

IN THE SUPREME COURT OF THE UNITED STATES

Asem Farooq v. donna bolt, et al.

No # 24-5903

PETITION FOR RECONSIDERATION

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT:

Pursuant to Rule 44.1& 44.2 of the Rules of the Supreme Court, Asem Farooq, the Petitioner in this matter, respectfully submits this Petition for Reconsideration of the Court's decision dated 13th January 2025. The Petitioner seeks a thorough review of the issues presented herein, as This case involves egregious violations of federal statutory protections under the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. § 4301 et seq., along with fraud upon the court and denial of due process through judicial misconduct., and raises significant questions regarding the enforcement of rights guaranteed to servicemembers.

INTRODUCTION

This case presents an issue of national importance: the safeguarding of rights afforded to members of the United States Armed Forces under USERRA. The petitioner, a reservist, was unlawfully terminated by their employer for fulfilling mandatory military obligations. Compounding this injustice, the Respondent engaged in fraudulent conduct by concealing evidence and misrepresenting material facts in prior proceedings. These actions undermine the integrity of the judicial process and warrant the Court's reconsideration to correct a manifest miscarriage of justice; (see exhibit 1, pg 7-10).

STATEMENT OF FACTS

1. The Petitioner, a reservist, was employed by Manheim et al. While employed, the Petitioner was required to attend periodic military training as mandated by their reservist duties.

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2. On around August 2019, the Petitioner requested approved leave to participate in military training. Despite the clear protections afforded under USERRA, the Respondent denied this request and subsequently terminated the Petitioner's employment.
3. The Respondent alleged the Petitioner resigned voluntarily. However, during prior litigation, the Respondent's fraudulent concealment of evidence revealed that the Petitioner's termination was directly related to their military service obligations.
4. Lower courts failed to properly address the Respondent's violations of USERRA and the deliberate misconduct in concealing material evidence, resulting in an unjust outcome that directly contravenes federal law and the principles of fairness.

ARGUMENT

I. THE DECISION BELOW CONFLICTS WITH FEDERAL LAW AND ESTABLISHED PRECEDENT.

USERRA explicitly prohibits employers from discriminating against employees based on their military obligations. See 38 U.S.C. § 4311. The Respondent's actions—denying the Petitioner leave for military training and subsequently terminating their employment—constitute clear violations of these statutory protections.

Furthermore, this Court has consistently emphasized the importance of protecting servicemembers' rights to ensure they are not penalized for their service.

Cited Cases & Laws:

- **Staub v. Proctor Hospital, 562 U.S. 411 (2011)** – Holding that an employer may be liable under USERRA if a supervisor performs an act motivated by anti-military animus that is intended to cause an adverse employment action.
- **Gordon v. Wawa, Inc., 388 F.3d 78 (3d Cir. 2004)** – Reinforcing that USERRA must be liberally construed in favor of servicemembers.
- **Sheehan v. Department of the Navy, 240 F.3d 1009 (Fed. Cir. 2001)** – Clarifying the burden-shifting framework in USERRA claims.
- **Leisek v. Brightwood Corp., 278 F.3d 895 (9th Cir. 2002)** – Emphasizing protection against employer retaliation under USERRA.

The lower court's decision to overlook these violations undermines the purpose and intent of USERRA.

II. THE RESPONDENT'S FRAUDULENT CONDUCT WARRANTS EXTRAORDINARY RELIEF.

The Respondent's concealment of evidence and misrepresentation of material facts constitute fraud upon the court. Such actions erode public confidence in the judicial process and require corrective intervention. This Court has recognized that fraud undermining judicial proceedings is a basis for extraordinary relief.

Relevant Statutory and Regulatory Authority:

- **38 U.S.C. §§ 4301-4335** – The Uniformed Services Employment and Reemployment Rights Act (USERRA), which provides comprehensive protections for servicemembers' employment rights.
- **20 C.F.R. Part 1002** – Department of Labor regulations interpreting USERRA.
- **H.R. Rep. No. 103-65 (1993)** – Legislative history emphasizing Congress's intent to broadly construe USERRA in favor of servicemembers.

III. THIS CASE INVOLVES AN ISSUE OF NATIONAL IMPORTANCE.

The rights of servicemembers are fundamental to maintaining a strong and effective military. Employers must be held accountable for discriminatory practices that deter individuals from serving in the Armed Forces. By addressing the Respondent's violations and the judicial failures in this case, the Court will reaffirm its commitment to upholding the rights of those who serve.

PETITION FOR RECONSIDERATION UNDER RULE 44

I. GROUNDS FOR RECONSIDERATION UNDER RULE 44

A. Fraud Upon the Court and Newly Overlooked Evidence

1. Falsified Affidavits and Misrepresentation by Defendants

- Defendants submitted falsified affidavits and fraudulent documentation in the Fort Worth court, knowingly misrepresenting material facts regarding Plaintiff's employment status.
- Digital evidence—including email records, timestamped internal employment logs, and other forensic data—demonstrates that Plaintiff was wrongfully terminated and did not voluntarily resign, as falsely claimed by Defendants.

2. Repeated Requests to Reopen Cases Were Wrongfully Denied

- Plaintiff repeatedly filed motions with the Fort Worth division court requesting the reopening of cases based on newly uncovered fraudulent misrepresentation by Defendants.
- Despite clear evidence of perjury and document tampering, the Fort Worth judges ignored these requests, thereby violating Plaintiff's fundamental right to due process.
- Fraud upon the court undermines judicial integrity and is grounds for vacating judgments, as established in *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944).

B. Judicial Bias and Due Process Violations Require Reconsideration

1. Judge Pittman's Recusal Proves Acknowledgment of Bias

- On July 15, 2024, Judge Mark T. Pittman recused himself from a related case involving Plaintiff, acknowledging concerns regarding potential bias or conflicts of interest.
- Despite this, other Fort Worth judges with a documented history of dismissing Plaintiff's claims without review of critical evidence have continued to preside over Plaintiff's cases.
- Judicial reassignment is warranted under *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009), where the Supreme Court held that due process requires reassignment when a judge's impartiality may reasonably be questioned.

2. Reassignment of Plaintiff's Cases to the Same Fort Worth Judges is a Violation of Due Process

- The ongoing assignment of Plaintiff's cases to the same Fort Worth judges, despite prior **demonstrated bias and pattern of dismissals with prejudice**, violates **due process and fair trial rights**.
- The Supreme Court has ruled that **judicial reassignment is necessary to avoid excessive familiarity with the same litigants leading to bias** (see *United States v. Mutchler*, 559 F.2d 955 (5th Cir. 1977)).

C. Improper Transfer of Venue Violates Supreme Court Precedent

1. Judicial Transfer Must Not Be Used to Secure a Favorable Outcome for Defendants

- The transfer of this case back to the **Fort Worth Division** under **28 U.S.C. § 1404(a)** is an abuse of discretion because it **ensures the case will be heard by judges who have already demonstrated bias against Plaintiff**.
- The Supreme Court has made it clear that **venue transfers should not be used to facilitate judicial favoritism or foreclose justice** (see *Hoffman v. Blaski*, 363 U.S. 335 (1960)).

2. The Supreme Court Must Intervene to Prevent Further Obstruction of Justice

- Given the **history of bias, obstruction of justice, and failure to consider material evidence**, the Supreme Court must intervene to prevent a **m miscarriage of justice and uphold the integrity of the judicial process** under *Tumey v. Ohio*, 273 U.S. 510 (1927).

II. PETITIONER'S CERTIFICATION OF GOOD FAITH

Pursuant to Rule 44.2, Petitioner certifies that this petition is presented in good faith and not for purposes of delay. Petitioner seeks reconsideration to correct grave legal errors, address overlooked fraud, and challenge the unlawful concealment of key evidence that has directly impacted the outcome of this case.

Plaintiff's intent is not to delay the proceedings but to ensure that justice is not subverted by fraudulent misrepresentations, biased judicial rulings, and improper venue transfers.

III. PRAYER FOR RELIEF

For the foregoing reasons, Petitioner respectfully requests that this Honorable Court:

- 1. Grant this Petition for Reconsideration under Rule 44.**
- 2. Stay the transfer of this case to the Fort Worth Division.**
- 3. Order an evidentiary hearing to assess:**
 - o The falsified affidavits and fraudulent misrepresentations by Defendants.
 - o The judicial bias and improper dismissals of Plaintiff's prior cases.
 - o The necessity for venue reassignment to an impartial judicial panel.
- 4. Issue any additional relief that this Court deems just and proper to prevent further obstruction of justice.**

For the foregoing reasons, the Petitioner respectfully requests that this Honorable Court reconsider its prior decision, grant certiorari, and review the case on its merits to ensure that justice is served. The Petitioner further prays for any additional relief that the Court deems just and proper.

Respectfully submitted,

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Dated: 02/14/25