No. 25-303

IN THE

Supreme Court of the United States

COUNTY OF COOK AND THOMAS J. DART, IN HIS OFFICIAL CAPACITY AS HEAD OF THE COOK COUNTY SHERIFF'S OFFICE,

Petitioners,

v.

JOHN NAWARA,

Respondent.

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

RESPONDENT'S BRIEF IN OPPOSITION

PETER V. BUSTAMANTE
LAW OFFICE OF PETER V. BUSTAMANTE
17 N. State Street, #1550
Chicago, IL 60602
(312) 346-2072

RICHARD F. LINDEN
LAW OFFICES OF RICHARD LINDEN
17 N. State Street, #1550
Chicago, IL 60602
(312) 590-0211

ALLISON M. ZIEVE
Counsel of Record
SCOTT L. NELSON
PUBLIC CITIZEN LITIGATION GROUP
1600 20th Street NW
Washington, DC 20009
(202) 588-1000
azieve@citizen.org

Attorneys for Respondent

November 2025

QUESTION PRESENTED

Section 12112(a) of the Americans with Disabilities Act prohibits employment discrimination on the basis of disability. Section 12117(a) provides that the remedies for such discrimination are those provided by Title VII of the Civil Rights Act, which include a private right of action for equitable relief, including backpay. Section 12112(d)(1) specifies that "[t]he prohibition against discrimination as referred to in subsection (a) shall include medical examinations and inquiries." In this case, a jury found that Petitioners had violated section 12112(d)(4), which bars employers from requiring disability-related medical inquiries and examinations unjustified by business necessity.

The question presented is:

Whether a violation of section 12112(d)(4) constitutes discrimination under section 12112(a) and thus can be remedied under section 12117(a), when the employee does not have and is not perceived to have a disability.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes

Other Authorities

INTRODUCTION

The Americans with Disabilities Act (ADA) prohibits covered employers from requiring medical examinations or inquiries "of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability," unless the examinations or inquiries are job-related and justified by business necessity. 42 U.S.C. § 12112(d)(4)(A). Petitioners do not dispute that this prohibition applies to all employees, regardless of whether they have or are perceived to have a disability.

In this case, the jury found that Petitioners had imposed a medical examination or inquiry, unjustified by business necessity, on Respondent John Nawara, who neither has nor was perceived to have a disability. Petitioners do not seek review of this jury verdict.

Under Title I of the ADA, an employee who proves discrimination on account of disability is eligible for backpay. *Id.* § 12112(a); *id.* § 12117(a) (incorporating remedies available under 42 U.S.C. § 2000e-5). Petitioners agree.

The ADA specifies that "[t]he prohibition against discrimination" under Title I "shall include medical examinations and inquiries." *Id.* §12112(d)(1). As the court below held, this provision makes violation of the medical inquiry provision a form of discrimination under the Act. On this point, Petitioners disagree. They argue that a violation of the medical inquiry provision constitutes discrimination if the employee has or is perceived to have a disability, and that a violation of the same provision does not

constitute discrimination if the employee has no actual or perceived disability.

Petitioners' reading is unsupported by the statutory text and has not been adopted by any court of appeals. Given the complete absence of disagreement among the circuits, as well as the ADA's plain text, review is unwarranted. And Petitioners' focus on eligibility for damages—which neither the jury nor trial judge awarded, and which were not at issue on appeal—further weighs against review. The petition should be denied.

STATEMENT

Statutory Background

Enacting the ADA, Congress sought to provide a "comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1). To achieve this goal, Title I of the ADA, which covers employment, sets out prohibitions on discrimination. *See id.* § 12112.

Section 12112(a) starts by stating the "[g]eneral rule" that "[n]o 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." Section 12112(b) provides a list of actions that are included within the prohibition against discrimination set forth in section 12112(a). Among those actions are "using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability." *Id.* § 12112(b)(6).

Of particular relevance here, section 12112(d)(1) specifies that "[t]he prohibition against discrimination as referred to in subsection (a) shall include medical examinations and inquiries." Subsection (d) addresses both the pre-employment and employment context. *See id.* § 12112(d)(2)–(4).

With respect to job applicants, subsection (d)(2) bars an employer from conducting medical examinations or inquiries as to whether a job applicant has a disability or as to the nature or severity of the applicant's disability, other than inquiries into the ability to perform job-related functions. In enacting this provision, Congress was concerned that employers had in the past used medical examinations and inquiries "to exclude applicants with disabilities … before their ability to perform the job was even evaluated." H.R. Rep. No. 101-485, pt. III, at 42 (1990).

With respect to current employees, subsection (d)(4)(A) provides that employers "shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity."

Under Title I of the ADA, "any person alleging discrimination on the basis of disability in violation" of the statute is entitled to the "powers, remedies, and procedures" of Title VII of the Civil Rights Act of 1964. 42 U.S.C. § 12117(a) (incorporating 42 U.S.C. §§ 2000e-4, 2000e-5, 2000e-6, 2000e-8, & 2000e-9). Title I thus incorporates Title VII's private right of action, *id.* § 2000e-5(f)(1), and its provision for

backpay and other equitable relief, *id.* § 2000e-5(g)(1). That section makes backpay available unless the employer's action was taken for a "reason other than discrimination." *Id.* § 2000e-5(g)(2)(A).[1]

Factual Background

Respondent John Nawara was a correctional officer at Cook County Jail, employed by the Cook County Sheriff's Office, where he had worked since 1998. In September 2016, Officer Nawara had an argument with his supervisor, who then submitted a report to the Sheriff's Office's human resources (HR) department. Eventually, HR interviewed Officer Nawara and directed him to undergo a fitness-for-duty examination and to complete two medical information authorization forms. Pet. App. 3a. He was placed on leave—which was without pay after he exhausted accrued leave—until he underwent and passed the fitness-for-duty exam. *Id.*

Officer Nawara initially refused to complete the medical record release forms or undertake the fitness-for-duty evaluation. He remained on leave from November 18, 2016, to September 26, 2017, until he could no longer afford to remain out of work. D. Ct. Dkt, 305. He then agreed to sign a modified version of the forms and undergo the exam. Pet. App. 3a. The examining doctor declared him fit to return to duty, without restrictions. Officer Nawara then returned to work. *Id.*

---

[1] In contrast to backpay for violations of the ADA, available through the ADA's incorporation of 42 U.S.C. § 2000e-5(g)(1), compensatory and punitive damages for violations of the ADA are available for "intentional discrimination" pursuant to 42 U.S.C. § 1981a(2).

Proceedings Below

A. Officer Nawara filed this suit against the Sheriff's Office in March 2017. Among other claims, he alleged that the Sheriff's Office violated section 12112(d)(4) of the ADA, which prohibits subjecting employees to unjustified, disability-related medical exams or inquiries. At trial, a jury sided with Officer Nawara, agreeing that the examination requirement and related requests for medical records were neither job-related nor consistent with a business necessity. The jury instructions permitted the jury to award emotional distress damages, but the jury found that Officer Nawara had not proved that he had suffered emotional distress. The jury did not consider Officer Nawara's entitlement to any other form of monetary relief, such as backpay, because the issue of equitable relief was reserved for decision by the court. Pet. App. 3a–4a.

After the verdict, Petitioners moved for judgment as a matter of law, which the court denied. Officer Nawara, too, filed a post-trial motion, seeking equitable relief in the form of backpay in the amount of $30,773, restoration of lost benefits, and restoration of seniority. Eventually, the district court awarded restoration of seniority. *Id.* 4a–5a; D. Ct. Dkt. 413.

As for backpay, the court denied the motion. The court began by explaining that, under Title I, backpay is available for violations that constitute "'discrimination on account of' disability." Pet. App. 19a. And the court recognized that section 12112(d)(4) prohibits unjustified "medical examinations and inquiries" into the existence or extent of an employee's possible disability, whether or not the

employee is disabled or perceived to be disabled by the employer. *Id.* at 20a. Nonetheless, the court held that violation of that section constitutes "discrimination" under Title I only as applied to a disabled individual. *Id.* at 29a. The court held that, because Officer Nawara had no actual or perceived disability, he had not suffered discrimination. And thus, it held, the violation of section 12112(d)(4) potentially made him eligible for damages (which the jury had not awarded) but not for backpay. *Id.* The court did not explain how the ADA would provide for damages, which require proof of intentional discrimination, 42 U.S.C. § 12112(a); *id.* § 1981a(2), if the violation of section 12112(d)(4) did not constitute discrimination under the statute.

B. Officer Nawara timely appealed the district court's decision denying backpay.[2] The United States filed as amicus curiae in support of Officer Nawara's position, to address the availability of backpay for violations of section 12112(d)(4) committed against employees without disabilities. Br. for U.S., *Nawara v. Cook Cty.*, Nos. 22-1393, 22-1430, 22-2395, & 22-2451, at 1–2 (7th Cir. filed Nov. 23, 2022). Focusing on the statutory text, the brief reiterated the United States' position that backpay is available for violations of section 12112(d)(4), regardless of the plaintiff's disability status. *See id.* at 2, 11–19.

In a unanimous decision, the Seventh Circuit reversed, agreeing with Officer Nawara and the

---

[2] Petitioners cross-appealed the ruling restoring Officer Nawara's seniority, arguing that the ruling should be vacated as moot. Pet. App. 14a. The Seventh Circuit ruled against Petitioners on factual grounds. *Id.* at 15a.

United States that, under Title I, unjustified medical examinations and inquiries are a form of "discrimination on account of disability" for which backpay is available. Based on "a careful examination of the ordinary meaning and structure of the law itself," Pet. App. 5a (quoting *Food Mktg. Inst. v. Argus Leader Media*, 588 U.S. 427, 436 (2019)), the court rejected Petitioners' contrary argument that, although the jury found that Petitioners had unlawfully required Officer Nawara to undergo a fitness-for-duty examination and to disclose medical records in violation of Title I, Title I's remedies were unavailable because Petitioners had not required him to do so on account of actual or perceived disability.

As the court of appeals explained, under Title I, the employer "shall not require a medical examination and shall not make inquiries of an employee as to *whether such an employee is an individual with a disability or as to the nature or severity of the disability*, unless such examination or inquiry is shown to be job related and consistent with business necessity." *Id.* at 7a (quoting § 12112(d)(4)(A)). "Based on this language," the court continued, "an employee may invoke § 12112(d)(4)(A) even if he is not disabled or perceived to be disabled." *Id.* (citing *Kurtzhals v. County of Dunn*, 969 F.3d 725, 730 (7th Cir. 2020)).

Agreeing with Petitioners and the district court, the court of appeals explained that, "in the context of the ADA, § 2000e-5(g)(2) precludes backpay when an employer acts unlawfully for any reason other than 'discrimination on account of disability.'" *Id.* at 10a. The court of appeals disagreed, though, with Petitioners' view that, under the statute, "being subject

to medical examinations and inquiries is a means of discriminating, not discrimination in and of itself." *Id*. Rather, the court held, under the plain text of the statute, the violation of section 12112(d)(4)(A) "count[s] as discrimination on account of disability even absent evidence that Nawara had a disability or a perceived disability." *Id*. at 10; *see id*. at 10–12.

Focusing on the statutory text, the court explained that Petitioners' contrary argument had multiple flaws. To start, reading the prohibition in subsection (d) as providing only examples of actions that constitute discrimination based on disability under subsection (a) if aimed at an employee because he was (or was perceived to be) disabled would render subsection (d)(1) surplusage. *Id*. at 11a. Further, the court observed that subsection (a) by itself addresses only discrimination based on disability, whereas subsection (d)(4)(A) covers both disabled *and* non-disabled employees. *Id*. (citing *Kurtzhals*, 969 F.3d at 730; *Griffin v. Steeltek, Inc.*, 160 F.3d 591, 594 (10th Cir. 1998) (*Griffin I*)). "Nor is it satisfactory to say that subsection (d)(1) operates entirely separately from subsection (d)(2), (3), or (4), because (d)(1) sets forth the 'general' rule as the title indicates." *Id*. at 12a (citing *Yates v. United States*, 574 U.S. 528, 540 (2015)).

Thus, the court explained, "[t]he better construction of § 12112(d)(1) can be gleaned from [the] text." *Id*. "Section 12112(a)'s prohibition on discriminating against a qualified individual on the basis of disability 'shall include' § 12112(d)'s prohibition on requiring a medical examination or inquiry as described in § 12112(d)(4)(A)." *Id*. "Put another way, to prove a violation of § 12112(d)(4) is to prove discrimination on the basis of disability under

§ 12112(a)." *Id.* (citing *Bates v. Dura Auto. Sys., Inc.*, 767 F.3d 566, 582 (6th Cir. 2014) ("The ADA ban of 'discriminat[ion] ... on the basis of disability' thus encompasses medical examinations and disability inquiries involving employees." (omission in original))). In addition, the court noted that section 12112(d) is not "unique" in this regard. *Id.* at 13a. Section 12112(b), which bars using selection criteria that screen out or tend to screen out an individual with a disability, likewise brings certain conduct within the scope of discrimination under subsection (a), "whether or not the targeted individuals are disabled." *Id.* at 13a (discussing § 12112(b)(6)).

Summing up, the court held that, "read together, § 12112(a) and § 12112(d)(1) define a violation of § 12112(d)(4)(A) to constitute discrimination on the basis of disability under § 12112(a)." *Id.* at 14a. Therefore, the court concluded, the ADA—"drawing as it does on Title VII's remedial structure"—authorized Officer Nawara to recover backpay for the violation. *Id.*

C. Petitioners filed a petition for rehearing. The court denied the petition with no judge calling for a vote. Pet. App. 33a.

REASONS FOR DENYING THE WRIT

I. There is no conflict among the circuits.

As both the Seventh Circuit and the United States explained below, there is no conflict on the question presented. The courts of appeals that have addressed the question presented by Petitioners agree that an employee without a disability can state a claim for relief under § 12112(a) for violation of subsection (d)(4). Petitioners are flatly incorrect that decisions from four circuits disagree.

A. As Petitioners agree, Pet. 15, the Sixth Circuit has addressed the question and reached the same conclusion as the decision below. Focusing on the statutory text, the Sixth Circuit explained that the ADA's ban of "'discriminat[ion] ... on the basis of disability' … encompasses medical examinations and disability inquiries involving employees," and the remedies provision "does not exclude (d)(4) claims." *Bates*, 767 F.3d at 582 (holding that employees without disabilities suing under § 12112(d)(4) "qualify … as 'person[s] alleging discrimination on the basis of disability'").

B. Petitioners describe the law in four other circuits as "unclear." Pet. 17. All four, though, have rejected Petitioners' reading and held, as the statute states, that subsection (d)(4) applies to "employees" subjected to unjustified medical inquiries, regardless of disability. Petitioners' view—that if the employee has no disability, an employer's violation of subsection (d)(4) is "merely a technical" one, *id.* at 22, for which no relief is available—finds no support in the opinions they cite.

Petitioners start with the Ninth Circuit. But in the decision they cite, that court explained that, whereas section 12112(d)(1) refers to "individuals with a disability," sections 12112(d)(2)–(4) refer to "employees" and "job applicants"—reflecting their broader reach. *Fredenburg v. Contra Costa Cty. Dep't of Health Servs.*, 172 F.3d 1176, 1182 (9th Cir. 1999). Moreover, the court noted that "protecting only qualified individuals [with a disability] would defeat much of the usefulness of those sections." *Id.* Both the statutory text and purpose, then, led the court to "hold that plaintiffs need not prove that they are qualified individuals with a disability in order to

bring claims challenging the scope of medical examinations under the ADA." *Id.* Nothing in the court's opinion suggests that such plaintiffs may not obtain backpay and other remedies available through section 12117(a)'s incorporation of Title VII remedies. Indeed, because section 12117(a) provides the only express authorization for employees to "bring claims" under the ADA, the court's decision strongly indicates otherwise.

The Ninth Circuit reiterated the point in *Indergard v. Georgia-Pacific Corp.*, 582 F.3d 1049 (9th Cir. 2009). There, the court explained that the ADA's prohibition on requiring an employee to undergo a medical examination unless job-related and consistent with business necessity "applies to all employees, whether or not they are disabled under the ADA." *Id.* at 1053. The plaintiff in that case sought both backpay and damages, and the Ninth Circuit expressed no doubts about whether she could pursue claims for such relief based on alleged violations of section 12112(d)(4).

The Eighth Circuit, too, has rejected Petitioners' reading and held that subsection (d)(4) applies to all employees and applicants. As that court stated, "a contrary reading of [the] subsection[] would obliterate much of [its] usefulness." *Cossette v. Minn. Power & Light*, 188 F.3d 964, 969 (8th Cir. 1999). In that case, the plaintiff sought to recover 15 months of lost wages, and the court held that if she proved violations of subsection (d)(4) (or (d)(3)), she was entitled to "recover" under the ADA.

Petitioners fare no better in the Eleventh Circuit. The opinion on which they rely "explicitly recognize[d] that a plaintiff has a private right of action

under 42 U.S.C. § 12112(d)(2), irrespective of his disability status." *Harrison v. Benchmark Electronics Huntsville, Inc.*, 593 F.3d 1206, 1214 (11th Cir. 2010). Further, the court noted that its "sister circuits" were "unanimous in recognizing a private cause of action irrespective of the plaintiff's disability status." *Id.* at 1211–12 (citing cases). The Eleventh Circuit's reasoning, based on statutory language and purpose, applies equally to claims under subsection (d)(4). Thus, the court later stated the same holding as to that subsection. *See Owusu-Ansah v. Coca-Cola Co.*, 715 F.3d 1306, 1310 (11th Cir. 2013) (collecting cases and stating that "we conclude, as have other circuits, that § 12112(d)(4)(A) protects employees who are not disabled").

With respect to the Fourth Circuit, Petitioners acknowledge that the court has held that subsection (d)(4) protects employees who are neither disabled nor perceived to be. Pet. 19 (discussing *Coffey v. Norfolk S. Ry. Co.*, 23 F.4th 332, 336 n.1 (4th Cir. 2022)). While Petitioners say that the decision fails to explain whether such a claim can trigger "money damages," *id.*, *Coffey* had no reason to do so because it held that the employer's inquiry was justified by business necessity. *See* 23 F.4th at 340. Nonetheless, if the plaintiff could not would have obtained relief even if he had prevailed on the claim, there would have been no point in the court addressing the claim at all.

C. Petitioners are also incorrect that four circuits have "declined to read" section 12112(d) as "allowing employees to recover money damages for discrimination unless they were actually disabled or an employer perceived them as disabled." Pet. 15. To begin with, as explained above, an entitlement to

money damages is not at issue here: Nawara was not awarded money damages, and he appealed only the district court's denial of his request for the equitable remedy of backpay. *See* Pet. App. 2a.

In any event, Petitioners' assertion of a conflict is unfounded. In two of the four cases they cite, the courts found that the plaintiffs had failed to show injury supporting compensatory damages—just as the jury found in this case. In the other two cases, the courts found that the employers had not made unjustified inquiries. None of the four decisions conflict with the decision below, because none of the cases hold or even imply that an employee who proves lost wages resulting from a violation of subsection (d)(4) is not entitled to backpay.

Petitioners begin with *Armstrong* v. *Turner Industries, Inc.*, 141 F.3d 554 (5th Cir. 1998). There, a non-disabled plaintiff claimed that he was subjected to a pre-offer medical examination and inquiry in violation of section 12112(d)(2)(A). Ruling against him, the Fifth Circuit did not reach the question whether a non-disabled plaintiff could be afforded relief for a violation of that section, and no claim for backpay was presented. Rather, the court held that the plaintiff was not entitled to compensatory damages because he "failed to allege any compensable injury." *Id.* at 559; *id.* at 562 (stating that the plaintiff failed to allege "any corresponding damages").

At the same time, the court was explicit that it was not "foreclos[ing] the possibility of liability based on any injuries legally and proximately caused by [a section 12112(d)(2)(A)] a violation." *Armstrong*, 141 F.3d at 562 n.20; *see id.* at 559 (noting that

answering "in the abstract" the question whether a non-disabled individual could pursue a claim for a violation of § 12112(d) would be "irrelevant to the disposition of th[e] lawsuit"); *see also Taylor v. City of Shreveport*, 798 F.3d 276, 282 (5th Cir. 2015) (stating, in a case brought by non-disabled police officers, "a prohibited medical examination or inquiry may constitute a form of employment discrimination under the ADA"); *Griffin I*, 160 F.3d at 595 (noting that *Armstrong* "assumed without deciding that a non-disabled plaintiff did have a cause of action" for a violation of § 12112(d)(2)).

Petitioners next turn to the Tenth Circuit's decision in *Griffin v. Steeltek, Inc.*, 261 F.3d 1026 (10th Cir. 2001) (*Griffin II*). In that case, too, the court did not address the question presented here. In *Griffin II*, the court affirmed a jury verdict denying a plaintiff nominal and punitive damages for a violation of section 12112(d)(2), where, in light of evidence that the employer's hiring decision was unrelated to the prohibited questions, a jury had determined that the plaintiff had "suffered no injury." *Id*. at 1028–29. Again, only damages were at issue, and the court did not address the question presented in the petition here. *See* Pet. i.

Importantly, though, the Tenth Circuit did address the question in an earlier appeal in the same case. In *Griffin I*, the Tenth Circuit held that "[a] job applicant need not make a showing that he or she is disabled or perceived as having a disability to state a prima facie case under 42 U.S.C. § 12112(d)(2)." *Griffin I,* 160 F.3d at 595. The court then remanded for consideration of "whether the questions on [the employer's] questionnaire violated the ADA's prohibition on medical inquiries, and, if so, whether [the

employee] is entitled to the relief he seeks." *Id.* Although on remand the jury found that the plaintiff was not entitled to damages, *Griffin II*, 261 F.3d at 1027, the Tenth Circuit's legal holding that a plaintiff alleging a subsection (d)(2) violation states a claim for relief under the ADA irrespective of disability aligns with the Seventh Circuit's holding in this case. Indeed, the court's recognition that a non-disabled plaintiff might be entitled to damages contradicts Petitioners' position, because damages are available under the ADA *only* for intentional discrimination. *See supra* n.1.

Petitioners also contend that the Third and Second Circuits disagree with the decision below. In both cases they cite, though, the court held that the plaintiff had failed to state a claim for entirely different reasons. In the Third Circuit case, it was "clear that in this case" the employer's requirement was justified by "business necessity" and therefore "permissible under the statute." *Tice v. Centre Area Transp. Authority*, 247 F.3d 506, 517 (3d Cir. 2001). Petitioners assert that the court distinguished between employees without disabilities and those "'regarded as' disabled," but in so doing it quotes from an inapposite portion of the opinion addressing the plaintiff's argument that the employer regarded him as disabled. Pet. 14 (citing *Tice*, 247 F.3d at 515). As to the issue here—and directly contradicting Petitioners' view that the opinion creates a conflict—the Third Circuit stated: "[W]e leave for another day the question whether the ADA permits nondisabled individuals to sue." *Tice*, 247 F.3d at 517.

Similarly, in the unpublished Second Circuit decision on which Petitioners rely, *Kosiba v. Catholic Health Systems of Long Island, Inc.*, No. 23-6, 2024

WL 3024652 (2d Cir. June 17, 2024), an employee argued that an inquiry into his vaccination status was forbidden under section 12112(d)(4). In a one-sentence footnote, the court stated that an inquiry into vaccination status was not a disability-related inquiry and thus did not fall within the scope of subsection (d)(4)'s prohibition. *Id.* at *1 n.1. The court did not discuss whether a non-disabled employee could assert a claim under subsection (d)(4), much less state a holding on the question. The decision certainly did not call into question the Second Circuit's longstanding recognition that non-disabled employees may seek relief for violations of subsection (d)(4). *See Conroy v. N.Y. State Dep't of Corr. Servs.*, 333 F.3d 88, 94 (2d Cir. 2003) ("We agree with our sister circuits that a plaintiff need not prove that he or she has a disability unknown to his or her employer in order to challenge a medical inquiry or examination under 42 U.S.C. § 12112(d)(4)(a).").

In sum, there is no conflict, or even tension, among the courts of appeals on the question whether a non-disabled employee or applicant may state a claim under section 12112(a) for violation of section 12112(d)(4).

II. Petitioners' policy and vehicle arguments are misplaced.

The Seventh Circuit's careful textual analysis explains why Petitioners' merits arguments are incorrect. *See* Pet. App. 13a–14a. The lack of disagreement among the courts of appeals likewise reflects that the decision below is correct.

The court's focus on text also demonstrates that Petitioners' contention that the decision below is

"inconsistent" with this Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), is wholly without merit. Pet. 31. According to Petitioners, the Seventh Circuit incorrectly deferred to the Equal Employment Opportunity Commission (EEOC) because the opinion cited (once) the Sixth Circuit decision in *Bates*, *see* Pet. App. 12a, and *Bates* had applied *Skidmore* deference in resolving the same issue. But *Bates* did *not* apply *Skidmore* deference in deciding the same issue—it looked to factors listed in EEOC enforcement guidance to resolve the issue whether the employer's drug-testing protocol constituted a "medical examination." *Bates*, 767 F.3d at 574. Furthermore, the Seventh Circuit's opinion in this case demonstrates that rejecting Petitioners' argument does not require any form of deference: The opinion is based on the statutory text and does not mention deference. Indeed, it refers to an EEOC regulation on the issue only in a footnote noting that the regulation is consistent with the court's de novo reading. *See* Pet. App. 13a n.3.[3]

As for policy, Petitioners are correct insofar as they suggest that the availability of a cause of action to challenge an employer's medical inquiry that is unjustified by business necessity is an important

---

[3] While Petitioners state that an agency's views carry no weight, Pet. 31–32, they also suggest that this Court inquire of the United States whether it continues to adhere to the plain-text reading of section 12112(d) that it provided in its amicus brief below. *See id.* at 21 n.6. As to the question of statutory interpretation presented here, however, it is the duty of the courts, not the United States, to say what the law is. *See generally Loper Bright*, 603 U.S. 369. And here, the courts of appeals have been unanimous in their reading.

subject. In the absence of a disagreement among the lower courts, however, it is not a subject important for *this Court* to address. As the courts of appeals have recognized, Congress has made the policy decision to provide a cause of action for employees and job applicants subject to unjustified medical inquiries.

Thus, the consistent holdings of the courts of appeals recognize that the statutory text of subsections (d)(2)–(4) embodies the legislative purpose of deterring unnecessary inquiries into medical status—for example, forcing people to reveal their HIV status. *See Fredenburg*, 172 F.3d at 1182. And a contrary reading that extends protections only to employees with disabilities would "defeat the very purpose" of subsections (d)(2)–(4). *Roe v. Cheyenne Mountain Conf. Resort, Inc.*, 124 F.3d 1221, 1229 (10th Cir. 1997); *accord Cossette*, 188 F.3d at 969; *Fredenburg*, 172 F.3d at 1182.

Petitioners worry about the impact of subsection (d)(4) on law enforcement personnel. The subsection, however, permits medical inquiries that are justified by business necessity, and courts have recognized that the business-necessity defense applies with particular force in the law-enforcement context. Thus, while Petitioners failed to prove that such circumstances were present in this case, the Seventh Circuit has reiterated that "[t]his 'special work environment' necessitates greater leeway for supervisors to order job-related fitness-for-duty evaluations." *Kurtzhals*, 969 F.3d at 731 (quoting *Coffman v. Indianapolis Fire Dep't*, 578 F.3d 559, 566 (7th Cir. 2009)); *see Krocka v. City of Chicago*, 203 F.3d 507, 515 (7th Cir. 2000); *Watson v. City of Miami Beach*, 177 F.3d 932, 935 (11th Cir. 1999).

Further, court decisions recognizing that subsection (d)(4) bars medical inquiries even of non-disabled applicants and employees go back decades. *See, e.g.*, *Roe*, 124 F.3d at 1229 (1997); *Cossette*, 188 F.3d at 969 (1999). Petitioners, though, point to no evidence of a harmful impact on law enforcement or any other field of work.

Remarkably, although a jury found that Petitioners had required a medical inquiry without any business necessity, Petitioners argue that this case shows that an employee without a disability should not be able to obtain relief for violation of subsection (d)(4) because Officer Nawara "missed time at work only because he felt that the release forms handed to him at an HR meeting did not comply with HIPAA." Pet. 24. That is, they blame the employee for not acceding to an employer's unjustified medical inquiry that they concede violates the ADA. *Id*. at 17, 22. Far from suggesting a policy basis for second-guessing the decision below, Petitioners' insistence that employees should have no recourse when the employer requires disclosure of medical information confirms Congress's judgment of the need for all employees to have the protection supplied by subsection (d)(4).

Finally, while Petitioners argue that this case is a good vehicle for resolving the question presented, Petitioners themselves seem uncertain about what question they seek to present. Their question presented is whether an employee who is not disabled or perceived to be disabled can state a claim for discrimination under the ADA. *See* Pet. i. Throughout the petition, though, Petitioners conflate that question with the question whether such an employee can recover compensatory damages. *See,*

e.g., *id.* at 15, 24. The damages question, though, is not presented in this case: The jury awarded no damages, and Officer Nawara's appeal concerned only the district court's denial of the equitable remedy of backpay. Pet. App. 2a.

In short, as to the question presented, the courts of appeals have no disagreement, reflecting the plain language of the statute.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

PETER V. BUSTAMANTE
LAW OFFICE OF PETER V. BUSTAMANTE
17 N. State Street, #1550
Chicago, IL 60602
(312) 346-2072

RICHARD F. LINDEN
LAW OFFICES OF RICHARD LINDEN
17 N. State Street, #1550
Chicago, IL 60602
(312) 590-0211

ALLISON M. ZIEVE
Counsel of Record
SCOTT L. NELSON
PUBLIC CITIZEN LITIGATION GROUP
1600 20th Street NW
Washington, DC 20009
(202) 588-1000
azieve@citizen.org

Attorneys for Respondent

November 2025