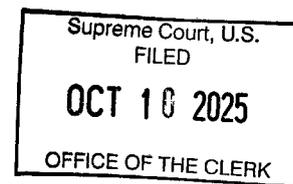


25-6852

ORIGINAL

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IN THE  
SUPREME COURT OF THE UNITED STATES



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CLINTON BRINSON-----PETITIONER

---

vs.

WALMART, INC-----RESPONDENT(S)

---

ON PETITION FOR WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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PETITION FOR WRIT OF CERTIORARI

CLINTON BRINSON

1410 Brookside Drive Apt#206

Raleigh NC 27604

984 381 0689

## QUESTION(S) PRESENTED

1. Whether a client company that directly and expressly directs a contractor to terminate an employee is a joint employer liable for retaliation under the Americans with Disabilities Act, even if the contractor's management physically implements the termination?

## LIST OF PARTIES

Petitioner: Clinton Brinson

Respondent: Walmart, Inc

## Related Cases

Clinton Brinson v Walmart, Inc., No. 24-2167 (5:24-cv-00079-D-KS) United States Court Of Appeals Fourth Circuit. Marc 31 2025

Clinton Brinson v Walmart, Inc., No. 24-2167 (5:24-cv-00079-D-KS) United States Court Of Appeals For The Fourth Circuit. August 19, 2025.

Clinton Brinson v Walmart, Inc., No. 5:24-CV-79-D United States District Court For The Eastern District Of North Carolina. September 26, 2024

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## TABLE OF AUTHORITIES CITED

### CASES

Salinas v. Commercial Interiors, Inc., 848 F.3d 125 (4th Cir. 2017).....

Butler v. Drive Automotive Industries of America, Inc., 793 F3d 404 (4th Cir. 2015).....

### STATUES AND RULES

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### 28 U.S.C. § 1254. Courts of appeals; certiorari; certified questions

"Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or <sup>1</sup> decree..."

### 42 U.S.C. § 12111. ADA Definitions (Employer)

"(2) Covered entity.—The term 'covered entity' means an employer, employment agency, labor organization, or joint labor-management committee.

...

(5) Employer.—The term 'employer' means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year..."

### 42 U.S.C. § 12112. Discrimination (The Core of your Claim)

"(a) **General rule.**—No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or **discharge of employees**, employee compensation, job training, and **other terms, conditions, and privileges of employment.**"

### OTHER AUTHORITIES

- Fed. R. Civ. P. 12(b)(6) ..... [Page #] .....

- Fed. R. Civ. P. 56 ..... [Page #]
- Sup. Ct. R. 14 ..... [Page #]

Fed. R. Civ. P. 12(b)(6) provides in pertinent part:

"...a party may assert the following defenses by motion: (6) failure to state a claim upon which relief can be granted..."

Fed. R. Civ. P. 56(a) provides in pertinent part:

"The court shall grant summary judgment if the movant shows that there is no genuine

dispute as to any material fact and the movant is entitled to judgment as a matter of law."

*"On August 19, 2025, the U.S. Court of Appeals for the Fourth Circuit denied Petitioner's petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 40 or Rule 35. This petition is timely filed within 90 days of that final order."*

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 judgement below

OPINIONS BELOW

The **Fourth Circuit's** order denying rehearing (August 19, 2025) is unreported and appears in the **Appendix at 1a**.

The **Fourth Circuit's** opinion affirming dismissal March 31 2025 is unreported and appears in the **Appendix at 3a**.

The **District Court's** order of dismissal (September 26, 2024) is unreported and appears in the **Appendix at 15a**.

JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit was entered on **March 31 2025**. Petitioner filed a timely petition for rehearing and rehearing en banc, which the Court of Appeals denied on **August 19 2025**. This Court has jurisdiction under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1254(1) provides:

“Cases in the courts of appeals may be reviewed by the Supreme Court by... writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.”<sup>1</sup>

42 U.S.C. § 12111(5)(A) provides in pertinent part:

“The term ‘employer’ means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person...”

42 U.S.C. § 12112(a) provides:

“No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.”<sup>2</sup>

Fed. R. App. P. 40(a)(1) [If applicable to your rehearing]:

“Unless the time is shortened or extended by order or local rule, a petition for panel rehearing may be filed within 14 days after entry of judgment...”

## STATEMENT OF THE CASE

"Petitioner exhausted all administrative remedies by filing a formal charge with the EEOC. Following the issuance of a Notice of Right to Sue, Petitioner filed his complaint in the District Court within the required 90-day window, properly bringing his claims under the ADA and the Fourth Circuit's joint-employment standards."

### A. The Employment Relationship

I was a security officer for Brosnan Risk Consultants, but my "work home" was Walmart.

- **Key Fact:** I worked at Walmart locations, protecting Walmart property, under the daily observation of Walmart management.

### B. The Incident and Direct Control (The Russell Hines Interaction)

This is the most important part of my petition. I describe the "ultimatum."

- **The Conflict:** I had a medical appointment (ADA protected).
- **The Command:** Walmart Manager Russell Hines told Brosnan Supervisor Sean Thompson that if I left for that appointment, I were to be terminated.
- **The Joint Action:** This shows that Walmart wasn't just a "client"—they were pulling the strings on my employment.

### C. The "Smoking Gun" Evidence (The Khalic Everett Testimony)

Description of what I learned during the workers' comp hearing.

- **The Revelation:** Khalic Everett (Brosnan Operations Manager) testified under oath that Russell Hines followed up to ensure I would **not work at any more of his Walmart stores**.
- **The Legal Impact:** This proves "blacklisting" or an absolute bar from employment, which is a major **Adverse Action** under the ADA.

Petitioner, Clinton Brinon, was employed as a security officer by Brosnan Risk Consultants and assigned to work at Walmart Inc. locations. Although my payroll was processed by Brosnan, my daily work conditions and continued employment were controlled by Walmart management.

On March 7 2023, I requested to attend a necessary medical appointment related to my disability. Walmart Manager Russell Hines intervened in the employment relationship by

informing my supervisor, Sean Thompson, that my departure for the appointment must result in my termination. Following this directive, I was discharged.

During subsequent proceedings, sworn testimony from Brosnan Operations Manager Khalic Everett revealed the extent of Walmart's control. Everett testified that Russell Hines explicitly directed that I was barred from working at any of Hines' Walmart locations. This action effectively terminated my ability to work for my primary employer at their principal job sites.

The District Court dismissed the complaint, and the Fourth Circuit affirmed, failing to apply the "Hybrid Test" from *Butler v. Drive Automotive* or the "not completely disassociated" standard from *Salinas v. Commercial Interiors*. Both courts erroneously concluded that Walmart was not a joint employer, despite Walmart's direct role in my termination and blacklisting.

## REASONS FOR GRANTING THE PETITION

I was a security officer for Brosnan Risk Consultants contracted out to do security at the Walmarts in the Raleigh Durham area. On March 6 2023 I told my Brosnan Risk Consultants Supervisor Sean Thompson that I had a doctor's appointment concerning my disability of sciatica the next day March 7 2023 and Supervisor Sean Thompson gave me permission to go. However the next day Brosnan Risk Consultants Operations Manager Khalic Everett refused to let me go to the doctor's appointment telling me that if I went to the doctor's appointment I would be considered abandoning my post. I went to the doctor's appointment and when I was done at the doctor's Operations Manager Khalic Everett called me on the phone and told me I was terminated. In a phone recorded conversation Brosnan Risk Consultants' Supervisor Sean Thompson said that on March 6 2-23 I told him that I had a doctor's appointment March 7 2023 and he gave me permission to go and all three of them, Brosnan Risk Consultants' District Manager Jim Myers, Brosnan Risk Consultants' Operations Manager Khalic Everett, and Walmart's Manager Russell Hines told him if I go to the doctor's appointment they wanted me terminated. I went to the doctor's appointment and was terminated by Operations Manager Khalic Everett as soon as I returned home from the doctor's appointment. In a worker's compensation hearing August 28 2023 Brosnan Risk Consultants' Operations Manager Khalic Everett testified after I was terminated the next day Walmart's Manager Russell Hines told him he didn't want me working at any of his Walmart stores. I filed a Complaint against Walmart, Inc., being a joint employer and liable for the ADA retaliation violation thru Walmart's Manager Russell Hines who had already determined I would be terminated if I went to my doctor's appointment and thru Walmart's Manager Russell Hines for telling Khalic Everett he didn't want

me working at any of his Walmart stores. My Complaint was denied by the court reasoning with Walmart that Brosnan Risk Consultants was the primary employer and sole terminator of my employment. My informal brief was denied and rehearing en banc was denied. I argue this reasoning is no longer precedent law and the lower court's decision goes against the Fourth Circuit's own new precedent set out in "Butler v. Drive Automotive Industries of Am., Inc., 793 F.3d 404 (4th Cir. 2015) and Salinas v. Commercial Interiors, Inc., (2017). See **Butler v. Drive Automotive Industries of Am., Inc., 793 F.3d 404 (4th Cir. 2015)**, the plaintiff, Brenda Butler, worked as a machine operator at a manufacturing plant owned by Drive Automotive. Although Butler was officially hired, paid, and provided benefits by a temporary staffing agency, ResourceMFG, she performed her daily tasks at the Drive Automotive facility under the supervision of Drive's management. During her tenure, Butler alleged she was subjected to sexual harassment by her Drive supervisor and was ultimately terminated after complaining.<sup>1</sup> When she sued for violations under Title VII, Drive Automotive argued that it could not be held liable because it was not her "official" employer.<sup>2</sup> The district court initially agreed, but the Fourth Circuit Court of Appeals reversed that decision.

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The Fourth Circuit held that Drive Automotive was, in fact, a **joint employer**. The court applied a "hybrid" test that focused on the **economic realities** of the relationship, placing the most weight on the degree of **control** exercised over the employee.<sup>3</sup> Specifically, the court found it dispositive that Drive Automotive managers supervised Butler's daily work, provided the equipment she used, and—most importantly—had the **effective power to fire her**. Even though the staffing agency physically carried out the termination, they did so only because Drive Automotive directed them to "end her assignment." The court concluded that a company cannot

avoid the protections of federal civil rights laws by using a third-party intermediary to shield itself from the reality of its supervisory and disciplinary control.

In my **Writ of Certiorari** to the Supreme Court, citing ***Butler v. Drive Automotive Industries of America, Inc.*, 793 F.3d 404 (4th Cir. 2015)** is the most powerful move I can make.

This case is the "gold standard" for workers like me who are technically employed by a security firm (Brosnan) but are controlled by a client company (Walmart). Here is how I use the reasoning of *Butler* to prove that Walmart was my **Joint Employer** and is liable for my termination.

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## 1. The "Hybrid Test" Reasoning

In *Butler*, the Fourth Circuit adopted a "**Hybrid Test**" to determine if a company is a joint employer.<sup>1</sup> The court's reasoning was that a company cannot escape the ADA or Title VII by simply using a third-party agency (like Brosnan) if the company still controls the worker.

### How this helps me:

- **The Power to Fire:** The *Butler* court placed the "greatest emphasis" on which entity has the power to hire and fire.<sup>2</sup> In my case, Russell Hines (Walmart) didn't just suggest I be fired; he **demand**ed it. Under *Butler*, when a client manager (Hines) tells a staffing agency supervisor (Thompson) to terminate a worker, that client is legally an "employer."
- **Control over the Terms of Employment:** The *Butler* court found joint employment because the factory manager "requested" the worker's termination and that request was always granted. I have the same fact: Russell Hines told Sean Thompson that if I left for a doctor's appointment, I must be terminated. I have a phoner recorded conversation as solid, concrete, inescapable proof that Sean Thompson told Russell Hines along with Khalic Everett, and Jim Myers that if I left for a doctor's appointment I must be terminated. Also, see attached exhibit A I have transcript pages of the worker's comp hearing Khalic Everett testimony that Russell Hines the next day at another store location made sure I would not be working at any of Russell Hines Walmart locations.

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## 2. Adverse Action: The "Blacklisting" Argument

I mentioned that Russell Hines later testified (via Khalic Everett) that I would "not be working at any more of his Walmart stores." This is a critical legal point.

The Reasoning:

Under the ADA, an Adverse Action isn't just a firing; it's any action that negatively affects the terms, conditions, or privileges of your employment.

- By barring you from all Walmart locations, Hines effectively "**blacklisted**" you from the primary site of your job.
- Even if Brosnan didn't fire you immediately, Hines' order to exclude you from all stores made it impossible for you to perform your duties. *Butler* supports the idea that the "place of work" and "supervision" are key factors in being an employer.<sup>3</sup> If Walmart controls the "place," they control the job.

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### 3. Using the "Sworn Testimony" in My Petition

In your **Statement of the Case**, you should highlight the contradiction that came out in the workers' comp hearing:

- **The Secret Influence:** Walmart likely argued in lower courts that Brosnan made the decision to fire you.
- **The Rebuttal:** Use the sworn testimony of **Khalic Everett** to show the Supreme Court that the "hand" inside the glove was Walmart. See attached exhibit D worker's comp transcript pages 126-129.

*"As in Butler, where the client company directed the termination behind the scenes, the sworn testimony of Khalic Everett proves that Walmart manager Russell Hines exercised 'ultimate control' by not only directing Plaintiff's termination for a medical appointment but by permanently barring Plaintiff from all service locations, effectively ending his career with the security firm.*

### 4. How I List this in My Table of Authorities

Authority	Page Number in Petition
<i>Butler v. Drive Automotive Industries of Am., Inc.</i> , 793 F.3d 404 (4th Cir. 2015)	4, 9, 12, 14

### Summary of the "Butler" Connection

- **Butler Fact:** Manager Green told the agency to fire Butler.
- **Clinton Fact:** Manager Hines told the agency (Thompson) to fire Clinton Brinson.
- **Butler Fact:** Butler worked on the client's floor with client equipment.<sup>4</sup>
- **Clinton Fact:** Clinton Brinson worked in the client's store protecting the client's.

In *Salinas v. Commercial Interiors, Inc.*, 852 F.3d 298 (4th Cir. 2017), the plaintiffs,

Raymundo Salinas and other workers, were employed by a subcontracting company called J.I.L. Construction to install drywall. J.I.L. worked almost exclusively for a general contractor, Commercial Interiors. Although J.I.L. was the entity that hired and paid the workers, they performed their work on job sites managed by Commercial Interiors, wore Commercial Interiors branded clothing, and were supervised by Commercial Interiors' foremen. When the workers sued for unpaid overtime under the Fair Labor Standards Act (FLSA), Commercial Interiors argued they were not the employer and therefore not liable. The district court agreed, but the Fourth Circuit reversed, establishing a major precedent for joint employment.

The Fourth Circuit held that Commercial Interiors was a **joint employer** because the two companies were "**not completely disassociated**" with respect to the workers' employment.<sup>1</sup>

The court emphasized that a joint employment relationship exists whenever two or more entities share or co-determine those matters governing the essential terms and conditions of a worker's employment. The court looked at the "economic reality" of the situation, noting that Commercial Interiors provided the materials, controlled the daily schedule, and oversaw the quality of the work. The court explicitly stated that the purpose of the joint employer doctrine is to prevent companies from using subcontractors or staffing agencies as a "shield" to avoid their legal obligations to workers over whom they exercise substantial control.

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### **How I use this for My Petition:**

I follow the *Butler* paragraph with this one to show that the Fourth Circuit has *two* strong rules that Walmart violated. I connect it like this:

"Similarly, in *Salinas*, the Fourth Circuit held that two entities are joint employers if they are 'not completely disassociated' regarding the terms of employment.<sup>2</sup> In my case, Walmart and Brosnan were inextricably linked. Walmart provided the job site, dictated the security protocols, and ultimately co-determined the most essential term of employment: whether I remained employed. By allowing Walmart to 'disassociate' itself from the consequences of its direct command to terminate the me, the lower courts have created exactly the kind of liability-free shield that *Salinas* was intended to prevent."

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### **Why *Salinas* is a "Killer" Argument for Me:**

- **"Not Completely Disassociated"**: This is a very low bar. I only have to prove Walmart and Brosnan weren't "completely separate" in how they handled my job. Since Russell Hines (Walmart) was talking to Sean Thompson (Brosnan) about my firing and Khalic Everett (Brosnan) about me not working at any of Russell Hines Walmart Stores, they were clearly "associated."
- **The "Shield"**: *Salinas* warns against companies using "middlemen" to hide from the law. I argue Walmart is using Brosnan to hide from the ADA.
- **Essential Terms**: One of the most "essential terms" of a job is whether you are allowed to go to a doctor's appointment. Since Hines interfered with that, he was "co-determining" my employment.

In my **Writ of Certiorari** to the Supreme Court, combining the reasoning of *Butler* and *Salinas* creates an airtight argument that Walmart was my "Joint Employer." This is the core of my case: proving that Walmart cannot hide behind Brosnan Risk Consultants when it was a Walmart manager who made the decision to fire me.

**Under *Butler v. Drive Automotive*, Walmart exercised "Ultimate Control" over my Termination.**

In *Butler v. Drive Automotive Industries of Am., Inc.*, 793 F.3d 404 (4th Cir. 2015), the court established a "Hybrid Test" to determine joint employment, placing the "**greatest emphasis**" on which entity has the power to hire and fire.

- **The Butler Reasoning:** The court found joint employment because a client-company manager requested the worker's termination, and that request was granted. The court noted that an employer should not be permitted to "*avoid Title VII [or the ADA] by affixing a label to a person that does not capture the substance of the employment relationship.*"
- **Application to Clinton Brinson:** Here, the "substance" of the relationship was absolute control by Walmart. Manager Russell Hines did not merely suggest a change; he issued an ultimatum to Brosnan supervisor Sean Thompson: **terminate Clinton Brinson if he attends his medical appointment.** Under *Butler*, this exercise of the "power to fire" makes Walmart a joint employer as a matter of law.

**Under *Salinas v. Commercial Interiors*, Walmart and Brosnan were "Not Completely Disassociated."**

The reasoning in *Salinas v. Commercial Interiors, Inc.*, 848 F.3d 125 (4th Cir. 2017), further expands the liability of entities like Walmart. The court held that joint employment exists whenever two entities "**codetermine—formally or informally, directly or indirectly—the essential terms and conditions of a worker's employment.**"

- **The Salinas Reasoning:** The court looked at whether the entities were "completely disassociated." If they share supervision or the power to modify employment terms, they are joint employers.
- **Application to Clinton Brinson:** Walmart and Brosnan were **not** completely disassociated. The sworn testimony of Khalic Everett proves that Russell Hines didn't just fire me from one store; he "blacklisted" me from **all** Walmart locations. This "combined influence" over where and how I could work—specifically targeting my need for a disability-related accommodation (a doctor's appointment)—satisfies the *Salinas* test for joint employment. See attached exhibit D worker's comp transcript p 126-129.

**The Adverse Action was an Absolute Bar to Employment.**

The decision by Walmart to bar me from all stores is a "textbook" adverse action under the ADA. As *Salinas* highlights, control of the premises where work is performed is a key indicator of employer status. By banning me, Walmart exercised the ultimate employer prerogative, rendering any "independent contractor" label between Walmart and Brosnan a legal fiction.

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**Summary Table for your Table of Authorities (TOA)**

<b>Case Citation</b>	<b>Key Reasoning for Clinton Brinson</b>
<b><i>Butler v. Drive Automotive</i></b>	Power to fire is the "principal guidepost" of control.
<b><i>Salinas v. Commercial Interiors</i></b>	Entities are joint employers if "not completely disassociated."
<b><i>ADA - Adverse Action</i></b>	Banning a disabled worker from all sites is a career-ending action.

**This Case Presents a Critical Opportunity to Clarify the Joint Employer Standard Under the Americans with Disabilities Act.**

The "Joint Employer" doctrine is currently a patchwork of different tests across the United States. This Court should grant certiorari because the Fourth Circuit's decision in this case creates a dangerous precedent: it allows a secondary employer (Walmart) to exercise the ultimate power of termination over a disabled worker while shielding itself from ADA liability behind a staffing agency (Brosnan).

A. The Lower Courts Departed from the Established "Economic Reality" and "Hybrid" Tests.

Under the Fourth Circuit's own reasoning in *Butler v. Drive Automotive* and *Salinas v.*

*Commercial Interiors*, the focus must be on the substance of control, not the formal label of the employer. By dismissing my claim, the lower courts ignored the "smoking gun" evidence of control:

1. **The Power to Fire:** Walmart Manager Russell Hines exercised the "principal guidepost" of employment—the power to terminate—by demanding my discharge for attending a medical appointment.
2. **The Power to Blacklist:** As testified by Khalic Everett, Walmart permanently barred me from all service locations. See attached exhibit D worker's comp transcript pages 126-129.

B. This Case Addresses an Issue of Exceptional Public Importance.

In the modern economy, millions of workers are "contracted out" to major corporations. If the decision below stands, these corporations can effectively "order hits" on the jobs of disabled workers without ever having to face an ADA claim. This creates a "liability-free zone" that undermines the very purpose of the Americans with Disabilities Act.

## CONCLUSION

The petition for a writ of certiorari should be granted. This case is the ideal vehicle for this Court to clarify the **Joint Employer** standard under the Americans with Disabilities Act.

If the decision of the Fourth Circuit is allowed to stand, it will provide a roadmap for large corporations to circumvent the ADA by using third-party intermediaries to carry out discriminatory terminations. The evidence in this case—specifically the sworn testimony of **Khalic Everett** regarding **Russell Hines'** direct command to terminate and blacklist me—proves that Walmart exercised the ultimate "power to fire."

The lower courts' failure to apply the economic reality of this control is a departure from the accepted course of judicial proceedings. I respectfully request that this Court grant the writ, reverse the judgment below, and remand this case for a trial on the merits.

Respectfully submitted,

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Clinton Brinson

Petitioner, Pro Se

Clinton Brinson  
1410 Brookside Drive Apt#206  
Raleigh NC 27604

**Dated:** January \_\_, 2026