

RKS

No. 23-559

IN THE  
SUPREME COURT OF THE UNITED STATES

ADEKUNLE C. OMOYOSI, PHARM.D., RPH,  
*Petitioner,*  
v.

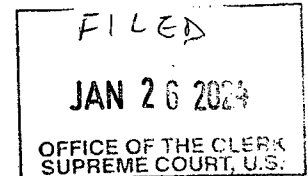
MICHAEL E. DEBAKEY VETERANS AFFAIRS MEDICAL  
CENTER, DEPARTMENT OF VETERANS AFFAIRS  
MEDICAL CENTER,  
*Respondents.*

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

**PETITION FOR REHEARING**

SUBMITTED BY:  
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January 24, 2024



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## PETITION FOR REHEARING

Pursuant to Rule 44.2, Petitioner suggests that there are “intervening circumstances of a substantial or controlling effect” that arose subsequent to the completion of briefing at the certiorari stage—and that militate in favor of granting rehearing (and certiorari) with respect to the Petitioner, vacating the decision below in his case, and remanding the matter.

1. The petition for certiorari presented the same subjects as those in the first seven (7) pages of the *2023 Year-End Report on the Federal Judiciary*, <https://www.supremecourt.gov/publicinfo/year-end/2023year-endreport.pdf>. Presumably in light of the report, this Court denied the petition on January 8, 2024.

2. Dr. Adekunle C. Omoyosi, PharmD., (Court of Appeals Docket No. 22-20387) was arrested in Texas after traffic stop<sup>1</sup>, then in 2017 the Texas State Board of Pharmacy (TSBP) issued non-clinical/non-healthcare restrictions on the Petitioner’s active Registered Pharmacist (RPh) license. *See* 1 Pet. Statement. II. 7.

3. On April 9, 2020, and April 24, 2020, the Petitioner submitted job applications to the Department of Veterans Affairs (VA), Michael E. DeBakey (Debakey) Veterans Affairs Medical Center (VAMC) and Veterans Health Administration (VHA), positions for Clinical Pharmacist. 1 Pet. Statement.

<sup>1</sup> “Black motorists experience disproportionate scrutiny and excessive force under guise of traffic enforcement...Driving while Black may not be a real crime codified in law, but it is treated as one throughout the country.” *Pressley, Johnson Lead Black Lawmakers Urging Buttigieg, DOT to Address Racial Disparities in Traffic Enforcement*, <https://pressley.house.gov/wp-content/uploads/2023/04/2023-04-06-Letter-to-DOT-on-Traffic-Enforcement.pdf>.

III. 8. On May 5, 2020, and May 19, 2020, the VA automated system rejected the applications because internet questionnaire on arrest record<sup>2</sup>, 1 Pet. Statement. III. 9. with Reasons. IV. B. 2. 28-29; resulting in the May 9, 2020, and May 20, 2020, discrimination complaints to the Equal Employment Opportunity Commission (EEOC or Commission). 1 Pet. Statement. IV. 11.

4. At the time of the VA EEOC investigation into Petitioner complaint, the United States Government Accountability Office (GAO) initiated superseding<sup>3</sup> investigation into VA employee complaints. 1 Pet. Statement. IV. 13-14.

5. On November 17, 2023, the Petitioner filed a supplemental brief with this Court that included the GAO report, GAO-23-105429 (after the certiorari briefing was complete), App B. 20a., of VA efforts to ensure equitable treatment of employees and applicants<sup>4</sup>, overturning the VA sham investigation<sup>5</sup>,

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2 <https://www.adeco.xyz/services/writappctod/9205590245038800000280592>.

3 Budget and Accounting Act of 1921, Sec. 312(a), 42 Stat <https://www.gao.gov/assets/D03855.pdf>.

4 See <https://www.gao.gov/assets/d23105429.pdf>, with “GAO Highlights of GAO-23-105429” <https://www.gao.gov/assets/d23105429high.pdf>; *United States v. Maricopa Cty*, 915 F. Supp. 2d 1073, 1080 (D. Ariz. 2012) (citing *Auer v. Robbins*, 519 U.S. 452, 461 (1997)) (agency interpretation of its own regulations “controlling unless plainly erroneous or inconsistent with the regulations”).

5 The Seventh Circuit explained in *Harden v. Marion County Sheriff's Dept.*, sham investigation have the following characteristics: 1) The “persons conducting the investigation fabricate, ignore, or misrepresent evidence, or the investigation is circumscribed so that it leads to the desired outcome; and 2) The decision-makers were the same

and strongly suggesting review of lower courts<sup>6</sup> conclusion.

6. In December 2023 to January 2024 inestimable damage to national security, was demonstrated by: public disclosure<sup>7</sup> of Secretary of Defense's -- the first African American to serve in the role -- veteran, under National Security Act of 1947 10 U.S.C. § 113(a) -- cancer survival and hospitalization, following surgical complications<sup>8</sup>; the significant likelihood of Secretary's VA hospital visits within the past 30 years; the VA's failed opportunity for early cancer screening for treatment, advancing health equity for civ-mil -- VA and DoD -- in support

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individuals who harbor racial or retaliatory animus. 799 *F.3d* 857, 865 (7th Cir., 2015). Petitioner "identified] such weaknesses, implausibilities, inconsistencies, or contradictions", *id.*, so that a reasonable person could not find the investigation or its results worthy of credence at 1 Pet. Statement. III-IV.

- 6 Federal judges may not be equipped to determine which pieces of information, when taken together (mosaic theory), could result secret disclosure, and defer to Executive agency, however, *infra* note 7; this case utilized public information and may defer to GAO report, *supra* note 4.
- 7 State secret privilege is not to be invoked to conceal wrongdoing, inefficiency, administrative error, or embarrassment or for delay or other improper reasons. See Memorandum from the Attorney General to Heads of Executive Departments and Agencies, *Policies and Procedures Governing Invocation of the State Secrets Privilege* (Sept. 23, 2009), <http://www.justice.gov/archive/opa/documents/state-secret-privileges.pdf>.
- 8 <https://www.defense.gov/News/Releases/Release/Article/3639728/statement-from-walter-reed-national-military-medical-center-officials-on-secret/>.

of Veteran and Military communities<sup>9</sup>; and subsequent investigations from DoD IG<sup>10</sup>, and US House of Rep. Committee on Armed Service, documenting risks ranging from "on-going counter-terrorism operations to nuclear command and control"<sup>11</sup>.

7. The government has not sought further review of this case in Court, with consideration to the previous, which is likely to produce substantial or even inestimable amount of harm or serious damage to public's trust.

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- 9 Although VA recommends screening "adult men of 'average risk'" 55-69 years, see <https://www.prevention.va.gov/docs/NCP-CPS-Recommend-Men-Letter-v06.pdf>, analysis models suggest for African American men early PSA-based screening, *before* age 55 years, and national prioritization, given: large disparities in prostate cancer mortality; higher rates of fast-growing prostate cancer (earlier age at cancer onset, more advanced cancer stage at diagnosis, and higher rates of higher tumor grade); and potential mortality benefit. See <https://www.cancer.org/content/dam/CRC/PDF/Public/8795.0.pdf>; and Screening for Prostate Cancer: Recommendation Statement. *Am Fam Physician*. 2018 Oct 15;98(8):Online. PMID: 30277733, <https://www.aafp.org/pubs/afp/issues/2018/1015/od1.html>.
- 10 <https://media.defense.gov/2024/Jan/11/2003374367/-1/-1/1/REVIEW%20OF%20SECDEF%20HOSPITALIZATION%20NOTIFICATION%20PROCEDURES%2020240110.PDF>.
- 11 <https://armedservices.house.gov/sites/republicans.armedservices.house.gov/files/Letter%20to%20Sec%20Austin%20re%20Hospitalization%20final.pdf> and <https://www.congress.gov/117/crec/2022/07/13/168/115/CREC-2022-07-13-pt1-PgH6219.pdf> (with further note on party-line 218-208 vote, <https://clerk.house.gov/Votes/2022325>; *supra* note 5).

8. Because of the constraints on Rule 60(b)<sup>12</sup>, within reasonable time and showing diligent effort, this Court should allow Petitioner to pursue any entitlement to relief under *Castelluccio v. IBM*, 2013 WL 6842895 (D. Conn. Dec. 23, 2013)—and should therefore grant the petition for rehearing, grant the petition for a writ of certiorari to Petitioner, vacate the decision below in his case, and remand for further proceedings in light of *Castelluccio*.

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<sup>12</sup> Investigative failure to follow up on evidence that supports a complaint may be considered evidence that the investigation was not truly intended to reach a reasoned conclusion, *Balding v. Sunbelt Steel Texas, Inc.*, 2016 WL 6208403 (D. Utah, 2016). In *Zisumbo v. Ogden*, court held that policy deviations may be construed as evidence of employer intent to reach an unreasoned conclusion about the falsification allegation -- central to the court's decision to proceed on the retaliation count. *Zisumbo v. Ogden Reg'l Med. Ctr.*, 801 F.3d 1185 (10th Cir. 2015).