

9/11/26

No. 26-347

In the
Supreme Court of the United States

BABU K. THOMAS,

Petitioner,

v.

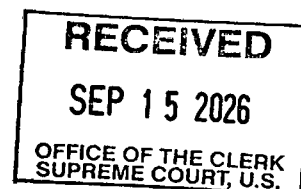
DAVID STEINER,
U.S. Postmaster General, et al.,

Respondents.

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

The Rehabilitation Act of 1973 incorporates the standards of the Americans with Disabilities Act Amendments Act of 2008 (ADAAA) to prohibit federal agencies from discriminating against qualified individuals with disabilities and mandates that the definition of disability "shall be construed in favor of broad coverage... to the maximum extent permitted." 42 U.S.C. § 12102(4)(A); 29 U.S.C. § 791 *et seq.* Under standard labor and civil rights principles, federal employees are further guaranteed procedural due process and fair representation before their constitutionally protected employment interests are extinguished.

The questions presented are:

1. Whether, under the Rehabilitation Act of 1973, an employer that has notice of an employee's disability and request for reasonable accommodation may completely fail to engage in the required interactive process—and disregard its own procedures governing that process—yet obtain summary judgment because the employee did not independently establish the precise accommodation that the interactive process was designed to identify; or whether an employer-caused breakdown of the interactive process itself constitutes evidence of failure to accommodate and shifts responsibility for the resulting evidentiary uncertainty.

This question implicates a recurring division among the courts of appeals concerning the legal consequences of an employer's failure to engage in the

interactive process. Some courts treat an employer-caused breakdown as independently significant evidence in determining liability for failure to accommodate, while others require the employee to establish the availability of a reasonable accommodation notwithstanding the employer's failure to participate. The decision below implicates the more restrictive approach and warrants this Court's review to establish a uniform rule governing an affirmative federal accommodation obligation.

2. Whether, when federal law and the governing collective-bargaining regime vest an exclusive bargaining representative with exclusive authority to prosecute a career federal employee's contractual grievance, the employee may be deprived of a constitutionally protected property interest in continued employment solely because the exclusive representative negligently fails to satisfy a ministerial grievance deadline—causing binding arbitration to dismiss the grievance as procedurally non-arbitrable without any adjudication on the merits or whether due process and the representative's duty of fair representation require a meaningful remedy where the employee himself had no control over the missed deadline.

3. Whether a federal court of appeals may, consistently with the Fifth Amendment and ordinary principles of appellate review, refuse to consider properly briefed challenges to wrongful termination and the grievance-arbitration process as supposedly raised for the first time on appeal when those claims were expressly pleaded in the original district-court complaint, maintained in subsequent proceedings,

specifically preserved in objections to the Magistrate Judge's Recommendation, and presented in the appellant's opening brief.

4. Whether the ADA Amendments Act's command that disability be construed in favor of broad coverage permits summary judgment on the ground that a Rehabilitation Act plaintiff failed to create even a genuine dispute as to disability where an EEOC Administrative Judge, following an evidentiary hearing, expressly found that the employee "has established he is disabled within the meaning of the Rehabilitation Act," and the court of appeals relied in part upon the employee's ability to continue working for years after earlier diagnoses—although enabling qualified employees with disabilities to continue working is the very purpose of reasonable accommodation.

5. Whether Rule 56 permits summary judgment where court-ordered discovery concerning the employee's medical and personnel records, alleged AWOL records, grievance-arbitration file, and other material evidence remained disputed or incomplete, while the record contained conflicting documentary evidence concerning accommodation requests, medical submissions, LWOP/AWOL status, protected activity, and the asserted basis for removal.

PARTIES TO THE PROCEEDINGS BELOW

Petitioner Babu K. Thomas was the plaintiff in the district court and the appellant in the court of appeals.

Respondents David Steiner, Postmaster General of the United States; Pamela Bondi, Attorney General of the United States; and Jennifer Lowery, United States Attorney for the Southern District of Texas, were defendants-appellees in the court of appeals. Louis DeJoy, then Postmaster General, was the defendant in the district court and was succeeded in his official capacity during the proceedings.

RELATED PROCEEDINGS

**United States District Court
Southern District of Texas**

Civil Action No. 4:22-CV-3157

Babu K. Thomas,
Plaintiff

v.

Louis DeJoy, Postmaster General,
Defendant

Judgment Entered May 20, 2025

* * *

**United State Court of Appeals
for the Fifth Circuit**

No. 25-20297

Babu K Thomas
Plaintiff-Appellant

v.

David Steiner, U.S. Postmaster; Pamela Bondi, U.S.
Attorney General; Jennifer Lowery, United States
Attorney for the Southern District of Texas,
Defendants- Appellees

Judgment Entered April 14, 2026

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In the Supreme Court of the United States

BABU K. THOMAS,
Petitioner,

v.

DAVID STEINER, U.S. Postmaster General
et al.,
Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

Petitioner Babu K Thomas respectfully petitions
for a writ of certiorari to review the judgment of the
United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals
for the Fifth Circuit is unreported and is reproduced
at App. 1a–19a. The judgment of the court of appeals
is reproduced at App. 20a–21a. The order of the
United States District Court for the Southern District
of Texas adopting the Magistrate Judge’s
Memorandum and Recommendation is reproduced at
App. 22a–23a. The February 12, 2025 Memorandum
and Recommendation is reproduced at App. 29a–45a.

The EEOC Office of Federal Operations Right-to-Sue Letter is reproduced at App. 46a-51a.

JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on April 14, 2026. An application for an extension of time within which to file this petition was granted by Circuit Justice Samuel A. Alito on July 2, 2026, extending the time to and including September 11, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment provides, in relevant part: "No person shall be ... deprived of life, liberty, or property, without due process of law."

Section 501 of the Rehabilitation Act, 29 U.S.C. § 791, governs nondiscrimination and affirmative action in federal employment. Section 504, 29 U.S.C. § 794(a), provides in relevant part that no otherwise qualified individual with a disability shall, solely by reason of disability, be excluded from participation in, denied the benefits of, or subjected to discrimination under a program or activity conducted by an Executive agency or the United States Postal Service.

The ADAAA provides that the definition of disability "shall be construed in favor of broad coverage of individuals ... to the maximum extent permitted." 42 U.S.C. § 12102(4)(A).

PRELIMINARY STATEMENT

This petition presents recurring questions concerning the protections Congress afforded federal employees with disabilities under the Rehabilitation Act and the ADA Amendments Act of 2008, the obligations imposed upon federal employers when an employee requests reasonable accommodation, and the consequences when an exclusive bargaining representative's procedural default prevents any merits adjudication of a career employee's removal grievance.

The operative controversy began in 2014, when Petitioner sought reasonable accommodation so that he could continue performing his job. Petitioner did not claim that the mere fact of diagnoses years earlier automatically established liability. He had continued working after those diagnoses. In 2014, as his limitations and working conditions required workplace modification, he invoked the accommodation process for its intended purpose: to remain productively employed.

USPS's own Handbook EL-307 describes reasonable accommodation as an interactive process through which the Postal Service considers changes in the manner in which a job is performed so that a qualified individual with a disability can perform the essential functions of the position. Petitioner repeatedly requested that process. Yet USPS's records classified him as being on Leave Without Pay ("LWOP") effective August 13, 2014, and, after more than three years, USPS later removed him on a

charge of Absence Without Leave ("AWOL") beginning September 1, 2014.

The administrative record makes the disability question especially consequential. After an evidentiary hearing, the EEOC Administrative Judge expressly concluded that "Complainant has established he is disabled within the meaning of the Rehabilitation Act." App. 52a. The same decision identified contemporaneous 2014 medical documentation and Petitioner's certified request for "reasonable accommodation." The federal courts later held that Petitioner had failed to create even a genuine dispute as to disability.

The timing of Petitioner's protected activity also matters. In November 2017 while still seeking accommodation and permission to return to work Petitioner sought assistance from his congressional representative concerning discrimination, harassment, denial of reasonable accommodation, and denial of work. ROA. 371-375. He again requested accommodation at a January 12, 2018 investigative interview, asked to return to work the next day, and was told "NO." The Notice of Removal followed weeks later.

Petitioner's removal grievance was never adjudicated on its merits in arbitration. The arbitrator dismissed it as procedurally non-arbitrable because the exclusive bargaining representative failed timely to initiate Informal Step A. App. 57a. The court of appeals then declined to consider Petitioner's wrongful-termination and grievance-arbitration challenges on the ground that they had

not been raised in district court, although the original complaint expressly pleaded wrongful removal and a separate "Collusion, unfair and improper Grievance Arbitration process" claim, and those matters were preserved and presented on appeal.

The petition does not ask this Court to retry disputed employment facts. It asks the Court to resolve questions concerning the meaning of disability after the ADAAA, responsibility for the Rehabilitation Act interactive process, the consequences of an exclusive representative's procedural default that eliminates merits review of a federal employee's removal grievance, preservation of claims actually pleaded below, and the use of summary judgment where material discovery and factual conflicts remain.

STATEMENT OF THE CASE

A. Background and Relevant Events

Petitioner Babu K. Thomas, a tenured employee of the United States Postal Service, was unlawfully terminated following an enforced, multi-year Leave Without Pay (LWOP) status initiated after he requested a reasonable accommodation under the Rehabilitation Act of 1973. Under the Agency's governing policies, including USPS-EL 307 and the applicable Collective Bargaining Agreement (CBA), Agency officials were required to engage in a good-faith interactive process and apply progressive discipline principles. Instead, the Agency abruptly halted the interactive process, placed Petitioner on LWOP status for over three years, and subsequently

recharacterized that approved leave into a fabricated charge of Absence Without Leave (AWOL) to justify his removal.

Thomas began working for the United States Postal Service ("USPS") as a city letter carrier in June 2000. He performed physically demanding outdoor work in the Houston-area climate. His medical history included type 2 diabetes and depression. The events principally at issue here, however, concern the period beginning in 2014 and culminating in his removal in 2018.

By 2014, Petitioner was experiencing limitations affecting his ability to perform long outdoor shifts without modification. His accommodation requests included an eight-hour workday, access to restroom facilities and blood-glucose monitoring as needed, protection from extreme heat, route adjustment, and assistance with overtime. He sought accommodation to continue working, not to withdraw from the workforce.

Throughout the administrative process, Agency officials actively circumvented transparency and statutory compliance. During congressional inquiries regarding the denial of accommodation, the Agency submitted contradictory reports. In administrative proceedings before the Equal Employment Opportunity Commission (EEOC), the Agency obstructed key employee witnesses from testifying. Furthermore, officials falsified official records and compromised Petitioner's Official Personnel Folder (OPF/EPF), excluding critical medical documentation

that substantiated his ongoing accommodation requests.

Rather than engaging in an interactive dialogue to explore accommodations pursuant to USPS Handbook EL-307 guidelines, management ignored Petitioner's certified written requests. Following a June 2014 EEO investigation initiated by Petitioner regarding harassment and hostile work environment, Petitioner was forced off work after August 13, 2014.

Petitioner's appellate brief and exhibits identify repeated accommodation efforts beginning in 2014. On September 12, 2014, he sent medical documentation by certified mail. In October 2014 he contacted management concerning reasonable accommodation, and on October 12, 2014 sent a certified letter expressly captioned "Reasonable Accommodation," asking management to discuss accommodation and stating that he wanted to return to work. He followed with additional certified correspondence in 2015, 2016, and 2017 referring to medical documentation, his accommodation requests, and his desire to return. See, e.g., ROA. 214-253; ROA. 354-357.

On January 24, 2015, USPS notified Petitioner that he had been placed on Leave Without Pay (LWOP) status retroactively effective August 13, 2014. Petitioner remained on authorized LWOP status for over three years. Throughout this period, Petitioner submitted multiple certified letters to supervisors and managers, requesting to engage in the interactive process for reasonable accommodation and reporting workplace harassment. USPS

management conducted no interactive accommodation sessions, provided no written denial notices under EL-307 Section 213, and completely failed to evaluate potential workplace adjustments.

On November 1, 2017, after leaving Petitioner on LWOP for over three years without accommodation, USPS ordered Petitioner to produce acceptable medical evidence for his extended absence or face disciplinary removal. Following an investigative interview in January 2018, USPS issued a Notice of Removal, retroactively reclassifying Petitioner's authorized LWOP as Absence Without Leave (AWOL) and terminated his employment effective March 23, 2018.

On November 13, 2017, Petitioner again wrote to management, including the USPS District Manager, asking to return to work and receive reasonable accommodation. On November 15, 2017, he sought assistance from his congressional representative concerning discrimination, harassment, hostile work environment, denial of reasonable accommodation, and USPS's refusal to allow him to work. ROA. 371-375.

The EEOC administrative record later addressed USPS's response to that congressional inquiry. The Administrative Judge found that the information in the response stating that DRAC had requested medical documentation from Petitioner was inaccurate. App. 57a. The decision recounted testimony that the Human Resources Manager prepared the congressional response after consulting

the Labor Relations Specialist who also chaired DRAC.

On January 12, 2018, Petitioner appeared for an investigative interview and again requested reasonable accommodation and permission to return to work. His appellate brief states that he asked, "can I come to work from tomorrow?" and was told "NO." He filed an EEO complaint the following day concerning, among other matters, denial of work and reasonable accommodation.

USPS issued a Notice of Removal dated February 6, 2018, charging "Unacceptable Attendance—AWOL" and asserting that Petitioner had been AWOL since September 1, 2014. Petitioner received the notice by certified mail on February 14, 2018. The later AWOL charge covered substantially the same period for which USPS's earlier written records had classified him as LWOP.

Petitioner contemporaneously challenged the removal. In his grievance statement he disputed the AWOL characterization, identified absence-reporting confirmation numbers, reiterated that he had submitted medical materials by certified mail, and stated that he had repeatedly requested accommodation and permission to return to work. See ROA. 358–362.

B. Grievance Arbitration

Petitioner invoked the contractual grievance process to challenge his removal. His original district-court complaint later alleged that USPS used

conflicting service methods and timelines to impair his grievance rights and that USPS and the exclusive bargaining representative acted improperly in the grievance-arbitration process, including exclusion of Petitioner's private attorney.

The grievance ultimately reached arbitration. The arbitrator's August 13, 2018 Award Summary states that the grievance had been filed untimely at Informal Step A and therefore "is not procedurally arbitrable and is, therefore, dismissed." App. 57a. The award did not adjudicate whether USPS had just cause to remove Petitioner.

Petitioner's concern is therefore distinct from the discrimination merits heard in the EEOC process. The removal grievance itself, whether the discharge complied with the governing CBA and just-cause protections, was never decided on the merits because of an informal step A deadline missed by the exclusive representative that controlled the contractual grievance machinery.

C. The EEOC Proceedings

Petitioner pursued his discrimination and retaliation claims through the federal-sector EEO process and received an evidentiary hearing before an EEOC Administrative Judge.

In the Bench Decision, under the analysis of Petitioner's disability claim, the Administrative Judge expressly found: "Complainant has established he is disabled within the meaning of the Rehabilitation Act." App. 52a-56a; ROA. 278-280.

The decision also identified medical documentation from the relevant 2014 period, including notes accompanying Petitioner's September 12, 2014 submission, and a medical note stating that he could return to work on September 5, 2014.

The decision further recorded Petitioner's certified October 12, 2014 letter asking management to contact him concerning "reasonable accommodation," the January 2015 LWOP notice, and a July 2015 medical letter concerning type 2 diabetes and avoidance of strenuous outdoor labor.

The Administrative Judge nevertheless entered judgment for the Agency on the claims presented, concluding that Petitioner had not carried his burden of proving that the challenged actions were taken because of race, disability, age, or prior protected EEO activity. Petitioner maintains that the accommodation issue required separate treatment because failure to accommodate rests on an affirmative statutory duty and does not turn solely on proof of discriminatory animus.

The Administrative Judge also addressed the congressional inquiry. Although the AJ did not find ultimate discriminatory or retaliatory liability on those claims, the decision expressly found that USPS's statement that DRAC had requested medical documentation from Petitioner was inaccurate. App. 57a.

PROCEEDINGS BELOW

A. District Court Proceedings

Petitioner filed his federal complaint on September 15, 2022. The complaint expressly alleged denial and refusal of reasonable accommodation, denial of work, LWOP, removal without just cause, loss or destruction of medical and personnel records, allegedly false or manipulated records used to support the AWOL charge, the congressional inquiry, and an unfair and improper grievance-arbitration process.

USPS moved for summary judgment. Petitioner opposed the motion and argued that numerous material facts were disputed, that USPS had failed to engage in the interactive accommodation process, and that material discovery remained outstanding.

On October 28, 2024, after a discovery hearing, the Magistrate Judge ordered USPS to supplement its discovery responses. The written order required production of all of Petitioner's medical documents in USPS's possession, custody, or control from 2014 through June 2018; Petitioner's personnel file; all notices or documents indicating AWOL status from 2014–2018; the grievance-arbitration file; and information identifying the person or persons hired to replace him. ROA. 390.

Petitioner maintained that USPS did not fully comply and filed a further motion to compel. His appellate briefing cited ROA. 380, 436, and 545 concerning the discovery-compliance dispute.

On February 12, 2025, while that discovery dispute remained pending, the Magistrate Judge issued an M&R recommending summary judgment for USPS. The M&R acknowledged that the events pertinent to the case began on August 13, 2014, that USPS had classified Petitioner as LWOP, and that the record contained several letters from Petitioner asking to discuss reasonable accommodations.

On disability, however, the M&R concluded that Petitioner failed to create a genuine dispute that he was disabled under the Rehabilitation Act. In the alternative, it concluded that Petitioner was responsible for the breakdown of the interactive process, relying in part on management statements denying receipt of medical documentation.

Petitioner objected. Among other points, he cited the EEOC Administrative Judge's express disability finding, challenged the conclusion that no relevant medical documentation existed, argued that the M&R improperly attributed the interactive-process breakdown to him, challenged USPS's reliance on old disciplinary material that he maintained had been rescinded or expunged, and identified the unresolved discovery issues.

The M&R also stated that all of Petitioner's protected activity occurred "long before" his 2018 termination. Petitioner objected that this was factually incorrect because his protected activity included the November 2017 congressional inquiry, grievance activity, continuing accommodation requests, and January 2018 EEO activity immediately preceding the February 2018 removal.

The district court ultimately adopted the M&R and entered judgment for USPS. The court later denied post-judgment relief and assessed costs.

B. Court-of-Appeals Proceedings

Petitioner appealed pro se to the United States Court of Appeals for the Fifth Circuit. His opening brief expressly presented whether summary judgment had been entered despite incomplete discovery; whether the district court improperly resolved disputed facts; whether the Rehabilitation Act had been misapplied; whether wrongful termination had been disregarded; and whether the grievance-arbitration process, including exclusion of private counsel and the union's untimely filing, denied due process.

The Fifth Circuit affirmed. On the Rehabilitation Act claim, the court characterized Petitioner's diabetes diagnosis in 2005 and depression diagnosis in 2009 as the basis for his asserted disabilities, then stated that he "continued to work for years after these diagnoses" in concluding that the record did not establish a genuine dispute as to substantial limitation of a major life activity. App. 1a.

That reasoning is central to this petition because Petitioner's operative accommodation controversy began in 2014, years after the diagnoses, when he sought workplace modification to enable him to continue working. The statutory accommodation framework exists precisely to permit a qualified

employee to perform the essential functions of employment with reasonable accommodation.

The Fifth Circuit also declined to consider Petitioner's wrongful-termination and grievance-arbitration claims, stating that they had not been pleaded in district court and would not be considered for the first time on appeal. App. 1a. Yet the original complaint expressly pleaded removal without just cause and included a separate section entitled "Collusion, unfair and improper Grievance Arbitration process." Those matters were also raised in Petitioner's objections and expressly presented as issues in his Fifth Circuit brief.

REASONS FOR GRANTING THE PETITION

I. THE INTERACTIVE-PROCESS QUESTION WARRANTS REVIEW.

This case presents an important question under the Rehabilitation Act: what are the consequences when a federal employer receives notice of disability and repeated requests for accommodation, fails to participate in the interactive process designed to identify an effective accommodation and needed information, and later obtains summary judgment by assigning the consequences of that breakdown to the employee.

Petitioner's prior briefing relied on *Loulseged v. Akzo Nobel Inc.*, 178 F.3d 731, 736 (5th Cir. 1999), for the principle that when an employer's unwillingness to engage in a good-faith interactive process leads to a failure to accommodate, the employer violates the

law. *See also Griffin v. United Parcel Service, Inc.*, 661 F.3d 216, 224 (5th Cir. 2011). The EEOC authorities cited below similarly recognize an ongoing accommodation obligation and recurring violations when needed accommodation is repeatedly denied. *See Larissa E. v. U.S. Postal Serv.*, EEOC Appeal No. 0120160683 (Feb. 23, 2016); *Major D. v. U.S. Postal Serv.*, EEOC Appeal No. 0120152351 (Mar. 22, 2016); *Melani F. v. Dep't of Homeland Sec.*, EEOC Appeal No. 0720150027 (Mar. 15, 2016).

The courts of appeals materially differ, however, concerning the consequence of an employer-caused breakdown at summary judgment. The Ninth Circuit holds that when an employer fails to engage in the interactive process in good faith, the burden at summary judgment shifts to the employer to prove that no reasonable accommodation was available. *Snapp v. United Transportation Union*, 889 F.3d 1088, 1095 (9th Cir. 2018). The Second Circuit, by contrast, requires the employee to identify an accommodation that would have been possible notwithstanding the employer's failure to engage in the process. *McBride v. BIC Consumer Products Manufacturing Co.*, 583 F.3d 92, 100–01 (2d Cir. 2009). This conflict directly implicates the first Question Presented: who bears the consequences of the evidentiary uncertainty created when the employer fails to participate in the process designed to identify an effective accommodation.

That continuing-obligation principle is critical here. Disability and the need for accommodation are not frozen at the date of diagnosis or an earlier request. An employee may work successfully for years

and later require modification because limitations, job demands, or circumstances change. Reasonable accommodation exists to enable continued employment.

USPS's own EL-307 procedures reinforce the point. They permit oral or written requests, do not require technical language, and contemplate communication to determine what additional information is necessary. Yet the lower courts treated the absence of what they regarded as sufficient documentation as grounds for placing the entire breakdown on Petitioner even though his evidence showed repeated requests for dialogue and return to work.

Review is warranted to clarify responsibility for the interactive process and the allocation of burdens where the employer itself fails to engage. The question is recurring for federal employees and agencies and directly affects whether an affirmative statutory accommodation duty has practical force.

II. THE DISABILITY ANALYSIS BELOW WARRANTS REVIEW UNDER THE ADAAA'S BROAD-COVERAGE COMMAND.

The court of appeals' reasoning turned the purpose of reasonable accommodation on its head. After reciting Petitioner's diagnoses in 2005 and 2009, the panel emphasized that he "continued to work for years after these diagnoses" and relied on that history in concluding that he failed to create a genuine dispute as to disability. App. 1a.

Petitioner's Rehabilitation Act claim, however, did not arise from the mere fact of those earlier diagnoses. The operative accommodation controversy began in 2014, when he sought modifications so that he could continue working. A qualified individual is one who can perform the essential functions of the position with or without reasonable accommodation. The fact that an employee who worked for years before later needs accommodation is therefore not inconsistent with disability coverage; it is fully compatible with the statutory scheme.

Congress enacted the ADAAA to reject an unduly restrictive conception of disability and commanded that coverage be construed broadly. 42 U.S.C. § 12102(4)(A). Petitioner's ability to persevere in employment before his limitations required accommodation should not become evidence that strips him of the very protection designed to keep qualified employees at work.

The administrative record makes the issue especially stark. After an evidentiary hearing, the EEOC Administrative Judge expressly found that Petitioner "has established he is disabled within the meaning of the Rehabilitation Act." App. 52a; ROA. 278-280. The same decision identified medical documentation from the relevant 2014 period. The later judicial conclusion that Petitioner failed to create even a genuine dispute as to disability raises an important question concerning the threshold standard applied under the post-ADAAA Rehabilitation Act.

Review is warranted to ensure that courts do not revive restrictive pre-ADAAA reasoning by converting an employee's successful work history into evidence against disability when the employee later seeks accommodation for its intended purpose—to remain employed.

**III. EXCLUSIVE REPRESENTATION
CANNOT BECOME THE MEANS BY
WHICH A FEDERAL EMPLOYEE
LOSES ALL MERITS REVIEW OF A
CAREER-ENDING REMOVAL.**

Petitioner's removal grievance presents a distinct constitutional and representational question. Federal labor law and the governing collective-bargaining system vested the exclusive representative with control over the contractual grievance process. Petitioner himself did not control the representative's compliance with the mandatory filing deadline.

The arbitrator's award states that the grievance was untimely at Informal Step A and, for that reason alone, "is not procedurally arbitrable and is, therefore, dismissed." App. 57a. The award did not decide whether USPS had just cause to remove Petitioner or whether the underlying AWOL charge was valid.

Where an employee must depend upon an exclusive representative to invoke binding grievance procedures, treating a purely ministerial default by that representative as an absolute extinction of the employee's merits review presents a question of national importance. The employee can lose a

constitutionally significant property interest in continued public employment without any adjudication of whether the discharge satisfied the governing just-cause standard.

The problem is aggravated where exclusive-representation rules simultaneously restrict the employee's ability to substitute private counsel for the representative controlling the grievance. Petitioner alleged in his original complaint that his attorney was excluded from the arbitration process while the exclusive representative controlled the grievance.

The Court's review is warranted to clarify whether due process and the duty of fair representation permit an exclusive representative's negligent failure to satisfy a mandatory grievance deadline to extinguish the employee's only contractual merits review, and, if not, what meaningful remedy must remain available.

IV. PURSUANT TO RULE 10(a), THIS COURT SHOULD REVIEW THE COURT OF APPEALS' REFUSAL TO CONSIDER CLAIMS EXPRESSLY PRESENTED AND PRESERVED BELOW.

Certiorari is independently warranted because the court of appeals declined to consider Petitioner's wrongful-termination and grievance-arbitration claims on the stated ground that they had not been raised in the district court. That conclusion is contradicted by the pleadings and proceedings below.

Petitioner's original complaint expressly challenged his removal and separately alleged an unfair and improper grievance-arbitration process, including the conduct of the exclusive bargaining representative and the exclusion of Petitioner's private counsel. Petitioner continued to pursue those matters, specifically objected when the Magistrate Judge's Recommendation failed to address them, and expressly presented them as issues in his opening brief to the court of appeals.

The court of appeals nevertheless declined to consider those claims as though they had been raised for the first time on appeal. App. 13a-14a. That ruling did more than dispose of an appellate argument. It left unreviewed Petitioner's challenge to the process by which an eighteen-year career employee lost his employment without the removal grievance ever receiving an adjudication on the merits.

Where the record demonstrates that substantial federal claims were pleaded, preserved, and presented on appeal, refusing to consider them on the premise that they were never raised below presents a serious departure from ordinary appellate review. This Court's intervention is warranted to ensure that preservation doctrine serves its proper purpose and does not itself become the mechanism by which properly presented constitutional and statutory claims escape review.

V. THE RULE 56 AND DISCOVERY DISPOSITION WARRANTS REVIEW.

Rule 56 permits judgment without trial only when there is no genuine dispute of material fact. It does not authorize the court to weigh competing evidence, assess credibility, or resolve reasonable inferences against the non-movant. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986).

The district court's own discovery order identified the categories bearing directly on the disputed facts: Petitioner's 2014–2018 medical records, personnel file, AWOL records, grievance-arbitration file, and replacement information. Petitioner maintained that the ordered discovery was not fully produced and sought further compliance.

At the same time, the record contained direct conflicts. USPS's 2015 correspondence classified Petitioner as LWOP effective August 13, 2014, while the 2018 Notice of Removal charged AWOL beginning September 1, 2014. Petitioner produced certified correspondence and mailing evidence supporting repeated accommodation and medical submissions; USPS relied on later management statements denying receipt. The administrative decision itself identified 2014 medical documentation and found a statement in the congressional response concerning DRAC's request for medical documentation to be inaccurate.

Petitioner does not ask this Court to resolve which witness was truthful or which document should

ultimately prevail. The question is whether summary judgment is permissible where court-ordered discovery necessary to test the movant's account remains disputed and where competing record evidence is resolved against the nonmovant.

Review is warranted because the disposition below converts contested record issues into dispositive facts and risks weakening Rule 56's protection against judicial factfinding at the summary-judgment stage.

**VI. THIS CASE IS AN APPROPRIATE
VEHICLE TO RESOLVE THE
QUESTIONS PRESENTED.**

The principal legal issues are cleanly presented by the record. The written accommodation requests, USPS's own LWOP notice, the Notice of Removal, the EEOC Administrative Judge's express disability finding, the district court's discovery order, the arbitration award, and the Fifth Circuit's preservation ruling are documentary matters that do not depend on this Court resolving witness credibility.

The decisions below are dispositive. The federal courts rejected Petitioner's Rehabilitation Act claims at summary judgment, the court of appeals expressly relied on his historical ability to continue working, and the panel expressly declined to consider the wrongful-termination and grievance-arbitration claims on preservation grounds. The arbitration award independently shows that the removal grievance was dismissed without a merits adjudication because of untimeliness at Informal Step A.

This case is not an abstract dispute over administrative procedure. Petitioner devoted eighteen years to federal service and sought reasonable accommodation not to avoid work, but to remain at work and preserve his livelihood. When management did not respond to his repeated efforts to obtain accommodation and return to duty, Petitioner pursued the avenues available to him—including the EEO process, contractual grievances, and assistance from his congressional representative. He continued seeking accommodation and permission to return to work immediately before USPS issued the Notice of Removal.

The administrative record itself illustrates the importance of the questions presented. After an evidentiary hearing, the EEOC Administrative Judge expressly determined that Petitioner had established disability under the Rehabilitation Act but entered judgment for the Agency on the claims presented because Petitioner had not proved the required connection between the challenged actions and protected status or activity. The federal courts later reached a fundamentally different threshold conclusion, holding that Petitioner had failed to create even a genuine dispute that he was an individual with a disability.

Nor did Petitioner ever obtain a merits determination of the separate contractual question whether USPS had just cause to remove him. His removal grievance was dismissed as procedurally non-arbitrable because his exclusive bargaining representative failed timely to initiate Informal Step

A. Thus, although his discrimination claims received administrative adjudication, the merits of the grievance challenging the removal itself were never decided in arbitration.

Petitioner has continued to pursue the legal processes available to him not merely to obtain redress for the loss of his own career and livelihood, but to preserve federal protections whose practical value extends to similarly situated employees who may be left without meaningful recourse when an agency fails to engage in the accommodation process or an exclusive representative's procedural default eliminates merits review. The questions presented concern whether those statutory and constitutional protections remain enforceable when the procedures designed to safeguard them fail at precisely the moment, they are most needed.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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September 11, 2026

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