v. Radnor Twp. Police Dep't</i> , 2013 U.S. Dist. LEXIS 9367 (E.D. Pa. Jan. 24, 2013)	13
• <i>Patton v. Target Corp.</i> , 915 F. Supp. 2d 961 (D. Minn. 2013)	13
• <i>Petty v. Metropolitan Government of Nashville-Davidson County</i> , 538 F.3d 431 (6th Cir. 2008)	13
• <i>Rademacher v. HBE Corp.</i> , 645 F.3d 1005 (8th Cir. 2011)	13
• <i>Stewart v. City of Houston</i> , 372 F. App'x 475 (5th Cir. 2010)	13

STATUTES AND RULES:

- **38 U.S.C. §§ 4301-4335**
Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)
 - The primary statute governing employment and reemployment rights for uniformed service members.
- **38 U.S.C. § 4301(a)(1)**
Statement of Purpose of USERRA
 - States the purpose of USERRA: to encourage noncareer service in the uniformed services by minimizing the disadvantages to civilian careers.
- **38 U.S.C. § 4311**
Discrimination Against Persons Who Serve in the Uniformed Services
 - Prohibits employment discrimination based on military service and provides protection against retaliation.
- **38 U.S.C. § 4312**
Reemployment Rights
 - Defines the rights of service members to reemployment after military service.
- **38 U.S.C. § 4313**
Reemployment Positions
 - Specifies the positions that service members must be reemployed in after returning from military service.
- **38 U.S.C. § 4323**
Enforcement of Rights
 - Establishes the enforcement mechanisms for USERRA, including legal actions and remedies available to aggrieved service members.
- **38 U.S.C. § 4325**
Enforcement of Rights with Respect to States as Employers
 - Establishes the procedures for enforcing USERRA rights against state employers.

OTHER:

This discrimination case should be reopened pursuant to Federal Rule of Civil Procedure 60(b)(2) and 60(b)(3) due to the defendants' concealment of material evidence, which now constitutes newly discovered proof. The rule provides relief from a final judgment if new evidence that could not have been discovered earlier through reasonable diligence comes to light, or if the judgment was obtained through fraud or misconduct. Here, the concealment of key evidence regarding the discriminatory practices and wrongful termination of the plaintiff meets the standard for reopening the case. Furthermore, under equitable tolling, the time limit to reopen the case should be extended due to the defendants' intentional withholding of evidence, which prevented the plaintiff from discovering the truth during the original litigation. Therefore, justice necessitates the reopening of this case to address the fraud and ensure proper adjudication.

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix F to the petition and is
☒ reported at 5th Circuit Appellate Court; or,
☐ has been designated for publication but is not yet reported; or, ☐ is unpublished.

The opinion of the United States district court appears at Appendix D to the petition and is
☒ reported at Northern Texas Federal Court; or,
☐ has been designated for publication but is not yet reported; or, ☐ is unpublished.

☐ For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is _____
☐ reported _____ at ; or,
☐ has been designated for publication but is not yet reported; or, ☐ is unpublished.

The opinion of the _____ court
appears at _____ to the petition and is
Appendix _____; or,
☐ reported at
☐ has been designated for publication but is not yet reported; or, ☐ is unpublished.

1.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was.

1st October 2024

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 1st October 2024 , and a copy of the order denying rehearing appears at Appendix. F

☐ An extension of time to file the petition for a writ of certiorari was granted to and including (date) on _____ (date) in Application No.

A

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____ . A copy of that decision appears at Appendix _____ .

☐ A timely petition for rehearing was thereafter denied on the following date: _____ , and a copy of the order denying rehearing appears at Appendix _____ .

☐ An extension of time to file the petition for a writ of certiorari was granted to and including (date) on _____ (date) in Application No. _____ .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED:

1. Article I, Section 8, Clause 12 (The War Powers Clause):

- The U.S. Constitution grants Congress the power to raise and support armies. USERRA protections stem from this authority as Congress is empowered to regulate military service, including ensuring that citizens can serve in the military without being discriminated against by their civilian employers.

2. Article I, Section 8, Clause 14 (The Necessary and Proper Clause):

- This gives Congress the authority to make laws necessary and proper to execute its powers, including the regulation of military service and employment protections for those serving in the armed forces.

3. 14th Amendment (Equal Protection Clause):

- While USERRA cases do not generally involve direct challenges based on the 14th Amendment, discrimination against military members by employers could raise equal protection issues under this provision. Although USERRA itself is a statutory provision, equal protection principles could be used to bolster arguments against discriminatory practices by employers.

4. Article VI, Clause 2 (Supremacy Clause):

- USERRA, as a federal law, is the "supreme law of the land," meaning that its provisions override any conflicting state laws that fail to provide similar or greater protections to reservists. This clause ensures that state laws cannot diminish the protections guaranteed by USERRA.

Statutory Provisions Involved:

1. Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) (38 U.S.C. §§ 4301-4335):

- 38 U.S.C. § 4301: Declares the purposes of USERRA, which include prohibiting discrimination against individuals because of their military service and ensuring that those who serve in the military can return to their civilian employment with the same rights and benefits as if they had not been absent.
- 38 U.S.C. § 4311: Prohibits employers from discriminating against employees or potential employees based on their service in the uniformed services, including the Reserve and National Guard. It also forbids employers from taking adverse actions, such as demotions, firings, or refusals to hire, based on military service.

Continued:

- **38 U.S.C. § 4312:** Governs the reemployment rights of reservists and outlines employers' obligations to rehire military service members after they complete their service.
 - **38 U.S.C. § 4313:** Ensures that returning service members are reemployed in the position they would have attained had their employment not been interrupted by military service, or in a comparable position.
 - **38 U.S.C. § 4316:** Guarantees certain employment benefits (such as seniority and pensions) for returning reservists and ensures that their time in military service counts toward accruing benefits.
 - Federal perjury offenses are governed by 18 U.S.C. §§ 1621, 1622, and 1623.
- 2. Veterans' Reemployment Rights Act (VRRA) (predecessor to USERRA):**
- USERRA's predecessor law, the Veterans' Reemployment Rights Act (VRRA), provided reemployment rights to veterans after World War II. While USERRA has replaced VRRA, courts still occasionally reference VRRA for context and precedent in employment cases involving veterans.
- 3. Title VII of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000e-2000e-17):**
- Though primarily focused on discrimination based on race, color, religion, sex, or national origin, Title VII principles may be invoked in tandem with USERRA claims, particularly where discriminatory intent or practices may overlap with prohibited actions under both statutes.
- 4. Americans with Disabilities Act (ADA) (42 U.S.C. §§ 12101-12213):**
- If a military reservist returns from service with a disability, protections under the ADA may also apply, ensuring reasonable accommodations in the workplace alongside USERRA's reemployment rights.

Continued:

5. Veterans' Benefits Improvements Act of 2004 (P.L. 108-454):

- This law amended USERRA by clarifying certain aspects of employer-provided health plans and benefits for service members. It also imposed additional reporting requirements on employers regarding reservists' employment rights.

Additional Provisions Related to Military Reservist Protections:

6. Servicemembers Civil Relief Act (SCRA) (50 U.S.C. §§ 3901-4043):

- Although more focused on legal protections in financial and civil matters, SCRA can also intersect with employment issues, especially regarding reservists who face legal obligations during deployment. SCRA ensures that military members do not suffer adverse civil consequences while they are in service.

8. Federal and State Anti-Retaliation Laws:

- USERRA's anti-retaliation provisions align with general federal and state anti-retaliation laws, which prohibit employers from retaliating against employees for exercising their rights, such as filing a complaint or seeking reinstatement under USERRA.

These constitutional and statutory provisions collectively ensure that reservists and other military personnel are protected from discrimination in employment and have the right to return to their civilian jobs with the same status and benefits as if they had not been absent for service.

STATEMENT OF THE CASE:

The plaintiff, a military reservist, was unlawfully terminated by the defendant corporation & its management after requesting time off to fulfill mandatory military training obligations. The plaintiff reported discriminatory practices and a hostile work environment to the local Austin, Texas Ombudsman and the company's HR department. In retaliation, the defendant not only terminated the plaintiff but in contrary to their alleged resignation claim, engaged in a campaign of defamation, spreading contradicting and damaging information that tarnished the plaintiff's professional reputation. The plaintiff contends that the termination was discriminatory, in violation of the Uniformed Services Employment & Reemployment Rights Act (USERRA), and part of a broader pattern of retaliation against military personnel. The employer took adverse action against plaintiff the reservist, by terminating Movant from employment for constant military absences.

Numerous courts have consistently ruled in favor of reservists who were discriminated against due to their military obligations, as seen in *Akhdary v. City of Chattanooga, Tennessee*, 2011 U.S. Dist. LEXIS 14352 (E.D. Tenn. Feb. 14, 2011), where a reservist was found to have been unlawfully treated by his employer. Similarly, in *Anderson v. Frontier Airlines, Inc.*, 2014 U.S. Dist. LEXIS 148159 (D. Colo. Oct. 17, 2014), and *Angiuni v. Town of Billerica*, 838 F. Supp. 2d 20 (D. Mass. 2011), courts held that discrimination against military service members violated USERRA protections. In *Erickson v. United States Postal Service*, 571 F.3d 1364 (Fed. Cir. 2009), a reservist's termination was ruled unlawful, emphasizing the importance of reemployment rights.

The defendants in this case, like in *Madden v. Rolls-Royce Corp.*, 563 F.3d 636 (7th Cir. 2009), claim the termination was unrelated to the plaintiff's military obligations. However, it is clear that the company's management, similar to the employer in *Hannah v. American Airlines, Inc.*, 2014 WL 3966373 (S.D. Tex. Aug. 13, 2014), engaged in defamatory actions to sabotage the plaintiff's future employment opportunities. In *Gagnon v. Sprint Corp.*, 284 F.3d 839 (8th Cir. 2002), a court found that adverse actions taken against a reservist employee based on military obligations violated federal law, an issue directly applicable in the present case.

Additionally, the corporation's legal representatives concealed key evidence and provided false testimony during federal court proceedings, akin to the misconduct addressed in *McDaniel v. Loyola University Medical Center*, 2015 WL 623054 (N.D. Ill. Feb. 12, 2015). This concealment and perjury compounded the injustice faced by the plaintiff, as was similarly found in *Petty v. Metropolitan Government of Nashville-Davidson County*, 538 F.3d 431 (6th Cir. 2008), where courts ruled in favor of the plaintiff after employer misconduct was uncovered.

This case presents not only a clear violation of USERRA but also highlights the potential for widespread abuse of employment protections afforded to military reservists if corporations are allowed to engage in retaliation and defamation without consequence.

REASONS FOR GRANTING THE PETITION:

The writ should be granted because this case presents significant legal questions regarding employer discrimination and retaliation against a military reservist, in clear violation of federal law, including the Uniformed Services Employment and Reemployment Rights Act (USERRA). The plaintiff was wrongfully terminated after requesting time off for mandatory military training and for reporting discriminatory practices and hostile working conditions to the Ombudsman and the company's HR department. This retaliation for exercising rights protected by federal law raises serious concerns about the effectiveness of USERRA's enforcement and the integrity of employment protections for military personnel.

Moreover, the defendant corporation's actions extend beyond wrongful termination. The company's management engaged in a campaign of defamation and libel against the plaintiff, spreading false information designed to damage the plaintiff's reputation with co-workers. This defamation further exacerbates the harm inflicted on the plaintiff by undermining future employment opportunities and damaging their standing within the community.

Additionally, the defendant's legal counsel deprived plaintiff of Justice by concealing evidence of the termination, plus other violations and providing false misleading testimony in federal court. This obstruction of justice and failure to present the truth not only prejudiced the plaintiff's case but also undermines the integrity of the judicial system. Granting the writ is necessary to address these grave violations of law, to uphold the legal protections afforded to military reservists, and to ensure that employers and their representatives are held accountable for retaliatory and dishonest practices in violation of federal law and judicial standards.

Defendant deposition transcript has several pages missing, intentional perjurious action & defrauding the courts by defendants lawyer, of omitting evidence of truth in the case. The lower courts have not recognized *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), In *Iqbal*, Supreme Court held that a complaint must contain sufficient [factual matter], accepted as "true", to "state a claim to relief that is plausible on its face." Corporate emails clearly showing termination should have met that "factual" standard.

Continued:

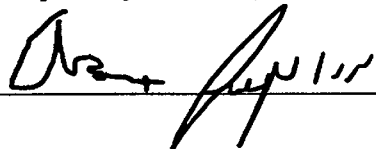
The plaintiff's discriminatory termination by the defendant corporation has unjustly prevented the plaintiff from obtaining unemployment benefits due to the concealed and misrepresented nature of the termination. By withholding key evidence and fabricating claims during court proceedings, the corporation not only deprived the plaintiff of rightful benefits but also engaged in a deceptive pattern that, if allowed to stand, sets a dangerous precedent.

Permitting this injustice enables other corporations to exploit similar unethical legal tactics—lying before federal judges, concealing evidence, and violating federal rules with impunity. Such actions undermine the rule of law and embolden corporations to disregard federal protections, further eroding the integrity of the judicial system and employment rights of workers, especially military reservists.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. J. [unclear]', is written over a horizontal line.

Date: 10/06/24