

No. 25-1028

In the Supreme Court of the United States

PORTER SMITH, PETITIONER

v.

MICHIGAN DEPARTMENT OF CORRECTIONS, ET AL.

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

PETITION FOR REHEARING

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Porter Smith respectfully petitions for rehearing of this Court's June 29, 2026 order denying his petition for a writ of certiorari.

REASONS FOR GRANTING REHEARING

In the proceedings below, a split panel of the Sixth Circuit held that the Rehabilitation Act does not authorize retaliation claims, despite the Act's direct incorporation of the ADA's express anti-retaliation provision. See, *e.g.*, Pet. 10-13.

In the three weeks since the petition was denied, at least two circuits and three district courts have adhered to their longstanding contrary circuit authority.¹ Unlike

¹ *Brantley v. Univ. of Tex. at Austin*, No. 25-50584, 2026 WL 2042727, at *3 (5th Cir. July 15, 2026) (citing *January v. City of*

the Sixth Circuit, these courts continue to recognize a private right of action for retaliation. *E.g.*, *Brantley, supra*; *Patel, supra*. They largely invoke the same circuit authority flagged in the petition, and they invoke the same plain-text rationale applied everywhere (*all eleven circuits*) except, now, the Sixth Circuit. See Pet. 13-18 (citing, *e.g.*, *January, supra*); Reply Br. 3-4.

This stark division is intolerable, and the post-denial snapshot confirms the need for immediate review.

1. It shows circuits understand the controlling majority rule in their jurisdictions. They cite the same cases petitioner featured as binding circuit authority (*e.g.*, *Brantley* and *January, supra*)—and indeed often the same cases both the majority and dissent flagged below as part of a clear and lopsided circuit conflict (Pet. App. 15a-16a; *id.* at 33a (Bloomekatz, J., dissenting) (citing, *e.g.*, *January, supra*)).

These courts are not reconsidering their views or even entertaining the Sixth Circuit’s rationale. On the contrary, they continue recognizing the Rehabilitation Act covers retaliation—as it always has in every other court for decades.

2. The latest cases show the frequent recurrence of this important question. This Court often grants review when the same type of split (involving the same number

Huntsville, 74 F.4th 646, 653 (5th Cir. 2023)); *Patel v. Sec’y, Dep’t of Veterans Affairs*, No. 25-11344, 2026 WL 1948994, at *7 & n.3 (11th Cir. July 6, 2026) (“The Rehabilitation Act incorporates the ADA’s anti-retaliation provision, 42 U.S.C. § 12203(a).”) (citing, *e.g.*, 29 U.S.C. 794(d)); *Hungerman v. Keiser Univ.*, No. 21-318, 2026 WL 2082489, at *2, *6 (M.D. Fla. July 20, 2026) (citing *Todd v. Fayette Cty. Sch. Dist.*, 998 F.3d 1203, 1214 (11th Cir. 2021)); *Gibson v. Lieutenant Mr. Thompson*, No. 24-4836, 2026 WL 1972701, at *2 (E.D. Pa. July 8, 2026); *Eriakha v. Univ. of Miss.*, Nos. 25-226+, 2026 WL 1866718, at *10 (N.D. Miss. June 29, 2026) (citing *Calderon v. Potter*, 113 F. App’x 586, 592 (5th Cir. 2004)).

of decisions) represents the *entirety* of circuit law on a subject.² Here, a significant split is apparent even looking back a sum total of three weeks.

And extending back just slightly before the denial, more examples abound. See, *e.g.*, *Peters v. CBS Viacom*, No. 22-6287, 2026 WL 1792761, at *7 (S.D.N.Y. June 23, 2026) (“The Rehabilitation Act ‘adopts the ADA’s definition of “disability” by reference,” and “it ‘contain[s] similar provisions against retaliation and [is] governed in this respect by the same standards as the ADA”’) (citing *Treglia v. Town of Manlius*, 313 F.3d 713, 719 (2d. Cir. 2002), cited at Pet. 14, Pet. App. 36a); *Doe v. Cal. S. Univ.*, No. 25-9549, at *2, *5 (C.D. Cal. June 22, 2026) (dismissing Rehabilitation Act retaliation claim on factual basis but granting leave to amend); *Zhao v. Adm’rs of the Tulane Educ. Fund*, No. 25-2474, 2026 WL 1741230, at *2 (E.D. La. June 17, 2026) (“Retaliation under the ADA and Section 504”; no hint retaliation claim does not exist); *Clark v. Azzarelli*, No. 25-7122, 2026 WL 1723468, at *4 n.6 (E.D. Pa. June 15, 2026) (“The RA incorporates by reference the substantive standards of the ADA,” which “prohibit[] retaliation”) (citing *Kendall v. Postmaster Gen. of the U.S.*, 543 F. App’x 141, 144 (3d Cir. 2013), cited at Pet. 14); *Lugo v. Birmingham-Jefferson Cty. Transit Auth.*,

² A few recent examples: *United States Postal Service v. Konan*, No. 24-351 (cert. granted Apr. 21, 2025) (2-1); *First Choice Women’s Resource Centers, Inc. v. Platkin*, No. 24-781 (cert. granted June 16, 2025) (2-1); *FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd.*, No. 24-345 (cert. granted June 30, 2025) (2-1); *M & K Employee Solutions, LLC v. Trustees of the IAM National Pension Fund*, No. 23-1209 (cert. granted June 30, 2025) (1-1); *Galette v. New Jersey Transit Corporation*, No. 24-1021 (cert. granted July 3, 2025) (1-1). As the Solicitor General explained in urging review in *Konan*, “[t]his Court has recently and repeatedly granted certiorari in cases arising from 1-1 or 2-1 circuit conflicts.” Pet. 19, *Konan*, *supra* (filed Sept. 27, 2024).

No. 25-11476, 2026 WL 1649879, at *4 n.3 (11th Cir. June 8, 2026) (“Our analysis ‘applies with equal force’ to Lugo’s retaliation claims under § 1981 and the Rehabilitation Act.”).

The intervening cases continue this unbroken pattern, reflecting business as usual. Contrary to respondents’ wishful thinking (see Br. in Opp. 14, 16), courts are still not reconsidering their preexisting views.

3. The post-denial trend proves there is nowhere else for this issue to percolate. Literally every other circuit is already bound by existing circuit law. Not a single panel can even confront the split Sixth Circuit’s aberrant logic without going en banc. Cf. *Patel*, *supra*; see Reply Br. 5. And there is zero reason to expect any court to waste its time: the Sixth Circuit’s logic is atextual and out of step with every other parallel federal anti-discrimination scheme. *E.g.*, Pet. 11-13, 19-20; Reply Br. 6-7. The law was clear, settled, and workable until the split panel below introduced chaos and confusion—at least for thousands of state employees in Michigan, Ohio, Kentucky, and Tennessee. *E.g.*, Reply Br. 7 & n.3; see also Pet. 18.

Respondents will predictably focus on the lack of extended analysis in the intervening cases. This would miss the point entirely. There is no reason to exhaustively reexamine settled circuit precedent. When an issue has already been resolved at the circuit level, a panel knows to cite the relevant decision and move on. There is no point belaboring the issue. And, indeed, if any circuit actually considered these questions open, one would expect the *opposite* behavior—some form of considered analysis or explanation. Instead, these recent decisions emphatically underscore the settled nature of circuit law; courts invoke settled precedent and address Rehabilitation Act claims on the merits, with no hint that retaliation claims are possibly unauthorized. *Brantley*, *supra* (Fifth Circuit); *Patel*,

supra (Eleventh Circuit). And this is all despite the Sixth Circuit's contrary decision now being on the books for a full *eight months*. It has been ignored by other courts for that entire time, and it was ignored by courts again for the last three weeks.

In short, as immediate experience confirms, this split is not going anywhere, and delay is pointless. This statutory question is remarkably straightforward, and the competing views are clear. Because this Court's review is warranted now, rehearing should be granted.

CONCLUSION

The petition for rehearing should be granted, and the petition for a writ of certiorari should be granted.

Respectfully submitted.

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RULE 44.2 CERTIFICATION OF COUNSEL

As counsel of record for petitioner, I hereby certify that this petition for rehearing is presented in good faith and not for delay. I further certify that this petition is restricted to the grounds specified in this Court's Rule 44.2.

/s/ *Daniel L. Geyser*
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