ORIGINAL

25-202

No. 25-____

In the Supreme Court of the United States

ADRIENNE APUZZA,

Petitioner,

v.

NYU LANGONE LONG ISLAND,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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August 14, 2025

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QUESTIONS PRESENTED

1. Did the Court create conflicts in the law by failing to be guided by the common-law rule, well-established public policy and the long legal tradition protecting an employee's, or any competent person's, decision to refuse any unwanted medical treatment?

2. Did the Court create conflicts in law, pursuant to recent Supreme Court authority, that compulsory treatment for the health benefit of the person treated —as opposed to compulsory treatment for the health benefit of others—implicates the fundamental right to refuse a medical treatment based on medical privacy and informed consent as echoed in the statute?

3. Did the Court err by failing to consider that an employer violates the ADA's prohibition on discriminatory qualification standards when it imposes a non-job-related medical treatment as a condition for employment, and then treats her adversely despite claiming ADA protection of her job, given the fact that the employee alleged that the medical treatment only claims to lessen symptoms for the user but does not claim to prevent infection of others, and the employee alleged that the employer regards any untreated employee as a "direct threat" to health and safety without first performing an individualized assessment as required?

4. Did the Court abuse its discretion by failing to consider the Congressional intent and standard of review for ADA pleadings by failing to review defendant's response to determine if it expressed any viable ADA defense?

5. Is a covered employer required by the ADA to show, particularly when challenged, that the new

"COVID policy" qualification standards for employment are both job-related for the position in question and consistent with "business necessity" so that the new standards do not result in prohibited actions?

6. Did the Court create conflicts in the law by failing to consider that a covered employer is required, by the conditions set forth in the statute, to show that an employee individually and objectively poses a contagious "direct threat" before imposing the new qualification standards; which also invaded her medical privacy rights and informed consent, particularly given the allegations and evidence that COVID-19 is not a vaccine-preventable disease, Ms. Apuzza was never diagnosed with COVID-19, and makers of the treatment, marketed as a "vaccine", simply claim that the shots may lessen COVID-19 symptoms for the user but the makers do not claim, nor has it been shown, to prevent infection of others?

7. Did the Court abuse its discretion by refusing to properly analyze whether certain "COVID policy" medical treatments and medical tests qualify as non-job-related qualification standards which are prohibited for all employees not just those diagnosed with an actual disability?

8. Is the Court biased and abusing its discretion because the Court has adopted nearly the same discriminatory policies and practices which gave rise to the complaint? Details are outlined in the Statement of the Case below.

PARTIES TO THE PROCEEDINGS

Petitioner and Plaintiff-Appellant below

- Adrienne Apuzza

Respondent and Defendant-Appellee below

- NYU Langone Long Island

LIST OF PROCEEDINGS

U.S. Court of Appeals for the Second Circuit

No. 24-493

Adrienne Apuzza, *Plaintiff-Appellant* v.
NYU Langone Long Island, *Defendant-Appellee*

Judgment: March 11, 2025

U.S. District Court, Eastern District of New York

No. 22-CV-7519

Adrienne Apuzza, *Plaintiff* v.
NYU Langone Long Island, *Defendant*

Memorandum and Order: December 29, 2023

Amended Judgment: February 21, 2024

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF CONTENTS – Continued

Page

APPENDIX TABLE OF CONTENTS

OPINIONS AND ORDERS

STATUTORY AND REGULATORY PROVISIONS AND JUDICIAL RULES

TABLE OF AUTHORITIES

Page

CASES

STATUTES

TABLE OF AUTHORITIES – Continued

Page

JUDICIAL RULES

REGULATIONS

OTHER AUTHORITIES

PETITION FOR A WRIT OF CERTIORARI

Petitioner Adrienne Apuzza respectfully requests the issuance of a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The Second Circuit's March 11, 2025, unpublished and non-precedential Summary Order denying Apuzza's appeal in No. 24-493 is attached at App.1a. The U.S.D.C. Eastern District of New York's December 29, 2023 Memorandum and Order issued for 22-cv-7519 is attached at App.10a.

JURISDICTION

The Second Circuit entered a summary order on March 11, 2025. App.1a. Apuzza invokes this Court's jurisdiction under 28 U.S.C. § 1254(1), having timely filed this petition for a writ of certiorari within ninety days of the summary affirming the District Court's order to dismiss Apuzza's amended complaint.

STATUTORY PROVISIONS INVOLVED

This case involves the definition of the terms such as perceived "*disability*" under the "*regarded as*" and "*record of*" prongs (42 U.S.C. § 12112), "*qualification standards*", "*job-related*" "*business necessity*" and "*direct threat*" as defined and implemented by 29 C.F.R. § 1630. The ADA was amended in 2008 by Congress to expand the definition of the protected class under the ADA-AA.

The intent of Congress as related to the "regarded as" prong definition in paragraph (3) was to reject the Supreme Court's reasoning in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999) and to reinstate the reasoning of the Supreme Court in *School Board of Nassau County v. Arline*, 480 U.S. 273 (1987) which set forth a broad view of the third prong definition of diagnosed impairment and perceived impairment.

Additionally, there is considerable overlap between the "record of" and "regarded as" prongs in terms of addressing irrational discrimination, such as the one experienced in the context of the "COVID-19 pandemic". Protection from irrational discrimination based upon the fears and stigmas associated with certain perceived conditions is most frequently described as being the purpose of the "regarded as" prong. Indeed, the ADA's legislative history specifically mentions that individuals with perceived conditions are covered under the "regarded as" disability prong. The "record of" prong explicitly outlines that it covers individuals who are misclassified as having such perceived impairment.

In this case, an employer, NYU LANGONE [hereafter "LANGONE"], engaged in irrational discrimination by treating an employee, Ms. Apuzza, *as if* she had a perceived, or undiagnosed, condition of currently being an omnipresent contagious threat of deadly contagious disease and LANGONE took prohibited actions against the employee on this basis. The employer also misclassified the employee as a direct threat, without performing any assessment, who was "in need" of treatment for the perceived impairment. The treatments "prescribed" by the employer, although marketed as a "vaccine" are not traditional vaccines but are medical treatments as Apuzza alleged, and it was improper for the District court to ignore these allegations at the pleading stage and for the Appeal court to affirm. Both courts failed to accept Apuzza allegations that she was fired because she was assumed to be a "direct threat" who required treatment and because she opposed prohibited qualification standards and violations of statute; instead the courts preferred LANGONE's naked assertion that Ms. Apuzza was fired for insubordination to a legitimate policy. The "COVID policy" measures were new qualification standards for employment which excluded, segregated, and diminished the benefits of employees who were classified as untreated "direct threats" by the employer. LANGONE imposed these mitigation measures without satisfying the prerequisite conditions that the treatments and tests be "job-related", as defined in the statute, or be a "business necessity" as established by performing the "direct threat" assessment outlined in the statute.

The text of the relevant provisions is contained in the Appendix at App.32a-45a.

STATEMENT OF THE CASE

LANGONE is a covered entity under Title I of the ADA-AA. Ms. Apuzza was employed by LANGONE since September of 1986 as a Medical Technologist.

Apuzza alleged that LANGONE had improperly determined that all employees were a "direct threat" of deadly contagious disease when it imposed a "COVID policy" implementing new qualification standards for employment based upon this premise. LANGONE refused to perform an objective assessment or diagnosis thus Apuzza claimed that she was being regarded by LANGONE as having a perceived disability and she alleged several adverse conditions of employment such as: harassment, isolation, segregation, denial of equal access, non-job-related treatments, medical examinations and tests; medical inquiries, discriminatory qualification standards; lack of redress and competent help from HR and EEO agents and severe limitations placed on invoking her rights and ADA protections. Apuzza alleged that the "COVID-19 policies" misclassified her in such a way that her employment opportunities were limited because LANGONE would not permit her to do her job on-site without first submitting to the new qualification standards.

Apuzza gave written notice of her objections to possible ADA violations; LANGONE nevertheless continued to impose medical treatments as a condition of employment and denied her exemption claim based on violations of the ADA.

Apuzza alleged that LANGONE violated her rights by: threatening her with termination unless she took

a non-job-related medical treatment; refusing to accept her ADA-based exemption or have an ADA-trained HR agent review her claims; firing her while she was claiming protected opposition; imposing new discriminatory qualification standards; refusing to accept her antibody titer blood results showing antibodies to SARS COV-2 while continuing to coerce her to take a medical treatment she did not need or want; and terminating her because she refused treatment and opposed a policy that violated her rights.

Ms. Apuzza filed a lawsuit against LANGONE on December 9, 2022, LANGONE failed to answer the complaint and Apuzza filed a First Amended Complaint on March 28, 2023. According to the briefing schedule both parties stipulated to, and FRCP 15(a)(3), LANGONE was required to answer the amended complaint in 14 days, by April 11, 2023. On April 25, 2023, Magistrate Judge Wick coached LANGONE's two attorneys from the docket sheet that the "time to answer, move or otherwise respond to the amended complaint is as permitted by applicable Federal Rules". LANGONE's two attorneys ignored this instruction and still failed to answer the complaint; which led to Ms. Apuzza, on June 11, 2023, filing a motion for summary judgment stating that, based on LANGONE's failure to respond, together with the rule that Apuzza's allegations are taken as true at the pleading stage, there were no material facts in dispute and all other prerequisites for summary judgment had been fulfilled. LANGONE filed an opposition to the motion for summary judgment on July 6, 2023 and Apuzza replied on July 24, 2023. It is a strong indication of the court's bias in favor of the attorneys/defendant that Judge Joan Azrack ignored the fully-briefed

motion for summary judgment which was substantially prejudiced Apuzza. Instead, on July 27, 2023, without LANGONE ever having bothered to file a motion asking for more time respond to the amended complaint, Judge Azrack decided to coach LANGONE from the docket to "serve its motion to dismiss by August 31, 2023", more than four months after it was due. Apuzza served her opposition on September 20, 2023. LANGONE served a reply on October 16, 2023 and filed the fully briefed motion with the court on the same date.

On December 29, 2023, Judge Nusrat Choudhury granted the motion to dismiss with prejudice.

On February 3, 2024, Apuzza filed a motion to vacate the order and sent it with certified delivery tracking, however the clerk improperly stated the motion was filed on February 9, 2024 which greatly prejudiced Apuzza as the date-change invalidated her motion once the clerk entered its judgment on February 9, 2024. Apuzza sent an email to the judge simply alerting him that an administrative error had occurred. Choudhury issued an order declaring that her email about an administrative error qualified as a prohibited *ex parte* communication but failed to state any harm or prejudice the email caused. Apuzza then filed a letter citing FRCP 2.9 which allows *ex parte* communications that do not prejudice the other party along with a copy of her email and proof of USPS tracking. Choudhury did not instruct the clerk to fix the filing date of the motion to vacate, he continued to ignore her timely filing and he refused to rule on the motion. Each of the above examples of prejudicial actions taken by Azrack and Choudhury support Apuzza's claims of judicial bias in favor of

the attorneys/defendant and against the *pro se* plaintiff which is likely because the court enforces the same policies as the defendant.

On February 16, 2024, Apuzza filed a notice of appeal of the order granting the motion to dismiss.

On November 23, 2024, Apuzza's Appeal was opened. However, the appeal court stayed the case pending a ruling on the motion to vacate. Apuzza sent the Appeal court status update letters; the last one was filed on June 10, 2024 in which Apuzza informed the clerk that Choudhury had still not ruled on the motion for three months and that Choudhury appeared to be "delaying and denying [her] access to the appeal process". On July 27, 2024 Choudhury denied the motion and the Appeal court lifted the stay July 31, 2024. Apuzza served/filed her Opening Brief on November 22, 2024. On December 27, 2024, LANGONE filed its brief. The Circuit Court filed an unpublished Opinion that affirmed the District Court order on March 11, 2025.

The court of first instance had original and exclusive jurisdiction over plaintiff's claims pursuant to 28 USC. § 1331, in that the matters in controversy are brought pursuant to Title I of the ADA and ADAAA of 2008.

SUMMARY OF THE ARGUMENT

The Circuit Court and the District Court abused their discretion by: (1) ruling that Apuzza's allegations failed to state a claim for either discrimination or retaliation under the ADA without any evidentiary hearing or discovery process; (2) ruling that Apuzza did not "plausibly" allege a cause of action when her allegations are to be taken as true; (3) failing to review whether LANGONE's liability, as is the ADA standard; (4) misstating that Apuzza only alleged a future perceived disability which is not covered by the ADA; (5) ignoring facts alleged in the complaint: (i) Apuzza alleged LANGONE's policy assumed Apuzza had a condition (perceived disability) which needed medical treatment; (ii) Apuzza alleged that LANGONE currently (not in the future) mis-classified Apuzza as a "direct threat" to others unless she received medical treatment claimed by makers to lessen symptoms of "COVID-19"; (5) Apuzza alleged that LANGONE failed to establish by individual assessment (*i.e.* a doctor's diagnosis) that Apuzza was, in fact, a direct threat (Apuzza alleged that LANGONE refused to accept Apuzza's antibody titers which showed she was not a threat); (6) Apuzza alleged new qualification standards, which do not require a showing of disability, were prohibited by not fulfilling the "job-related" requirement; (7) Apuzza alleged retaliation based upon discrimination; (ii) she alleged the causal relationship between her opposition to prohibited actions, refusal of the medical treatment and adverse employment actions she received; (iii) Apuzza alleged her written notice informing LANGONE of potential

violations and requirements for informed consent; and (iv) she alleged that LANGONE's policy demonstrated that she was regarded as having a condition which required medical treatment (perceived disability). Judges are not allowed to decide *sua sponte* that Apuzza's allegations are false until the discovery process is over and an evidentiary hearing is held.

The Courts further abused their discretion by: (8) ruling Apuzza's alleged efforts to exercise her rights under the ADA were really insubordination (i) by *improperly presuming* the COVID policy was a *legitimate* corporate policy when Apuzza alleged it conflicted with laws. The Courts refused to consider that the ADA afforded Apuzza a path to follow, by acting in good faith opposition to the policy, being respectful, attempting to engage in open and constructive communication with her employer, and rightfully refusing discriminatory qualification standards; and refusing to waive her medical privacy rights or informed consent which are squarely rooted in the ADA, 29 CFR Part 1630.9(d)(9). These abuses demonstrate bias because the Courts have adopted the same policies which gave rise to Apuzza's complaint.

The Appeals Court further abused its discretion by (1) ignoring and misconstruing alleged facts showing that prohibited qualification standards were being imposed daily, not at a future date; (2) failing to review whether the qualification standards were prohibited if they did not meet statutory conditional standards, *i.e.* "job-related", "direct threat"; (3) failing to note that the District court did not accept alleged facts as true at the pleading stage; and (4) refusing to set precedent which confuses these important issues even further.

REASONS FOR GRANTING THE PETITION

Petitioner Adrienne Apuzza petitions the United States Supreme Court for a writ of certiorari to the United States District Court of Appeals for the Second Circuit, Case No. 24-493, under the following criteria. This petition and the proceedings below involve a matter of great public importance and raise one or more significant federal questions that are in the public's interest.

A. Court's History of Countermanding Congress

The United States District Court and its Appellate Court have a history of overruling federal law and legislating from the bench. The federal court's practice of countermanding federal law specifically includes whittling down the effectiveness of Congress' purpose intended to protect people with disabilities from discrimination. Eighteen years after the enactment of the ADA, the United States Congress had to intervene and amend the law to further state what its intent was, and to overcome some of the case law established in the federal appeals circuits and the United States Supreme Court, that had effectively repealed the congressional intent expressed in the 1990 version of the ADA.

Additionally, both the trial and appeals courts have imposed a greater pleading standard upon Apuzza than it would for a party represented by an attorney, or a party proceeding only under the "actual" or diagnosed prong of the ADA. The courts have presumed to become gatekeepers of the law that Congress intended to be very accessible for those with disabilities under

any of the prongs, with an intentionally low standard or threshold to invoke the court's jurisdiction and not this gauntlet of unfair conditions once again fabricated by federal courts. This is nothing new as federal courts have a long history of countermanding Congress, which is demonstrated by the congressional intent for amending the ADA in 2008.

People have a private property right to access the law and use it to protect other rights they have, and the federal courts have taken this right, intruded upon it, and trespassed upon it by impeding and frustrating access to justice, the sole means by which people can reach a remedy for damages to their property rights. The federal courts have no property rights over the law; their role is to provide access to the law and facilitate justice, not to own the law, and deny access to the law and justice. The law cannot be owned any more than mathematics can be owned, or any person can own the thoughts of another. However, federal judges have conducted themselves, as if they own the law and as if they can ration it as they desire in the expression of their own passions and prejudice. This is far from the very least that can be expected of the courts: giving the appearance of justice. This conduct is insolent and defiant for the reason that the federal courts obtained their authority to function solely from the very people they are intended to serve.

Regarding the court's "standard of review", Congress stated in 2008 that the main focus of the courts should be whether the employer is satisfying its obligations under the ADA. " . . . [I]t is the intent of Congress that the primary object of attention in cases brought under the ADA should be *whether entities*

covered under the ADA have complied with their obligations, and to convey that the question of whether an individual's impairment is a disability under the ADA should not demand extensive analysis." (*emphasis added*).[1] The standards in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937 (2009) cannot be applied without consideration of Congressional intent for the ADA, especially since Congress had to amend the law in 2008 because this very Court made decisions that countermanded the original intent of Congress and the law. It appears we are here once again, where the federal courts are attempting to create a higher threshold by their use of a legal fiction known as "implausible allegations". Congress specifically instructed courts to review the *liability* of the entity as the first order of business.

The novel application of a "plausibility" standard to *allegations* made by the plaintiff rather than to the *liability* of the defendant creates a higher threshold for those seeking relief and protection under the ADA than was intended by Congress. This is the same despicable conduct demonstrated in *Tennessee v. Lane*, 541 U.S. 509 (2004). Here, the District Court was not only participating in the same illegal policies as LANGONE; it denied Apuzza access to the court, the law and justice by allowing LANGONE to simply deny that it discriminated and retaliated, rather than analyzing its compliance.

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[1] 29 CFR Appendix to Part 1630—Appendix to Part 1630–Interpretive Guidance on Title I of the Americans With Disabilities Act.

Furthermore, claims of: improper inquiries designed to assess a perceived disability; or non-job-related medical treatments, examinations and tests; or improper requests for disclosure of confidential medical information; or for retaliation, may be brought by any applicant or employee, not just individuals with disabilities. *See, e.g., Cossette v. Minnesota Power & Light*, 188 F.3d 964, 969-70 (8th Cir. 1999); *Fredenburg v. Contra Costa County Dep't of Health Servs.*, 172 F.3d 1176, 1182 (9th Cir. 1999); *Griffin v. Steeltek, Inc.*, 160 F.3d 591, 594 (10th Cir. 1998).

Instead of reviewing LANGONE's response to determine if it had expressed any defense that was cognizable under the ADA, the trial court reviewed the complaint under a *distortion* of the standard pleading practice criteria. There is no basis for the court to presume that Apuzza alleged falsehoods or that the defendant is not a covered entity. There is no basis for presuming Apuzza's allegations of her direct experience of being presumed to need treatment, or of being a daily source of contagious disease, are implausible considering she alleged the "COVID policy" measures as written and LANGONE admitted the policy measures. There is no basis for the Circuit court to manufacture that Apuzza was regarded as having a perceived disability in the future when new qualification standards were currently in place and being enforced.

The trial court should have first reviewed LANGONE's response for any legally cognizable defense under the ADA, such as having conducted an individualized assessment to determine that plaintiff was a direct threat, or show that it had suffered an undue financial burden because of plaintiff's exercise of her

rights under the ADA, or that her exercise of such rights would have fundamentally altered normal operations. The court never considered the fact that the defendant's policy was not even related to plaintiff's essential job function.

LANGONE's naked denial that it ever acted *as if* plaintiff had a perceived disability is not a legal defense, nor was it objectively true given the facts.

The EEOC declared "the COVID-19 pandemic meets the direct threat standard"[2] and "... that a significant risk of substantial harm would be posed by having someone with COVID-19, or symptoms of it, present in the workplace at the current time." Clearly, the EEOC means that an individual diagnosed with "COVID-19" can be considered a "direct threat" as the CDC considers the disease to be a substantial risk. "An employee's ability to perform essential job functions will be impaired by a medical condition; or [a]n employee will pose a direct threat due to a medical condition."[3] The employee must be diagnosed as having the medical condition in order to establish direct threat.

Ms. Apuzza was never diagnosed with "COVID-19", however LANGONE assumed everyone was a direct threat without any objective assessment. This doesn't make the policy less discriminatory because it is applied to everyone, it makes it more discriminatory because it is not based on facts, it is based on fear, and COVID funding.

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2 *Pandemic Preparedness in the Workplace*, EEOC guidance document from "Direct Threat" page 7.

3 *Ibid* page 6.

The Supreme Court stayed the OSHA ETS advising that Congress has not given OSHA the power to regulate universal hazards to public health and it should focus on workplace specific hazards. LANGONE has no authority to compel its workers to take medical treatments that are not-job-related.

LANGONE's grandiose claim, although erroneous and hypothetical, that it was "preventing the spread of COVID-19", is not a legal defense to violating the ADA. Claiming there is a pandemic, is not a legal defense under the ADA. Neither is it a defense to ignore established public health law, and federal statute and legal precedents.

B. The Supreme Court Has a Duty to Preserve the Status Quo and the Uniformity of the Laws

One of the functions of the Supreme Court is to preserve the uniformity of the laws and the *status quo*. Therefore, the Supreme Court has a duty to act which is one of the compelling reasons for review.

The District Court's decision, as affirmed by the Circuit Court, is disrupting the *status quo* by allowing mere guidelines and executive orders to overcome established laws. If the Supreme Court does not act it will be allowing the court system to both contradict established public health policy and to facilitate the improper changing of established public health policy to the detriment of everyone.

The Circuit Court affirmed improper actions by the District Court which results in up-ending public health policy which has protected people for over a century and, in fact, destroys it. The two rulings create: a) conflicts with state public health laws regarding

due process and threat assessment; b) conflicts by allowing employers to improperly assume duties reserved to the Department of Health; c) conflicts with the statutory conditions set forth under "Emergency Use Authorization" guidelines, namely the right to informed consent and the right to refuse experimental treatments; d) conflicts with ADA requirements (including those which do not require any showing of a disability), that the employer perform an individualized risk assessment as a pre-condition to disciplining or firing an employee considered a safety threat/direct threat; and e) conflicts with the ADA requirement that in order for a medical treatment, test or inquiry to be a new condition of employment, it must first be established as necessary to perform the essential functions of the job.

The Supreme Court produces and preserves a uniformity of decision through the whole judicial system. The Circuit Court refused to publish its findings of fact and conclusions of law by which it affirmed the District Court's decision. The Circuit court also maintained that its affirmation of the District Court's ruling did not set a precedent and consequently is not binding. Both Courts failed to perform a proper review of the claims, applied incorrect legal standards, and disregarded alleged facts. The Supreme Court has a duty to act because the lower courts are adopting different and contradictory rules of decision; and by doing so, they are leaving the citizens without remedy and without justice.

The circuit court affirmed the District court's gross misreading of Apuzza's allegations, and disqualified her from coverage by concluding that Apuzza narrowly alleged that LANGONE acted as if she might

1) develop COVID in the future but that COVID 2) does not qualify as a "substantially limiting" disability—a precondition existing under the actual prong—and thus the court denied Apuzza coverage.

The circuit court's baroque finding is neither supported by the rules of construction nor the facts. A claim of perceived disability is required to sufficiently show that adverse actions were taken on the basis of a perceived disability. There is absolutely no requirement that the perceived disability must be shown to be as substantially limiting as a diagnosed disability. This condition was removed by Congress in 2008.

In the pleading, Apuzza alleged that she was treated as if she was a threat of contagious disease to others from the moment LANGONE adopted a COVID policy. To make matters worse, LANGONE imposed medical treatments, marketed as vaccines, which only claim to lessen the severity of symptoms for user and do not claim to prevent transmission to others, hence the need for "booster shots".

The Circuit court heavily cited the *Sharikov* case, but the Second Circuit made the same mistakes in *Sharikov* that it makes in Apuzza's case; namely Sharikov's allegations were not taken as true at the pleading stage, and the court failed to review employer compliance, especially regarding the pre-conditions to "job-related" and "direct threat."

Apuzza, like *Sharikov*, did not claim an actual disability at all, she never claimed to "have COVID". She claimed she was being treated as a contagious threat (perceived disability) and being misclassified as a "direct threat". LANGONE, like the employer in

Sharikov, failed to properly claim an affirmative defense.

In order for LANGONE to compliantly exclude Apuzza from the workplace because of posing a "direct threat" LANGONE must make "an individualized assessment of the individual's present ability" to safely perform her job, based on "a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence." as outlined in 42 U.S.C. §§ 12111(3), 12113(a), (b); 29 C.F.R. §§ 1630.15(b)(2), 1630.2(r). Apuzza alleged that LANGONE refused to fulfill this condition despite being asked to do so in Apuzza's Notice of Discrimination and it refused to accept her antibody titers test.

C. This Is a Case of First Impression

Many of the facts and circumstances in the pending appeal are unprecedented and are enumerated by the following:

1. The appellant is proceeding under both the "regarded as" and "record of" prongs of the ADA. The appellee has adopted a policy that instigated and provoked disability discrimination and retaliation on its face and it is the appellant's sincere belief that this is unprecedented.

As the Supreme Court has observed, these protections are particularly necessary to guard employees against misperceptions regarding communicable diseases, given that "[f]ew aspects of a handicap give rise to the same level of public fear and misapprehension as contagiousness." *Arline*, 480 U.S. at 284.

2. Moreover, the facts giving rise to the complaint include the unprecedented situation where the government has declared a public health emergency in which every single American is regarded as a direct threat of transmitting a contagious disease. This outrageous presumption is made without requiring evidence that any specific individual has such contagious disease. A covered entity, like LANGONE, is required to have a reasonable, individualized, objective basis to make such a declaration about an employee. This focus on reasonableness and individualized inquiry is particularly necessary to combat the myth-based hysteria that can accompany well-publicized but misunderstood outbreaks of disease. *Arline*, 480 U.S. at 284-85. Despite the ensuing hysteria, no public health emergency declaration created any new legal duty or legal authority for any of these "COVID-19 policies" or nullified any laws. Again, the backdrop of hysteria mixed with a lack of proper procedure is unprecedented.

3. The federal court has once again sought to countermand the intent of Congress by imposing superfluous conditions on pleadings by inventing new legal concepts such as: "fails to plausibly allege"; refusing to analyze the defendant's response and legal defense to claims of ADA violations by statutory standards; and erroneously elevating mere website commentary (EEOC, CDC) as some sort of new legal authority which lawfully imposed a new legal duty on the parties; thereby and once again attempting to defeat the intent of Congress.

4. Attorneys lack the training and willingness to represent plaintiffs in these types of cases; specifically, no attorney would agree to represent the appellant

in this matter. Appellant was unable to find an attorney who was even competent in this area of law; and yet, she is being held to a higher legal standard than any bar member and the court has frustrated appellant's access to the law by acting as its gatekeeper or owner.

5. There has never been a situation where the court has adopted and implemented the same illegal policies as the defendant, the same "COVID-19 policies", which have given rise to the complaint. Both the District and Appellate Courts refused to explain themselves or acknowledge this conflict. The conflict has expressed itself in several ways, one of which involves federal judges who have intruded upon cases, thereby frustrating access to the court for plaintiffs who are attempting to sue their employers for ADA violations, such as Apuzza detailed above.

6. The policies and practices of LANGONE, which gave rise to the complaint specifically exclude and ignore having any provisions for those employees with disabilities as defined by the ADA while simultaneously regarding every employee as a perceived direct threat of the same exact contagious disease/disability. Despite LANGONE disingenuously denying that it regarded any employee as having a perceived disability (contagious disease); this set of facts is apparent on the face of the employer's policy which seeks to involuntarily impose medical treatments upon each employee as if they are a direct threat of a contagious disease.

While it is not relevant whether or not any specific person, including the employer, admits to regarding an employee as having a disability, the courts and the defendant ignore the fact that, by virtue of the

government's announcement of a public health emergency, every employee was regarded as having a perceived disability. The LANGONE "COVID-19 policy" was clearly based upon this premise.

Moreover, LANGONE failed to provide any designated representative to competently respond to disability discrimination and retaliation complaints. In fact, the LANGONE employees who would normally have this designation, are the very ones perpetuating the discriminatory violations (*e.g.*, human resources). Again, this is unprecedented.

7. An "Emergency Use Authorization" or EUA period, which establishes that any medical treatments, such as "mask wearing" (for the novel purpose of containing the wearer's viral particles), or "COVID testing" (which does not yield a *bona fide* diagnosis of "COVID-19" despite positive results mistakenly called "cases"), or the novel mRNA "vaccines" (which do not prevent infection or transmission) are clinical trials and epidemiological experiments, none of which have been approved by the Food and Drug Administration and are therefore, not *bona fide* "vaccines", tests or medical treatments. Moreover, the pharmaceutical companies disclaim all liability for their experimental "vaccines" and the United States has indemnified the same pharmaceutical companies from having any liability for the manufacture, sale, or distribution of these experimental "vaccines".

8. The published and intended function of the Department of Health has been unlawfully circumvented and replaced by the association of private businesses and employers, thereby denying employees the protections normally afforded by public health policy, which places the burden of proof on the Depart-

ment of Health. In the case of an employer circumventing this authority, the burden of proof is unfairly shifted to the employee, and they are made to suffer the adverse employment action of enduring new exclusionary qualification standards that are unrelated to performing job duties while having no redress to a retaliatory policy which fully intends to eliminate anyone who attempts to claim their rights which then leads to having to incur the unfair burden of trying to seek a remedy in the courts against an employer. In the process, LANGONE then begins paying a law firm and attorneys hundreds of dollars an hour to oppose Apuzza's claim in the corrupted court system.

9. Apuzza alleged the provisions of LANGONE's "COVID-19 policy"; and the policy describes the medical treatments sought to be involuntarily imposed. These new qualification standards do not meet certain statutory conditions which makes them *prohibited actions*, and they come with penalties which makes them *adverse employment actions*; and the causal relationship is written into the policy. However, the Appeal Court failed to review that the pleading does allege the causal relationship between Apuzza 1.) claiming the protection of the ADA and 2.) refusing unwanted medical treatments to lessen the severity of symptoms she does not have and the resulting adverse employment actions. She alleged both actions she took resulted in adverse employment actions. The District court nonsensically opines that there is no causal relationship because Apuzza objected after the policy was in place; yet Apuzza would have no cause to object the policy until after it was implemented and she began to suffer various violations.

The Circuit court refused to properly analyze whether the new qualification standards[4] were *prohibited actions* which excluded Apuzza and were neither *job-related* nor found to be a *business necessity* due to a conclusive *direct threat* assessment.

LANGONE's HR refused to accept Apuzzs's claim of an ADA exemption and coerced her to comply under duress, loss of benefits, interference with protected rights and termination which are all adverse actions.

10. Apuzza provided sufficient written notice that she was "exempting" herself from the new qualification standards under the protection and guidelines of the ADA, LANGONE refused to accept it. Further, LANGONE stated that it would only allow exemptions for pre-existing medical conditions but would not accept her exemptions based upon legal rights available to the appellant.

11. The court and employers (defendant) are receiving compensation for participating in the "pandemic" scheme and have an ulterior motive beyond the noble-sounding claim of "preventing the spread of COVID-19". None of them have any concern about protecting anyone, especially in view of the fact that no one has any financial responsibility for "preventing the spread of COVID-19", nor any financial responsibility for any adverse health consequences suffered by any employee who complies with

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[4] *See* App.36a for CFR 1630.2(g) which outlines the conditions under which employers are allowed to designate medical treatments (*i.e.* face masks, COVID drugs, unpaid quarantines), and tests (*i.e.* temperature checks, symptom surveys, "COVID tests") as qualification standards for employment.

the experimental medical treatments, nor can any employee state a cause of action against an employer for having contracted "COVID-19" at work because it would be impossible to establish proximate cause.

It is not even possible to "prevent the spread of COVID-19", because there are no controlled environments by which such a task could be managed, and employers such as LANGONE have no competence or qualifications for such an undertaking.

Likewise, an employee who participates in the experimental medical treatments of the "COVID-19 policy" is not able to state a cause of action against her employer for suffering any adverse health consequences thereby, for the simple reason that there was no legal duty to impose such a policy, there was no legal authority to impose such a policy and the policy was not legally binding upon either the employer or the employee.

12. The employer's policy, along with the government's, is disproportionately applied to different groups of employees. First, the "COVID-19 policy" of the appellee fails to even recognize employees claiming the protection of the ADA. On its face, by excluding this group of people, it demonstrates discrimination. Second, the policy fails to: (1) include any provision for those with disabilities as defined by the ADA; (2) identify any designated representative or employee who can assist those with disabilities and any grievances they have; (3) provide any means of appeal or review of the employer's actions; (4) offer any legitimate accommodations that are recognized or cognizable under the ADA-AA; and (5) provide conspicuous notice, or the means by which such notice should be provided, to any employee, describing the manner in

which the policy relates to their essential job function.

The "COVID-19 policy" is applied disproportionately to those who participate (by disclosing their medical records, vital statistics, wearing masks and submitting to "COVID-19 tests"). The policy is then applied differently to employees who object to the policy and in good faith refuse to participate unless the employer satisfies its legal duty to obtain an individualized assessment that determines the employee to be a direct threat.

D. Everyone Is Implausibly Regarded As Being Infected with "COVID-19"

A contagious disease is defined by the ADA as one type of disability. The moment the President announced a public health emergency on January 31, 2020, specifically for "COVID-19", everyone in the entire nation was suddenly regarded as infected or likely to become infected, with such a disease. All of the states, counties, cities, towns, and government agencies began making the same proclamation. It was based on the exceedingly implausible premise that three-hundred thirty million people could suddenly become infected with or be at risk of incurring the same exact illness within a short period of time, and this situation would continue for over two years, however, this is the premise of the emergency declarations and of the COVID-19 policy.

Apuzza simply stated the facts of LANGONE's "COVID-19 policy" with the stated purpose of "preventing the spread of COVID-19", based upon the implausible presumption that every employee is currently a risk of contagion. The District Court in-

vented the legal fiction that because such a conclusion, simply restated by Apuzza, is implausible, therefore, Apuzza's complaint failed to state a plausible cause of action. This Court must acknowledge that it is the "COVID policy" itself which is implausible, not Apuzza's experiences of discrimination because of it.

Denying that plaintiff was currently regarded as disabled (by the government, the CDC, her employer) is not a legal defense to allegations of ADA violations. LANGONE never made a proper defense, cognizable under the ADA, but the court invented the legal fiction that plaintiff's complaint did not state a cause of action because it is "not plausible" to allege that everyone is regarded as having a disability, when in fact, this is the very premise of all government proclamations and every single employer's "COVID-19 policy", including the court's.

The entire "pandemic" artifice rests upon the ridiculous and implausible presumption that everyone has incurred the same exact disability, or will imminently incur such a disability, and that everyone should be treated according to a corporate policy published as a "guideline" by the CDC.

A corporate policy is not a *bona fide* medical diagnosis. The policy is intended to be imposed without any *bona fide* medical diagnosis and by circumventing the legislative process and the authority of the Departments of Health, at the federal, state and county levels and thereby, circumventing judicial oversight and denying everyone her right to due process based upon evidence. Apuzza's due process rights (including but not limited to medical privacy and informed consent) are squarely rooted in 29 CFR

Part 1630.9(d) and when she exercised them, she was penalized by appellee.

E. The Policy Contravenes a Century of Public Health Policy

When has it been necessary for one person to undertake a medical treatment in order to prevent illness in another person? This is the ridiculous and illogical premise behind the "COVID-19 policies" adopted and imposed by nearly every employer in the country, including this very Court.

The "COVID-19 policy" imposed by the appellee contravenes long-standing public health policy and ironically, the CDC publishes a list of bench books advising judges on the correct public health policy. The New York Unified Court System publishes a *Public Health Legal Manual* for Judges.[5] These bench books establish that it is only the state legislature which can establish a legal duty to impose medical interventions that prevent transmission of disease to others, subject to judicial oversight based upon medical evidence. This power cannot be delegated but can only be exercised by the Department of Health, not private businesses and certainly not by a private employer.

It is long-standing public health policy, that the only way to unilaterally impose any medical intervention or mitigation measure on people is by judicial review and approval based upon the affidavit of a physician who conducted a *bona fide* medical examination of an individual with her informed consent; and having diagnosed the contagious disease, then

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[5] https://www.nycourts.gov/whatsnew/pdf/PublicHealthLegalManual.pdf

provided an affidavit to the local public health officer. The public health officer could then petition the court to impose isolation or quarantine measures against the individual. Appellee's policy fails to comply with any of this public health policy[6]; in fact, it is clearly intended to violate, circumvent, and abolish these long-standing public health policies.

Since when did the mere announcement of a contagious disease create any new legal duties and new legal authorities to violate the rights of people and create new and negligent public health risks? The mere proclamation of a "deadly contagious disease" did not suddenly change hundreds of years of public health policy or the intangible private property rights of anyone, or suddenly create any new legal duty or legal authority for anyone to implement or impose the "COVID-19 policies".

F. The Policy Is Negligent and Has Created a Public Health Disaster

LANGONE's implementation of its illegal and negligent "COVID-19 policy" created the dangerous condition involving the involuntary imposition of the exact same experimental medical treatments on everyone without any *bona fide* diagnosis or assessment of contraindications, without judicial oversight, without any physician's oversight, without any financial responsibility and in violation of each employee's medical privacy rights and rights to informed consent.

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[6] As it pertains specifically to Ms. Apuzza, LANGONE contravenes long-standing public health policy expressed under Articles 3 and 11 of the New York City Health Code 24 RCNY. (*See* App.38a)

The policy is arbitrary, irrational, and unreasonable because it was based on the implausible scenario that every employee suddenly had become infected with the same exact deadly contagious disease within the same time period.

When did it cease to be *negligent* for laymen with no financial responsibility or professional accountability to impose involuntary medical treatments, that are not the result of a competent and qualified medical examination, but merely the policy of a corporation?

Why was the responsive policy so carelessly and negligently implemented? It excludes any provision for those claiming disabilities, it failed to review applicable ADA provisions; and it penalizes anyone who questions the policy. Further, just like shouting "fire" in a crowded theater, LANGONE's "COVID-19 policy" instilled fear, anxiety, and apprehension in every employee such that every time an employee had a cough or a symptom of the common cold, she believed she was not only going to die a horrible death but that she would infect other employees with the same demise. This created a very hostile and antagonistic working environment, especially between those who believed the COVID hysteria or felt compelled to comply to keep their job and those who either were not concerned due to assessing their age and health condition or did not agree with LANGONE's policy.

LANGONE's "COVID-19 policy" fails to address the screaming reality that neither LANGONE, nor any scientific principles known to mankind at this time, has the ability to establish the proximate cause behind any employee becoming infected with "COVID-19". LANGONE's negligent "COVID-19 policy" fails

to address the very obvious reality that each employee ends her shift and leaves the premises and is free to roam about the town or travel to faraway lands and engage with unknown and unidentifiable "risks" or "infected people", and then return to her job to begin his next shift. It is by this fact alone that LANGONE, no matter what its policies are, is wholly unable to "prevent the spread of COVID-19" by any stretch of the imagination, even if such a risk did exist.

How then is it reasonable or equitable to punish any employee for refusing to participate in such a policy? The policy is completely useless simply because LANGONE cannot control any employee's environment every moment of the day, whether at work or away.

G. The Policy Imposes Involuntary Experimental Medical Treatments Without Notice, Due Process, FDA Approval, or Informed Consent

Every medical treatment and test in the policy is under Emergency Use Authorization ("EUA")[7] guidelines and is classified as a clinical trial or epidemiological experiment. LANGONE has not obtained FDA approval to conduct clinical trials, nor has it obtained the informed consent of anyone affected by the policy. There are no "vaccines" during an EUA period as any medical intervention is a clinical trial by definition, not an FDA-approved medical treatment ("authorized" is not "approved"). Furthermore the shots are medical treatments and not designed to prevent infection. Or transmission.

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[7] The Emergency Use Authorization period announced by the Food and Drug Administration continues to this day.

Every medical intervention that is being administered under the EUA scheme is purely experimental and those participating in them are doing so at their own risk. However, this has not been disclosed by LANGONE or any government authority, including the Department of Health which is tacitly participating and overtly facilitating.[8]

LANGONE refused to inform any employee that its "COVID-19 policy" is a clinical trial and that each person submitting to its provisions is a test subject. Apuzza asked her employer, in her notice of discrimination, for a risk/benefit analysis necessary for informed consent and to receive the EUA disclaimer sheet for each treatment or test LANGONE imposed; LANGONE failed to provide this information. This violates Title 21 of the Code of Federal Regulations, "Food and Drugs", Part 50.20. No one, including Apuzza, has been given the opportunity to decide whether to consent to this medical experiment free of any element of force, fraud, deceit, duress, coercion, or undue influence. No one, including Apuzza, is required to become the subject in any epidemiological experiment. Apuzza's rights to informed consent and medical privacy, her right to refuse any medical treatment, is squarely rooted in 29 CFR Part 1630.9(d) which LANGONE has a legal duty to uphold.

H. Budgeted for the Future and a Trillion Dollar Market Cap

There is no end in sight for this "pandemic" scheme, it will continue perpetually, and it is intend-

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[8] Using the same terms from the most recent table-top exercise known as "Event 201" that preceded the January 31, 2020, announcement of the now, live-action role-playing event.

ed to continue perpetually because the banking system has made it profitable to engage in these policies. In its first year, the "pandemic" had a market cap in the billions of dollars. The "pandemic" is a profitable business enterprise for the pharmaceutical companies, governments, and those involved with the collection of data such as medical, biographical, biometric, and other surveillance data collected from online "contact tracing", "vaccine tracking", and "COVID-19 testing" online portals. The repositories for this human data include the university system, specifically Johns Hopkins University.

The Global Preparedness Monitoring Board ("GPMB") includes the World Bank and the World Health Organization, and the plan is to provide funding for nations which participate in future schemes. This is explained in hundreds of publications, but see *A World at Risk—Annual Report on Global Preparedness for Health Emergencies*, September 2019[9]. The "COVID-19 pandemic" was just another test in a long series of trials that have been taking place for decades. *See From Worlds Apart to a World Prepared*, GPMB Report 2021[10].

As of October 16, 2020, Congress has enacted four emergency supplemental funding bills to address the "COVID-19" pandemic, which collectively provide almost $3.2 billion for the global response. Of this amount, approximately $2.4 billion (75%) was designated for country, regional, and worldwide pro-

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[9] Available at: https://www.gpmb.org/annual-reports/annual-report-2019.

[10] Available at: https://www.gpmb.org/annual-reports/annual-report-2021.

gramming efforts through the State Department ($350 million), the U.S. Agency for International Development ($1.24 billion), and the CDC ($800 million); the remainder was for operating expenses. We examined the status of global "COVID-19" country, regional, and worldwide funding to assess how much has been committed to date and where it has been directed. *See U.S. Global Funding for COVID-19 by Country and Region: An Analysis of USAID Data,* June 29, 2022, published by Kaiser Family Foundation.[11]

Countries that are evolving their "COVID-19" pandemic response into longer term investments to strengthen systems for health and pandemic preparedness can consider applying for C19RM Portfolio Optimization (PO) Wave 2. This is a process that allows countries to receive additional C19RM funds and align investments with revised priorities. Eligible Country Coordinating Mechanisms (CCMs) have received letters with instructions on how to apply for funding. *See The Global Fund (theglobalfund.org) February 9th, 2023*[12].

The news is endless. *See, The Pandemic Fund Announces First Round of Funding to Help Countries Build Resilience to Future Pandemics*[13].

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[11] https://www.kff.org/global-health-policy/issue-brief/u-s-global-funding-for-covid-19-by-country-and-region-an-analysis-of-usaid-data/

[12] Available at: https://www.theglobalfund.org/en/updates/2023/2023-02-09-additional-funding-from-c19rm-and-the-new-pandemic-fund/.

[13] Available at: https://www.worldbank.org/en/news/press-release/2023/02/03/the-pandemic-fund-announces-first-round-

> Washington, Feb. 3, 2023 — The Pandemic Fund Governing Board approved $300 million in financing for its first round of funding to help developing countries better prepare for and respond to future pandemics. The Fund is also inviting interested eligible countries and Implementing Entities to submit Expressions of Interest (EOI) for potential projects to be supported by this initial funding.

This scheme is funded for many years to come, please also see COVID-19 World Bank Emergency Response: Projects Repository.[14]

The "pandemic" is the business of the world banking system and the world military (United Nations and World Health Organization). The United States Supreme Court is in a unique position to protect employees from this diabolical scheme and set an example for the world.

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of-funding-to-help-countries-build-resilience-to-future-pandemics#:~:text=3%2C%202023%20%E2%80%94%20The%20Pandemic%20Fund,and%20respond%20to%20future%20pandemics.

[14] Please consult: https://docs.google.com/spreadsheets/d/1416zufQFM7IY9OvHufmOmeF0jiQTT7V7jAlPg3Iqe9Q/edit#gid=0.

CONCLUSION

This Court should grant certiorari to review the Second Circuit's judgment.

Respectfully submitted,

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August 14, 2025