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No. _____

FILED

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SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

PENNY ALEXANDRA JACKSON,
Petitioner,

v.

UNIVERSITY OF TEXAS SOUTHWESTERN MEDICAL CENTER
SCHOOL OF MEDICINE,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Petitioner, a disabled veteran and former medical student, alleged that Respondent delayed and then inadequately accommodated her documented disabilities, causing the examination failures that led to her dismissal. Both courts below held that she was not a “qualified individual” — and therefore could not establish a *prima facie* case — because she failed examinations, including one taken after Respondent granted a portion of the accommodations she had requested. Neither court determined whether the accommodations Respondent provided were reasonable or adequate. The district court further declined to examine the summary judgment record Petitioner had submitted, reasoning that judges are not obliged to hunt for evidence within it, and the court of appeals affirmed that refusal. The questions presented are:

1. Whether a plaintiff may be held, as a matter of law, not to be a “qualified individual” under 42 U.S.C. § 12131(2) and Section 504 of the Rehabilitation Act on the basis of academic outcomes obtained under the very accommodations whose adequacy is the disputed question in the case — so that the injury alleged becomes conclusive proof that the plaintiff was never qualified.

2. Whether Federal Rule of Civil Procedure 56(c)(3), which provides that a court “need consider only the cited materials, but it may consider other materials in the record,” permits entry of summary judgment against a nonmovant on a dispositive element without any determination whether the evidence in the summary judgment record would permit a reasonable jury to find in her favor.

3. Whether the elements of a failure-to-accommodate claim brought by a student under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act are supplied by the employment framework of Title I, so that a public university is held to the notice and accommodation obligations of a “covered employer.”

PARTIES TO THE PROCEEDING

Petitioner is Penny Alexandra Jackson, plaintiff-appellant below.

Respondent is the University of Texas Southwestern Medical Center School of Medicine, defendant-appellee below.

No party is a nongovernmental corporation, and no corporate disclosure statement is required under Rule 29.6.

RELATED PROCEEDINGS

Jackson v. University of Texas Southwestern Medical Center School of Medicine, No. 3:24-CV-0495-X (N.D. Tex.). Memorandum opinion and order granting summary judgment to Respondent entered July 28, 2025.

Jackson v. University of Texas Southwestern Medical Center School of Medicine, No. 25-10942 (5th Cir.). Judgment affirming entered April 29, 2026; petitions for panel rehearing and rehearing en banc denied June 12, 2026; mandate issued June 22, 2026.

Jackson v. University of Texas Southwestern Medical Center School of Medicine, No. 3:24-CV-0495-X (N.D. Tex.). Petitioner's motion for relief from judgment under Federal Rules of Civil Procedure 60(b)(3) and 60(d)(3), filed July 16, 2026, remains pending.

TABLE OF CONTENTS

QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDING	ii
RELATED PROCEEDINGS	ii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL, STATUTORY, AND RULE PROVISIONS INVOLVED	1
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE PETITION	4
I. The decision below makes the disputed injury conclusive proof that the plaintiff was never qualified	4
II. The courts below entered judgment without deciding whether the record raised a genuine dispute	5
III. The courts below governed a student’s Title II claim by Title I employment doctrine .	6
CONCLUSION	7

APPENDIX

Appendix A — Opinion of the United States Court of Appeals for the Fifth Circuit (Apr. 29, 2026)	App. 1a
Appendix B — Memorandum Opinion and Order of the United States District Court for the Northern District of Texas Granting Summary Judgment (July 28, 2025)	App. 12a
Appendix C — Order of the United States Court of Appeals for the Fifth Circuit Denying Panel Rehearing and Rehearing En Banc (June 12, 2026)	App. 20a

TABLE OF AUTHORITIES

Cases

<i>Amedee v. Shell Chemical, L.P.</i> , 953 F.3d 831 (5th Cir. 2020)	passim
<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242 (1986)	passim
<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317 (1986)	passim
<i>Credeur v. Louisiana ex rel. Office of Attorney General</i> , 860 F.3d 785 (5th Cir. 2017)	passim
<i>McGregor v. Louisiana State University Board of Supervisors</i> , 3 F.3d 850 (5th Cir. 1993)	passim
<i>Southeastern Community College v. Davis</i> , 442 U.S. 397 (1979)	passim
<i>Tolan v. Cotton</i> , 572 U.S. 650 (2014) (per curiam)	passim
<i>McDonnell Douglas Corp. v. Green</i> , 411 U.S. 792 (1973)	passim
<i>US Airways, Inc. v. Barnett</i> , 535 U.S. 391 (2002)	passim

Constitutional Provisions, Statutes, and Rules

U.S. Const. amend. VII	passim
28 U.S.C. § 1254(1)	passim
29 U.S.C. § 794	passim
42 U.S.C. § 12112	passim
42 U.S.C. § 12131(2)	passim
42 U.S.C. § 12132	passim
Fed. R. Civ. P. 56(a)	passim
Fed. R. Civ. P. 56(c)(3)	passim
Sup. Ct. R. 13.1	passim
Sup. Ct. R. 13.3	passim

PETITION FOR A WRIT OF CERTIORARI

Petitioner Penny Alexandra Jackson respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. 1a) is unpublished and unreported. The order of the court of appeals denying panel rehearing and rehearing en banc (App. 20a) is unreported. The memorandum opinion and order of the district court granting summary judgment (App. 12a) is unreported.

JURISDICTION

The district court entered summary judgment for Respondent on July 28, 2025. The court of appeals entered judgment affirming on April 29, 2026. Petitioner filed timely petitions for panel rehearing and rehearing en banc, which the court of appeals denied by order entered June 12, 2026; the mandate issued June 22, 2026. This petition is filed within ninety days of the June 12, 2026 order. Sup. Ct. R. 13.1, 13.3. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL, STATUTORY, AND RULE PROVISIONS INVOLVED

The Seventh Amendment to the United States Constitution provides:

“In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.”

Federal Rule of Civil Procedure 56(a) provides in relevant 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.”

Federal Rule of Civil Procedure 56(c)(3) provides:

“The court need consider only the cited materials, but it may consider other materials in the record.”

Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132, provides:

“Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”

42 U.S.C. § 12131(2) provides:

“The term ‘qualified individual with a disability’ means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.”

Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a), provides in relevant part:

“No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance”

STATEMENT OF THE CASE

Petitioner is a Black woman, a disabled veteran, and a former medical student. She enrolled at Respondent in the fall of 2021 with a full scholarship and as a recipient of federal Vocational Rehabilitation and Employment benefits under Title 38, Chapter 31 — a program available only to veterans with a federally adjudicated service-connected disability.

Petitioner failed two courses in her first semester, which Respondent recorded as incompletes to permit summer remediation. App. 3a. Respondent nonetheless revoked her scholarship and placed her on academic warning. App. 3a–4a.

In January 2022, during her second semester, Petitioner requested academic accommodations for generalized anxiety disorder and obsessive-compulsive disorder. App. 4a. While that request was pending, she took and failed two final examinations without accommodations. App. 4a. On April 25, 2022 — more than three months after the request — Respondent granted extended time at 1.5 and a reduced-distraction environment. App. 4a. Petitioner contends those measures were materially narrower than what she had requested and what her providers had documented as necessary, and that additional requested accommodations were never granted. She then failed her Respiratory final examination and was dismissed. App. 4a.

Petitioner sued under Title VI of the Civil Rights Act of 1964, Title II of the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act. App. 4a. Respondent removed the case and moved for summary judgment.

The district court granted the motion. It assumed without deciding that Petitioner could prove her remaining elements, but held that she “provides no evidence she was qualified to remain in the program but instead argues that UT Southwestern failed to provide an accommodation, and the lack of accommodation caused her to fail her classes and be disqualified from the program.” App. 16a. The court declined to review the summary judgment record Petitioner had submitted, observing that judges “are not like pigs, hunting for truffles buried in the record,” and that it was “not required to sift through Jackson’s entire document production.” App. 16a. It analyzed the failure-to-accommodate claim under standards drawn from employment cases, framed in terms of what a “covered employer” must do. App. 17a.

The court of appeals affirmed in an unpublished per curiam opinion. It recited the governing summary judgment standard, App. 5a, but held Petitioner not a qualified individual because “she failed her Respiratory final exam despite having accommodations in place” and “also failed several other courses and final exams in her first year.” App. 8a. It did not address whether the accommodations in place were reasonable or adequate. It separately held that the

district court “did not err when it refused to examine Jackson’s entire document production.” App. 11a. Panel rehearing and rehearing en banc were denied without a poll on June 12, 2026. App. 20a.

REASONS FOR GRANTING THE PETITION

I. THE DECISION BELOW MAKES THE DISPUTED INJURY CONCLUSIVE PROOF THAT THE PLAINTIFF WAS NEVER QUALIFIED

The statute defines a qualified individual as one who, “with or without reasonable modifications,” meets a program’s essential eligibility requirements. 42 U.S.C. § 12131(2). The inquiry is counterfactual. It asks what the plaintiff could do if reasonable modifications were supplied — not what she in fact achieved under whatever modifications the institution chose to supply. *See McGregor v. La. State Univ. Bd. of Supervisors*, 3 F.3d 850, 855 (5th Cir. 1993) (asking whether the plaintiff was “capable of satisfying” requirements “with the aid of reasonable accommodations”).

Both courts below inverted that inquiry. The court of appeals held that Petitioner could not be a qualified individual because she failed an examination “despite having accommodations in place.” App. 8a. The district court held that she offered no evidence of qualification and characterized her contrary position as merely an argument that “the lack of accommodation caused her to fail her classes.” App. 16a. Neither court asked whether the accommodations in place were the reasonable ones the statute contemplates.

The consequence is circular. Where a plaintiff’s theory is that inadequate accommodation caused her failures, treating those failures as conclusive proof of non-qualification resolves the merits by assuming their answer. The worse the accommodation, the poorer the outcome, and the more certain the plaintiff’s defeat at the threshold. An institution can extinguish liability by granting a partial accommodation and then invoking the resulting failure.

That result cannot be squared with this Court's framework. The reasonableness of a proposed accommodation is ordinarily a fact-laden question. *US Airways, Inc. v. Barnett*, 535 U.S. 391, 401–02 (2002). And *Southeastern Community College v. Davis*, 442 U.S. 397, 406 (1979), framed the qualification inquiry around what the individual can do given appropriate modification — not around outcomes produced under contested ones.

The question recurs. Disability claims arising from academic dismissal almost always present this posture: the student was accommodated late, or partially, and then failed. If failure under the institution's chosen accommodation defeats qualification at the prima facie stage, these statutes are unenforceable in education precisely where the accommodation was worst. Hundreds of thousands of students with disabilities are enrolled in federally funded postsecondary and professional programs.

II. THE COURTS BELOW ENTERED JUDGMENT WITHOUT DECIDING WHETHER THE RECORD RAISED A GENUINE DISPUTE

Rule 56(c)(3) provides that a court “need consider only the cited materials, but it *may* consider other materials in the record.” The Rule allocates a burden of citation. It does not authorize judgment without the determination Rule 56(a) requires — whether there is a genuine dispute of material fact.

Here the district court declined to review the record Petitioner had submitted, App. 16a, and the court of appeals affirmed that refusal, App. 11a. Neither court held that no reasonable jury could find Petitioner qualified. Each held instead that she had not pointed to the right pages. Judgment followed from a citation deficiency rather than from an assessment of the evidence.

This Court has never addressed how far the permissive clause of Rule 56(c)(3) reaches, and the practice of the lower courts varies. Yet the premise of summary judgment is that the nonmovant's evidence is credited and every justifiable inference drawn in her favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *Tolan v. Cotton*, 572 U.S. 650, 657 (2014)

(per curiam). Evidence that is never examined can be neither credited nor weighed.

The stakes fall hardest on parties least able to absorb them. Pro se litigants and those with limited resources are most likely to submit a record without pinpoint citation to every element. A rule permitting judgment on that basis alone converts a citation convention into a merits disposition, and it does so without the reasonable-jury determination that Rule 56(a) and the Seventh Amendment require.

III. THE COURTS BELOW GOVERNED A STUDENT'S TITLE II CLAIM BY TITLE I EMPLOYMENT DOCTRINE

Petitioner was a medical student. She was never Respondent's employee. Yet the district court took the elements of her failure-to-accommodate claim verbatim from two Title I employment decisions, *Amedee v. Shell Chemical, L.P.*, 953 F.3d 831, 837 (5th Cir. 2020), and *Credeur v. Louisiana ex rel. Office of Attorney General*, 860 F.3d 785, 792 (5th Cir. 2017), and required her to show that her limitations "were known by the covered employer" and that "the employer failed to make reasonable accommodations." App. 17a. It then applied that employment test to a university's academic accommodation process. App. 18a.

The statutes are not interchangeable. Title I governs employment. 42 U.S.C. § 12112. Title II governs the services, programs, and activities of public entities. 42 U.S.C. § 12132. Congress placed them in separate subchapters with separate definitions and separate obligations.

The difference is substantive, not stylistic. Title I doctrine is built around the employment relationship: essential job functions, the interactive process, undue hardship measured against an employer's operations, and a notice rule calibrated to what a supervisor may fairly be expected to perceive at work. An academic program presents different questions — what the program's essential academic requirements are, and whether the student can meet them with reasonable modification. *Se. Cmty. Coll. v. Davis*, 442 U.S. 397, 406 (1979).

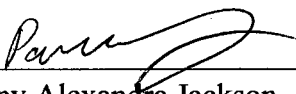
The transplant did work in this case. Because the court measured notice by an employment standard, it held that Respondent lacked notice of Petitioner's disability even though she had told the institution she received a veterans' benefit available only to veterans with an adjudicated service-connected disability, and even though her own letter to the Student Promotions Committee described her diagnosis and treatment. App. 20a. A university that certifies a student's federal disability benefits stands in no relation to that student resembling an employer confronted with an ambiguous request for leave.

The same borrowing runs through the rest of the opinion. The district court resolved both discrimination claims under *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), a Title VII employment framework, and it was that framework's employment-derived "qualified" element that produced the circular holding described in Part I. App. 14a-18a. Students who sue under Title II and Section 504 are entitled to have their claims measured by the statutes Congress wrote for them.

CONCLUSION

The petition for a writ of certiorari should be granted. In the alternative, the Court should grant the petition, vacate the judgment below, and remand for consideration of whether Petitioner is a qualified individual under 42 U.S.C. § 12131(2) when the adequacy of the accommodations provided is treated as a disputed question rather than as settled by her failure under them.

Respectfully submitted,



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Dated: 9 September, 2026