No. 26-462

IN THE
SUPREME COURT OF THE UNITED STATES

RYAN J. HAUBER,
Petitioner,

v.

HONKAMP KRUEGER & CO., P.C.,
Respondent.

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

MOTION TO DEFER CONSIDERATION OF THE PETITION AND TO CONSIDER IT TOGETHER WITH Nos. 26-5596 AND 26-383

Ryan J. Hauber
Pro Se Petitioner
8126 Airedale Lane
Galena, IL 61036
ryanjhauber@icloud.com
Tel: 815-281-0401

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....ii
PURPOSE.....1
FACTS.....1
1. This case.....1
2. No. 26-5596.....3
3. No. 26-383.....4
4. Amicus curiae briefs.....5
5. The supplemental brief and this motion.....5
THE RELATIONSHIP AMONG THE PETITIONS, AND ITS LIMITS.....6
The limits.....7
GROUNDS FOR THE RELIEF REQUESTED.....8
1. The Rules.....8
2. The time involved.....8
3. Prejudice and the time for a response.....9
4. The Rule 37.2 period.....9
CONCLUSION.....9

TABLE OF AUTHORITIES

Cases

Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986) 4, 7

Boddie v. Connecticut, 401 U.S. 371 (1971) 7

Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985) 5

Jackson v. University of Texas Southwestern Medical Center School of Medicine, No. 26-5596 (docketed Sept. 17, 2026) 1, 3, 4, 6, 7, 8, 9

Jackson v. University of Texas Southwestern Medical Center School of Medicine, No. 25-10942 (5th Cir. Apr. 29, 2026) (per curiam) 3, 7

Mathews v. Eldridge, 424 U.S. 319 (1976) 7

Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133 (2000) 4, 7

Scroggins v. City of Shreveport, Louisiana, No. 26-383 (docketed Sept. 21, 2026) 1, 4, 5, 6, 7, 8, 9

Scroggins v. City of Shreveport, Louisiana, No. 26-80 (cert. denied Oct. 5, 2026) 5

Tolan v. Cotton, 572 U.S. 650 (2014) (per curiam) 4, 7

Constitutional Provisions

U.S. Const. amend. V (Due Process Clause) 1, 7

U.S. Const. amend. VII 7

U.S. Const. amend. XIV 7

Statutes

Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* 3, 4, 6, 7

42 U.S.C. § 12111(8) 4

42 U.S.C. § 12131(2) 3

Civil Rights Act of 1964, Title VI, 42 U.S.C. § 2000d *et seq.* 3, 6

Civil Rights Act of 1964, Title VII, 42 U.S.C. § 2000e *et seq.* 4

Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.* 6

Rehabilitation Act § 504, 29 U.S.C. § 794 ..... 3, 6, 7

Rules

Fed. R. Civ. P. 37(b)(2) 7

Fed. R. Civ. P. 56 ..... 6, 7

Fed. R. Civ. P. 56(a) 7

Fed. R. Civ. P. 56(c)(3) 3

Fed. R. Civ. P. 60(b)(3), 60(d)(3) 4, 7

Sup. Ct. R. 15.....8
Sup. Ct. R. 15.6.....8
Sup. Ct. R. 15.7.....8
Sup. Ct. R. 15.8.....5
Sup. Ct. R. 16.1.....8
Sup. Ct. R. 21.....1, 5, 8
Sup. Ct. R. 21.4.....9
Sup. Ct. R. 37.2.....5, 9

Other Authorities

Clerk of the Court, Memorandum Concerning the Deadlines for Cert Stage Pleadings and the Scheduling of Cases for Conference (Mar. 2026).....8, 9

Supreme Court of the United States, Case Distribution Schedule, October Term 2026.....8

Petitioner Ryan J. Hauber, proceeding pro se, moves under Rule 21 for an order deferring consideration of his petition for a writ of certiorari, now distributed for the Conference of November 6, 2026, to the Conference of November 13, 2026, for which No. 26-383, *Scroggins v. City of Shreveport, Louisiana*, and No. 26-5596, *Jackson v. University of Texas Southwestern Medical Center School of Medicine*, are distributed, so that the three petitions may be considered together.

PURPOSE

The purpose of this motion is to place before the Court at one Conference three pending petitions by self-represented litigants who assert disabilities, in each of which the petitioner contends that a court below entered or affirmed judgment without addressing a matter the petitioner had placed before it. No. 26-383 was distributed on October 28, 2026 and No. 26-5596 on October 29, 2026, each for the Conference of November 13, 2026 (docket entries). The deferral requested is one week, from the Conference of November 6, 2026 to the Conference of November 13, 2026. Considering the three at one Conference would let the Court evaluate each petition with the other two in view.

FACTS

1. *This case.* Petitioner filed his petition on August 11, 2026. The petition was docketed on October 7, 2026; respondent waived its right to file a brief in opposition the same day; and the petition was distributed on October 14, 2026 for the Conference of November 6, 2026. The question presented is:

> Whether the Fifth Amendment's Due Process Clause permits a federal court to dismiss a disabled pro se litigant's case with prejudice as a discovery sanction while his properly filed, medically supported motion for accommodations remains pending and undecided.

Pet. 1. The district court dismissed the action with prejudice as a discovery sanction while petitioner's renewed motion for accommodations, supported by a declaration of his treating physician, had been pending 76 days without a ruling; the renewed motion was terminated as moot by the order of dismissal. Pet. 8–9. The court found that petitioner had willfully violated its discovery orders, and he does not ask this Court to revisit that finding. Pet. 8–9, 14. The court of appeals affirmed in an unpublished per curiam opinion that does not mention the accommodations motion. App. A. In denying post-judgment relief, the district court stated that the affirmance "implicitly rejected" petitioner's arguments concerning dismissal while the motion was pending, App. F, at 19a, and that the court "did not explicitly rule" on the motion but had considered his PTSD arguments in his filings opposing dismissal and had not found them a basis for excusing his discovery conduct or for a further opportunity to comply with court orders and rules, App. F, at 25a; see Pet. 10, 14. No proceeding remains pending below. Pet. 10.

2. *No. 26-5596.* On September 9, 2026, Penny Alexandra Jackson, proceeding pro se, filed a petition for a writ of certiorari, with a motion for leave to proceed in forma pauperis, from the judgment of the United States Court of Appeals for the Fifth Circuit in No. 25-10942 (decided April 29, 2026; rehearing denied June 12, 2026). The petition was docketed on September 17, 2026, with a response due October 19, 2026. The docket reflects no brief in opposition and no waiver; on October 29, 2026, the petition was distributed for the Conference of November 13, 2026 (docket entry). The petitioner states that she is a disabled veteran and former medical student; that she requested academic accommodations and, while the request was pending, took and failed two examinations without them; that after the university granted part of the accommodations she failed a further examination and was dismissed; and that she 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. No. 26-5596, Pet. i, 2–3. The district court entered summary judgment; the petition states that both courts below held that she was not a "qualified individual" and that the district court "declined to examine the summary judgment record Petitioner had submitted"; the court of appeals affirmed in an unpublished per curiam opinion, including that refusal. *Id.* at i, 3–5. The second of the three questions presented asks:

> 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.

Id. at i. The other two questions concern the "qualified individual" standard under 42 U.S.C. § 12131(2) and Section 504 and whether the employment framework of Title I supplies the elements of a student's failure-to-accommodate claim. *Id.* The petition states that a motion

under Federal Rules of Civil Procedure 60(b)(3) and 60(d)(3), filed July 16, 2026, remains pending in the district court. *Id.* at ii.

3. *No. 26-383.* On September 17, 2026, Felicia Scroggins, proceeding pro se, filed a petition for a writ of certiorari from the judgment of the Fifth Circuit in No. 25-30695 (decided May 13, 2026; rehearing denied June 23, 2026). The petition was docketed on September 21, 2026, with a response due October 21, 2026. Respondent's waiver of the right to respond was filed on October 10, 2026. On October 28, 2026, the petition was distributed for the Conference of November 13, 2026 (docket entry). The petitioner, a fire engineer with the Shreveport Fire Department, states that the district court noted her position that she had a qualifying condition under the Americans with Disabilities Act and that she was working light duty when terminated; she sued, asserting, among other things, disability discrimination under that Act, retaliation under Title VII, and denial of procedural due process. No. 26-383, Pet. 3–5. The district court entered summary judgment, holding, the petition states, that she was not qualified, and rejected the due process claim on its merits and as abandoned for failure to brief it; the court of appeals affirmed in a one-page per curiam opinion stating that it found "no reversible error." *Id.* at i, 5–8. The questions presented are:

> 1. Whether, under 42 U. S. C. § 12111(8), an employee who has returned to work and is actually performing assigned duties under an existing accommodation may be held unqualified as a matter of law based principally upon historical absenteeism and predictions concerning future attendance, without permitting a factfinder to consider evidence of the employee's actual work status, reasonable accommodation, and present ability to work.
>
> 2. Whether summary judgment conflicts with this Court's decisions in *Tolan v. Cotton, Reeves v. Sanderson Plumbing Products, Inc.*, and *Anderson v. Liberty Lobby, Inc.*, when a court resolves competing inferences concerning qualification, accommodation, attendance, and pretext against the nonmoving employee rather than allowing a jury to resolve genuine disputes of material fact.

Id. at i–ii. The petition also presents, as an additional constitutional question that it states is not its principal ground and may present a vehicle issue, whether a public employee's pretermination opportunity to respond is constitutionally meaningful under *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985), "when the record permits a reasonable inference that the disciplinary decision was effectively predetermined." No. 26-383, Pet. 18–19. It states that the court of appeals' opinion "contains no analysis" of the questions raised, including the due process argument. *Id.* at 20. An earlier petition by the same petitioner, No. 26-80, arising from a different judgment (Fifth Circuit No. 24-30777), was denied on October 5, 2026. No. 26-80 (docket entry).

4. *Amicus curiae briefs.* Under Rule 37.2, a brief of an amicus curiae in support of a petitioner may be filed within 30 days after the case is placed on the docket or a response is called for by the Court, whichever is later — here, because the Court has not called for a response, by November 6, 2026, the date of the Conference for which the petition has been distributed, so that a brief filed at the end of that period is filed on the day the petition is to be considered. As of October 28, 2026, petitioner has received one notice under Rule 37.2 of an intention to file a brief of an amicus curiae in support of petitioner. A notice is not a filing; whether a brief is filed is for the amicus curiae. Petitioner does not ask that the time under Rule 37.2 be extended.

5. *The supplemental brief and this motion.* The two later petitions were filed after petitioner's petition, on September 9 and September 17, 2026, and docketed before it, on September 17 and September 21, 2026. A supplemental brief under Rule 15.8, filed with this motion, calls them to the Court's attention as matter not available at the time of petitioner's last filing; this request for an order is made by motion because Rule 21, not Rule 15.8, governs it.

THE RELATIONSHIP AMONG THE PETITIONS, AND ITS LIMITS

Petitioner states the relationship as he understands it.

First, each petition is brought by a self-represented litigant who asserts a disability, in an action that included a claim under a federal disability statute, and in each case the court of appeals affirmed in an unpublished per curiam opinion: here, claims under the Americans with Disabilities Act and the Family and Medical Leave Act, ended by a dismissal with prejudice as a discovery sanction, Pet. 7–9; App. A; in No. 26-5596, claims under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act, with a claim under Title VI, ended by summary judgment, No. 26-5596, Pet. i, 3; in No. 26-383, a claim under the Americans with Disabilities Act, with claims for retaliation and denial of procedural due process, ended by summary judgment, No. 26-383, Pet. 5, 7–8.

Second, each petitioner contends that a court below entered or affirmed judgment without addressing a matter the petitioner had placed before it. Here, the district court dismissed the action while the renewed motion for accommodations remained undecided and later stated that it "did not explicitly rule" on that motion. Pet. 8–9; App. F, at 25a. In No. 26-5596, the second question presented asks whether summary judgment may be entered "without any determination whether the evidence in the summary judgment record would permit a reasonable jury to find in her favor," No. 26-5596, Pet. i, and the petition states that the court of appeals "did not address whether the accommodations in place were reasonable or adequate," *id.* at 3. In No. 26-383, the petition states that the court of appeals' opinion "contains no analysis of the ADA qualification issue, the accommodation evidence, the Rule 56 question, or the due-process argument." No. 26-383, Pet. 20.

Third, each petition invokes a rule governing what a court must determine before entering judgment: here, the Due Process Clause as construed in *Boddie v. Connecticut*, 401 U.S. 371 (1971), and *Mathews v. Eldridge*, 424 U.S. 319 (1976), Pet. 11–12; in No. 26-5596, Rule 56(a) and the Seventh Amendment, No. 26-5596, Pet. 1–2, 6; in No. 26-383, Rule 56 as construed in *Tolan v. Cotton*, *Reeves v. Sanderson Plumbing Products, Inc.*, and *Anderson v. Liberty Lobby, Inc.*, No. 26-383, Pet. i–ii.

The limits are these. The questions presented in Nos. 26-5596 and 26-383 arise under the Americans with Disabilities Act, Section 504, and Rule 56 at summary judgment; the question here arises under the Due Process Clause of the Fifth Amendment and concerns a dismissal under Rule 37(b)(2) entered while an accommodations motion remained undecided. In No. 26-5596, the court of appeals' opinion, ten pages long, states that the petitioner "failed to show that UTSMC did not provide reasonable, and timely, disability accommodations," No. 25-10942, slip op. at 9 (5th Cir. Apr. 29, 2026) (per curiam), and holds that the district court "did not err when it refused to examine Jackson's entire document production," *id.* at 10; the statement that the court "did not address" the adequacy of the accommodations is the petition's; and the petition states that a motion under Rules 60(b)(3) and 60(d)(3) remains pending in the district court, see Facts ¶ 2. In No. 26-383, the due process claim concerns a municipal employer's pretermination process under the Fourteenth Amendment; the district court entered summary judgment on that claim and also deemed it abandoned, No. 26-383, Pet. 7, 19; and an earlier petition by the same petitioner from a different judgment was denied on October 5, 2026, see Facts ¶ 3. Here, the district court has stated that the affirmance "implicitly rejected" petitioner's arguments concerning dismissal while the accommodations motion was pending, and the renewed motion was terminated as moot by the order of dismissal, see Facts ¶ 1. The three

cases arise from different judgments, from two circuits, against different respondents, and no petition has been granted. Petitioner does not contend that either later petition presents the question presented here, or that a decision in either would control the disposition of this petition. He submits that the Court can evaluate each petition with the other two in view if it considers them at the same Conference. Whether the petitions are related in a sense that warrants deferral is for the Court to decide; this motion asks only that the Court decide it with the three petitions before it.

GROUNDS FOR THE RELIEF REQUESTED

1. *The Rules.* Rule 15.7 defers distribution of a petition until a cross-petition is due for distribution. A cross-petition arises from the same judgment, and these petitions do not. Rule 15.6 provides that distribution and consideration of a petition "will not be deferred pending" receipt of a reply brief. No Rule addresses the request made here, which is for an order under Rule 21. After considering the documents distributed under Rule 15, "the Court will enter an appropriate order." Rule 16.1.

2. *The time involved.* Both later petitions have been distributed for the Conference of November 13, 2026: No. 26-383 on October 28, 2026, after respondent's waiver of the right to respond was filed on October 10, 2026, and No. 26-5596 on October 29, 2026, after the response due date of October 19, 2026 passed with no brief in opposition or waiver on the docket (docket entries). The Court's Case Distribution Schedule for October Term 2026 lists October 28 and 29, 2026 as the first paid and in forma pauperis lists for the Conference of November 13, 2026, and November 9, 2026 as the further list for that Conference, which the Clerk's Memorandum Concerning the Deadlines for Cert Stage Pleadings and the Scheduling of Cases for Conference (March 2026) describes as including cases "that were scheduled for a previous conference but

not decided," Memorandum § 4 n.1. The deferral requested is one week, from the Conference of November 6, 2026 to the Conference of November 13, 2026.

3. *Prejudice and the time for a response.* Respondent waived its right to file a brief in opposition. No proceeding remains pending below. Pet. 10. A deferral of one week requires nothing of respondent. Any response to this motion is due within 10 days of receipt, and "[i]n an appropriate case, the Court may act on a motion without waiting for a response." Rule 21.4.

4. *The Rule 37.2 period.* A brief of an amicus curiae filed at the end of the period stated in Facts ¶ 4 would be filed on November 6, 2026, the day the petition is to be considered. A deferral of one week would allow any such brief to be distributed before the petition is considered. Petitioner does not ask that the time under Rule 37.2 be extended.

CONCLUSION

Petitioner respectfully requests that the Court defer consideration of the petition for a writ of certiorari in this case to the Conference of November 13, 2026, for which Nos. 26-5596 and 26-383 are distributed, and consider the three petitions at that Conference.

Respectfully submitted,

Ryan J. Hauber
Pro Se Petitioner
8126 Airedale Lane
Galena, IL 61036
ryanjhauber@icloud.com
Tel: 815-281-0401
October 29, 2026