

No. 25-_____

IN THE

Supreme Court of the United States

KIM BOGARDUS,

Petitioner,

v.

CITY OF YAKIMA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme
Court of the State of Washington

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In *Cleveland v. Policy Management Systems Corp.*, 526 U.S. 795 (1999), this Court held that a claim of total disability for Social Security Disability Insurance (SSDI) purposes does not automatically estop a plaintiff from claiming to be a "qualified individual" under the Americans with Disabilities Act (ADA), provided the plaintiff proffers a "sufficient explanation" for the apparent inconsistency.

The questions presented are:

1. Whether the "sufficient explanation" requirement under *Cleveland* is satisfied only by an affirmative, textual reconciliation within the four corners of the SSDI application or testimony, as held by the First, Third, and Fifth Circuits; or whether it may be satisfied by contextual evidence as held by the D.C. and Ninth Circuits; and
2. Whether courts may effectively apply a judicial-estoppel or heightened summary-judgment standard against ADA plaintiffs by resolving credibility and factual disputes arising from SSDI filings at summary judgment rather than leaving those determinations to the trier of fact.
3. Whether a plaintiff's explanation is legally sufficient under *Cleveland* where she applies for SSDI while on medical leave and actively pursuing an available accommodation that would render her a "qualified individual."

PARTIES TO THE PROCEEDING

The Petitioner is Kim Bogardus, the plaintiff and appellant in the proceedings below.

The Respondent is the City of Yakima, a municipal corporation organized under the laws of the State of Washington, the defendant and respondent in the proceedings below.

RELATED PROCEEDINGS

Bogardus v. City of Yakima, 577 P.3d 379 (Washington Supreme Court, October 8, 2025).

Bogardus v. City of Yakima, 40060-3-III (Wash. App. Apr 03, 2025).

Bogardus v. City of Yakima, 21-2-00063-39 (Wash. Super. Ct. Yakima Cnty. Oct. 11, 2023).

TABLE OF CONTENTS

QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDING	ii
TABLE OF AUTHORITIES	iv
JURISDICTION.....	1
STATUTORY PROVISIONS INVOLVED	1
INTRODUCTION	2
STATEMENT OF THE CASE.....	3
REASONS FOR GRANTING THE PETITION.....	6
CONCLUSION.....	9
APPENDIX A: Opinion of the Washington Court of Appeals.....	App. 1a
APPENDIX B: Order Denying Review, Washington Supreme Court.....	App. 18a
APPENDIX C: Opinion <i>Cleveland v. Policy Mgmt. Sys. Corp.</i>	App. 20a

TABLE OF AUTHORITIES

	<u>Page(s)</u>
Cases	
<i>Cleveland v. Policy Management Systems Corp.</i> , 526 U.S. 795 (1999)	i, 2, 6, 9
<i>Davis v. Microsoft Corp.</i> , 149 Wash. 2d 521 (2003)	2
<i>Dean v. Municipality of Metropolitan Seattle</i> , 104 Wash. 2d 627 (1985)	2
<i>Detz v. Greiner Industries, Inc.</i> , 346 F.3d 109 (3d Cir. 2003)	8
<i>Motley v. New Jersey State Police</i> , 196 F.3d 160 (3d Cir. 1999)	7
<i>Pena v. Honeywell Int'l, Inc.</i> , 923 F.3d 18 (1st Cir. 2019)	8
<i>Reed v. Petroleum Helicopters</i> , 218 F.3d 477 (5th Cir. 2000)	8
<i>Smith v. Clark Cnty. Sch. Dist.</i> , 727 F.3d 950 (9th Cir. 2013)	8, 9
<i>Solomon v. Vilsack</i> , 628 F.3d 555 (D.C. Cir. 2010)	8
Statutes	
RCW 49.60.040	2
Revised Code of Washington (RCW) 49.60.180	2
Title 28 U.S.C. § 1257	1
Title 42 U.S.C. § 423	2
Title 42 U.S.C. § 12111	1
Title 42 U.S.C. § 12112	1

OPINIONS BELOW

The opinion of the Washington State Court of Appeals, Division III, affirming the summary judgment dismissal of Petitioner's claims, is captioned Bogardus v. City of Yakima, No. 40060-3-III, and was filed on April 3, 2025. (App. 2a-17a). It is unpublished.

The order of the Supreme Court of Washington denying Petitioner's petition for discretionary review was entered on October 8, 2025, in Case No. 104,306-6. (App. 18a).

JURISDICTION

The judgment of the Washington State Court of Appeals was entered on April 3, 2025. A timely petition for review was denied by the Supreme Court of Washington on October 8, 2025. This Petition for a Writ of Certiorari is filed within 90 days of that denial. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

STATUTORY PROVISIONS INVOLVED

The Americans with Disabilities Act and Washington Law Against Discrimination (collectively referred to as "ADA"):

- 42 U.S.C. § 12111(8): "The term 'qualified individual' means an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires."
- 42 U.S.C. § 12112(a) & (b)(5)(A) provide that: "No covered entity shall discriminate against a qualified individual on the basis of disability in

regard to ... employment." Such discrimination includes "not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee."

- Revised Code of Washington (RCW) § 49.60.180 is construed consistent with the ADA. *Dean v. Municipality of Metropolitan Seattle*, 104 Wn.2d 627, 636 (1985); *Davis v. Microsoft Corp.*, 149 Wn.2d 521, 532 (2003). It is an unfair practice for an employer "[t]o discharge or bar any person from employment because of ... the presence of any sensory, mental, or physical disability" or to discriminate in other terms of employment on that basis. Disability discrimination includes the failure to reasonably accommodate an employee's disability. RCW 49.60.040(7)(d).

The Social Security Act (SSA):

- The Social Security Act, 42 U.S.C. § 423(d)(2)(A): "An individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy."

INTRODUCTION

This case concerns whether a worker who applies for Social Security Disability Insurance (SSDI) forfeits her right to pursue a disability discrimination claim. In *Cleveland*, this Court held that SSDI claims may coexist with ADA claims, so long as the employee offers a "sufficient explanation" for any apparent inconsistency. 526 U.S. at 806. The

decision below misapplies *Cleveland* by treating Petitioner’s SSDI application statements as a judicial estoppel barring her claims of failure to accommodate and wrongful termination. The lower court’s decision reveals a deep divide in the circuits, with some circuits effectively abrogating *Cleveland*.

STATEMENT OF THE CASE

This case illustrates the apparent inconsistency in claiming to be disabled under the SSA but able to work with a reasonable accommodation under the ADA.

A. Petitioner Was A Disabled Employee That Needed An Accommodation In The Form Of A Transfer To An Available Position

Petitioner Kim Bogardus served as a bus driver for Respondent, the City of Yakima, beginning in 2001. Around 2014, the cumulative physical demands of driving a bus—specifically the vibration and repetitive neck movements—caused Petitioner to develop debilitating migraines and related spinal conditions.

From September 2014 through September 2019, Petitioner’s physicians provided Respondent with continuous written notices and Family Medical Leave Act (FMLA) certifications. These documents explicitly stated that the physical act of driving flared up her migraines and medical conditions, causing vision changes, numbness, and nausea—that prevented her from driving. The medical certifications requested intermittent leave, which Respondent initially approved and Petitioner utilized alongside vacation and sick time to manage her

condition while attempting to maintain her employment. By September 2019, her physician notified Respondent that the condition had become permanent.

Despite six years of medical notice and Petitioner's evident struggle to maintain her driving duties, Respondent failed to initiate an interactive process until July 20, 2020. During this period (2014–2020), Respondent had multiple vacancies for non-driving positions, including Transit Office Assistant and Transit Dispatcher roles—positions previously offered to other bus drivers as light-duty accommodations. At the July 2020 meeting, Petitioner requested a transfer to a Dispatcher or Assistant position. Respondent summarily rejected this request without an explanation.

On July 20, 2020, having exhausted her FMLA leave and in fear of losing her job, Petitioner made an effort to continue working in her bus driver position and was able to successfully perform her duties intermittently—when she did not have migraine flare ups—until August 17, 2020. On August 17, 2020, Petitioner suffered a flare up that left her unable to continue to drive. Petitioner requested unpaid time off as an accommodation to attempt to heal. Respondent denied this accommodation request.

On August 27, 2020, Respondent terminated Petitioner solely for having too many absences.

B. Petitioner's Disability Left Her Unable To Perform Her Previous Work

On May 12, 2020, while still employed, on approved medical leave and actively seeking reasonable accommodation, Petitioner applied for Social Security Disability Insurance (SSDI), alleging that her disabilities limited her ability to perform her job of driving a bus. On October 18, 2021, a year after her termination, the first SSDI application was denied. On January 13, 2021, Petitioner submitted a second SSDI application making the same claim. This was adjudicated and eventually approved on April 20, 2023. The SSDI administrative law judge explained her reasoning in a written order stating that the evidence showed that Petitioner:

had only been working intermittently from April 2020 into August 2020, when she was ultimately terminated due to her impairments and resulting absences. There is no indication that the claimant worked at levels consistent with substantial gainful activity after the alleged onset date. I therefore find that the claimant was not engaged in substantial gainful activity since the alleged onset date.

C. Procedural History

Petitioner filed suit alleging failure to accommodate and wrongful termination under WLAD. The trial court granted summary judgment for the Respondent and the Washington Court of Appeals affirmed invoking *Cleveland*, but finding that Petitioner did not provide an explanation for the apparent inconsistency. The Washington Court of Appeals failed to note in its opinion that Respondent had vacant sedentary positions that Petitioner

requested to be transferred to as an accommodation, but was denied. The Washington Supreme Court denied review.

REASONS FOR GRANTING THE PETITION

Twenty-five years ago, this Court in *Cleveland*, held that an SSDI claim of "total disability" does not inherently conflict with an ADA claim of being a "qualified individual." 526 U.S. 795. However, *Cleveland* included a caveat: a plaintiff cannot simply ignore the apparent contradiction but "must proffer a sufficient explanation." *Id.* at 806. The lower courts have since diverged sharply on what constitutes a "sufficient explanation," with some circuits practically resurrecting a *de facto* presumption of estoppel.

A number of circuits have interpreted *Cleveland's* "sufficient explanation" to impose an obscure and heightened pleading standard. These courts seem to require the employee to articulate specific language to "explain" the inconsistency, but do not explain what this language needs to be or when this explanation needs to happen. Presumably, these courts expect the plaintiff to provide an affirmative statement—in the form of a post-hoc affidavit or specific deposition testimony—that explicitly parses the legal distinctions between the SSA's "inability to work" and the ADA's "qualified individual." Another possibility is that these courts expect plaintiff's actual SSDI application statements to provide an explanation related to the ADA standard in the context of a reasonable accommodation. If an employee truthfully checks the "I am unable to work" box on an SSDI

application without adding a legal disclaimer about reasonable accommodation, these courts seem to deem the contradiction unexplained and the ADA claim estopped. This interpretation effectively raises the *Cleveland* standard, punishing employees who lack the legal sophistication to navigate complex statutory definitions while filling out government forms for survival benefits. It creates a trap where the "honest but disabled" worker is barred from court not because their claims are factually inconsistent, but because they failed to recite a legal explanation to reconcile them. These courts ignore contextual evidence that can provide the requisite "sufficient explanation."

In Motley v. New Jersey State Police, 196 F.3d 160 (3d Cir. 1999), for example, the court treated the plaintiff's statement in his disability pension application—that he was "totally and permanently disabled"—as conclusive, rejecting his ADA claim for failing to affirmatively explain the inconsistency. The *Motley* court appeared to expect affirmative testimony directly from the employee to explain the inconsistency. The dissenting opinion in *Motley* points out that the majority ignored contextual evidence showing that Motley had attempted to return to work and had medical support for doing so with limitations, which was a "sufficient explanation" for the apparent conflict. *Id.* at 168-170. The majority applied *Cleveland* as a near-estoppel rule, requiring specific legal parsing that employees are rarely equipped to articulate. This decision established a misguided precedent that practically abrogates *Cleveland* by resurrecting an estoppel-like standard.

The *Motley* standard has been reinforced by several circuits. *Pena v. Honeywell Int'l, Inc.*, 923 F.3d 18, 23 (1st Cir. 2019) (Citing *Motley* to support a quasi-estoppel ruling against the employee despite a physician's letter that the employee could work with a reassignment accommodation.); *Reed v. Petroleum Helicopters*, 218 F.3d 477, 480 (5th Cir. 2000) (Acknowledging and applying *Motley*'s judicial estoppel standard.).

Motley has also been invoked in age discrimination claims. In *Detz v. Greiner Industries, Inc.*, the court applied *Motley*'s judicial estoppel standard at summary judgment dismissing the plaintiff's claim because the court did not believe his SSDI inconsistency explanation. 346 F.3d 109, 118–121 (3d Cir. 2003). The *Detz* court focused only on his statements made throughout his SSDI applications and hearings to conclude that his explanation was not credible. *Id.* The court ignored contextual evidence of the fact that up until his termination, he was performing a light duty position that the employer had assigned him as an accommodation. *Id.* By making these credibility rulings, *Detz*'s decision effectively uses the *Cleveland* standard to heighten the summary judgment standard for the plaintiff in these cases.

In contrast, some circuit courts, namely the D.C. Circuit and Ninth Circuit, have implemented a holistic approach to determine whether there is a “sufficient explanation” of inconsistencies by considering contextual evidence. *Solomon v. Vilsack*, 628 F.3d 555 (D.C. Cir. 2010); *Smith v. Clark Cnty. Sch. Dist.*, 727 F.3d 950 (9th Cir. 2013). In *Smith*, the court considered contextual evidence and the

differing legal standards of the ADA and SSA. *Id.* at 955-960. The employee in *Smith* did not provide an affirmative legal explanation about the inconsistencies, which would have been fatal to her case under the *Motley* standard. *Smith* ruled that there was no conflict simply because SSDI does not take into account reasonable accommodations. *Id.*

Here, the court below ignored the contextual evidence that Petitioner was disabled only from driving, not from working, and had actively sought transfer to a vacant sedentary position. The lower court failed to even include in its opinion the fact that Petitioner requested and Respondent had available vacant sedentary positions that could have accommodated her. It noted only the “accommodation” that Respondent offered to an on-call bus driver position, which completely ignored the fact that her doctors were saying that driving was hurting her. It also ignored the ruling of the SSA administrative judge, which did provide an explanation of the apparent inconsistency. The lower court cites to *Cleveland*, 526 U.S. 795, but unconsciously adopted the *Motley*-estoppel standard appearing to expect an affirmative legal explanation directly from Petitioner and ignoring contextual evidence.

CONCLUSION

The uncertainty surrounding *Cleveland*’s “sufficient explanation” requirement disproportionately affects the growing and aging workforce in the transportation and industrial sectors. For these employees, where physical impairments often necessitate a transition to light-

duty roles, the interaction between the ADA and SSDI is a daily reality. Absent clear guidance from this Court, the lack of a uniform standard threatens their livelihoods by forcing a recurring and untenable choice between accessing subsistence benefits and preserving workplace civil rights.

By establishing a consistent standard, this Court will ensure that willing and capable employees are judged on their actual ability to perform with accommodations, not on their legal sophistication. Ultimately, a clear rule will empower capable employees to remain in the workforce and contribute their skills, rather than forcing them prematurely onto Social Security rolls.

For all the foregoing reasons, this Court should grant the petition for a writ of certiorari or, in the alternative, summarily reverse the decision below.

Respectfully submitted,

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