

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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RAYTHEON CO. v. HERNANDEZ**CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT**

No. 02–749. Argued October 8, 2003—Decided December 2, 2003

After respondent tested positive for cocaine and admitted that his behavior violated petitioner’s workplace conduct rules, he was forced to resign. More than two years later, he applied to be rehired, stating on his application that petitioner had previously employed him, and attaching letters both from his pastor about his active church participation and from an Alcoholics Anonymous counselor about his regular attendance at meetings and his recovery. The employee who reviewed and rejected respondent’s application testified that petitioner has a policy against rehiring employees who are terminated for workplace misconduct and that she did not know that respondent was a former drug addict when she rejected his application. Respondent filed a charge with the Equal Employment Opportunity Commission (EEOC), claiming that he had been discriminated against in violation of the Americans with Disabilities Act of 1990 (ADA). The EEOC issued a right-to-sue letter, and respondent filed this ADA action, arguing that petitioner rejected his application because of his record of drug addiction and/or because he was regarded as being a drug addict. In response to petitioner’s summary judgment motion, respondent for the first time argued in the alternative that if petitioner applied a neutral no-rehire policy in his case, it still violated the ADA because of that policy’s disparate impact. The District Court granted petitioner’s motion for summary judgment on the disparate-treatment claim and found that the disparate-impact claim had not been timely pleaded or raised. The Ninth Circuit agreed as to the disparate-impact claim, but held as to the disparate-treatment claim that, under the burden-shifting approach of *McDonnell Douglas Corp. v. Green*, 411 U. S. 792, respondent had proffered a prima facie case of discrimination, and petitioner had not met its burden to pro-

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vide a legitimate, nondiscriminatory reason for its employment action because its no-rehire policy, though lawful on its face, was unlawful as applied to employees who were lawfully forced to resign for illegal drug use but have since been rehabilitated.

Held: The Ninth Circuit improperly applied a disparate-impact analysis to respondent's disparate-treatment claim. This Court has consistently distinguished between disparate-treatment and disparate-impact claims. The former arise when an employer treats some people less favorably than others because of a protected characteristic. Liability depends on whether the protected trait actually motivated the employer's action. The latter involve facially neutral employment practices that fall more harshly on one group than another and cannot be justified by business necessity. Such practices may be deemed illegally discriminatory without evidence of the employer's subjective discrimination. Both claims are cognizable under the ADA, but courts must be careful to distinguish between the theories. Here, respondent was limited to the disparate-treatment theory that petitioner refused to rehire him because it regarded him as disabled and/or because of his record of disability. Petitioner's proffer of its neutral no-rehire policy plainly satisfied its obligation under *McDonnell Douglas* to provide a legitimate, nondiscriminatory reason for refusing to rehire respondent. Thus, the only remaining question before the Ninth Circuit was whether there was sufficient evidence from which a jury could conclude that petitioner did make its employment decision based on respondent's status as disabled despite its proffered explanation. Instead, that court concluded that, as a matter of law, the policy was not a legitimate, nondiscriminatory reason sufficient to defeat a prima facie case of discrimination. In doing so, the Ninth Circuit improperly focused on factors that pertain only to disparate-impact claims, and thus ignored the fact that petitioner's no-hire policy is a quintessential legitimate, nondiscriminatory reason for refusing to rehire an employee who was terminated for violating workplace conduct rules. Pp. 7–11.

298 F. 3d 1030, vacated and remanded.

THOMAS, J., delivered the opinion of the Court, in which all other Members joined, except SOUTER, J., who took no part in the decision of the case, and BREYER, J., who took no part in the consideration or decision of the case.