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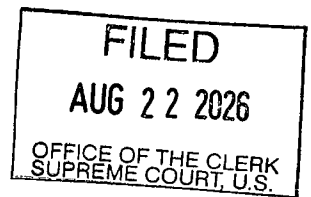
ORIGINAL

SUPREME COURT OF THE UNITED STATES

KEVIN KIRK,
Petitioner,

v.

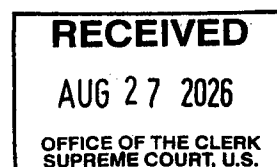
NATIONAL INSTITUTE FOR PEOPLE WITH DISABILITIES OF NEW JERSEY,
Respondent.



**ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF NEW
JERSEY, APPELLATE DIVISION**

PETITION FOR A WRIT OF CERTIORARI

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Kevin Kirk, proceeding pro se, respectfully petitions for a writ of certiorari to review the judgment of the Superior Court of New Jersey, Appellate Division.

QUESTION PRESENTED

The Fourteenth Amendment guarantees a litigant a meaningful opportunity to be heard before the State finally deprives him of a protected legal claim.

Petitioner, proceeding without counsel, attempted to oppose summary judgment by submitting written responses and witness statements contradicting Respondent's factual presentation. The trial court refused to consider Petitioner's witness statements because they were not submitted in affidavit or certification form, deemed Respondent's extensive statement of material facts admitted because Petitioner's opposition did not conform to the prescribed paragraph-by-paragraph format, and dismissed Petitioner's claims with prejudice. At the same time, the court considered Respondent's employment-investigation materials containing out-of-court employee statements.

Whether the Fourteenth Amendment's guarantee of due process is satisfied when a state court terminates a pro se litigant's civil claims with prejudice by treating the opposing party's factual assertions as admitted because of the litigant's failure to comply with the technical form of a summary-judgment rule, while declining to consider evidence the litigant actually submitted to dispute those assertions, thereby denying the litigant a meaningful opportunity to have genuinely disputed facts heard.

PARTIES TO THE PROCEEDING

Petitioner Kevin Kirk was the plaintiff in the Superior Court of New Jersey, Law Division, and the plaintiff-appellant in the Superior Court of New Jersey, Appellate Division.

Respondent National Institute for People with Disabilities of New Jersey was the defendant in the Law Division and defendant-respondent in the Appellate Division. No other parties were parties to the proceeding below.

RELATED PROCEEDINGS

Kirk v. National Institute for People with Disabilities of New Jersey, Superior Court of New Jersey, Law Division, Bergen County, Docket No. BER-L-6279-22. Summary judgment entered in favor of Respondent.

Kirk v. National Institute for People with Disabilities of New Jersey, Superior Court of New Jersey, Appellate Division, Docket No. A-3732-23. Judgment affirming dismissal entered September 24, 2025.

Kirk v. National Institute for People with Disabilities of New Jersey, Supreme Court of New Jersey, Docket No. 091382. Petition for certification denied April 6, 2026.

Kirk v. National Institute for People with Disabilities of New Jersey, Supreme Court of the United States, Application No. 26A17. On July 9, 2026, Justice Alito extended the time to file a petition for a writ of certiorari through August 24, 2026.

OPINIONS AND ORDERS BELOW

The unpublished opinion of the Superior Court of New Jersey, Appellate Division, affirming summary judgment is reproduced at Appendix A.

The order of the Supreme Court of New Jersey denying certification is reproduced at Appendix B.

The order of the Superior Court of New Jersey, Law Division, granting summary judgment and dismissing Petitioner's complaint is reproduced at Appendix C.

Relevant portions of the transcript containing the Law Division's oral decision are reproduced at Appendix D.

The pertinent constitutional provision is reproduced at Appendix E.

JURISDICTION

The Superior Court of New Jersey, Appellate Division, entered judgment on September 24, 2025. Petitioner timely sought discretionary review in the Supreme Court of New Jersey. That court denied certification on April 6, 2026.

Petitioner thereafter timely sought an extension of time from this Court. On July 9, 2026, Justice Alito granted Petitioner's application in part and extended the time to file this petition through August 24, 2026.

This Court has jurisdiction under 28 U.S.C. § 1257(a) because the judgment below is final and Petitioner timely presented to the Supreme Court of New Jersey a claim arising under the Due Process Clause of the Fourteenth Amendment.

In his petition for certification to the Supreme Court of New Jersey, Petitioner expressly contended that the exclusion of his evidence and differential treatment of the parties' submissions deprived him of his Fourteenth Amendment right to due process, including his opportunity to be heard and to receive a fair proceeding. Petitioner again asserted that the procedures employed had denied him a meaningful hearing and violated his constitutional right to due process.

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the United States Constitution provides, in relevant part:

No State shall ... deprive any person of life, liberty, or property, without due process of law.

STATEMENT OF THE CASE

A. Employment and commencement of the action

Petitioner was employed by Respondent National Institute for People with Disabilities of New Jersey and ultimately served as an assistant manager. Respondent operates residential facilities serving individuals with disabilities.

During the COVID-19 pandemic, Respondent maintained a workplace masking policy. Respondent terminated Petitioner's employment in January 2021 after an internal investigation concerning allegations that Petitioner repeatedly violated that policy.

Petitioner disputed those allegations and maintained that the investigation and termination were discriminatory and that Respondent's evidence contained significant factual inconsistencies.

On November 22, 2022, Petitioner commenced an action in the Superior Court of New Jersey, Law Division, Bergen County. His complaint asserted claims including race and sex discrimination under the New Jersey Law Against Discrimination and intentional infliction of emotional distress. Petitioner initially had counsel but thereafter proceeded pro se.

B. Respondent's motion for summary judgment

Following an extended discovery period, Respondent moved for summary judgment. Respondent filed a lengthy statement of material facts supported by certifications and numerous exhibits. Its submissions included statements obtained from employees during Respondent's internal investigation.

Petitioner attempted to oppose the motion himself. Petitioner's opposition did not take the formal structure required by New Jersey Court Rule 4:46-2. Instead, Petitioner submitted letters and materials attempting to dispute Respondent's factual presentation and to identify what he believed were contradictions in Respondent's evidence.

Petitioner also relied upon written statements from witnesses, including statements he contended corroborated his allegations of disparate and discriminatory treatment. The trial court determined that Petitioner's opposition did not conform to Rule 4:46-2.

On July 3, 2024, the court issued a deficiency notice advising Petitioner that his submission was deficient and allowing him additional time to file conforming opposition. Petitioner submitted an additional response, but it again did not contain the paragraph-by-paragraph statement admitting or disputing each of Respondent's proposed material facts required by the rule. Petitioner also did not submit his witness statements as sworn affidavits or certifications satisfying New Jersey Rule 1:6-6.

C. The summary-judgment hearing

At oral argument, Petitioner attempted to explain that he disputed Respondent's factual allegations and that his witness evidence supported his claims. The trial court informed him that the witness letters were not competent summary-judgment evidence because they were not sworn or certified under penalty of perjury.

Petitioner explained that the witnesses themselves could appear and testify and attempted to persuade the court that their evidence demonstrated factual disputes suitable for trial. The court nevertheless refused to treat the letters as competent opposition evidence.

The court further informed Petitioner that, although he was entitled to represent himself, pro se litigants were required to comply with the same procedural rules governing represented parties. Respondent's evidentiary presentation, meanwhile, included the results of its internal investigation and statements attributed to employees.

D. The trial court deemed Respondent's facts admitted and dismissed the action

In ruling on the motion, the trial court emphasized Petitioner's failure to file a Rule 4:46-2 responding statement. The court concluded that because Respondent's statement of material facts contained record citations and Petitioner had failed to submit a conforming response, Respondent's facts would be deemed admitted.

The court then reasoned that there were no genuine issues of material fact and granted Respondent judgment as a matter of law. Petitioner's complaint was dismissed with prejudice, eliminating the scheduled trial and preventing Petitioner's witnesses from ever being heard by a factfinder.

E. Appellate proceedings

Petitioner appealed pro se. Among other things, he contended that the summary-judgment ruling rested on material misrepresentations, improperly disregarded admissible evidence, and inconsistently treated witness statements. Petitioner also attempted to identify specific contradictions within Respondent's own submissions.

The Appellate Division affirmed. It concluded that Petitioner's witness letters were properly rejected because they were unsworn and did not satisfy the applicable procedural requirements. It further concluded that statements in Respondent's internal investigation were not improperly considered because those statements were relevant to the information upon which the employer acted, rather than necessarily being offered for the truth of every matter asserted.

The Appellate Division also relied upon Petitioner's failure to provide a conforming response to Respondent's statement of material facts.

F. The federal question was presented to the Supreme Court of New Jersey

Petitioner timely sought certification from the Supreme Court of New Jersey. His petition specifically invoked the Fourteenth Amendment. Petitioner contended that Respondent was permitted to rely upon unsworn statements while his own evidence was excluded and asserted that this violated his right to due process because he lacked an opportunity to be heard and was denied a fair and impartial hearing.

His reasons for certification again stated that the exclusion and rejection of his arguments implicated his constitutional rights to due process. His conclusion maintained that when courts rely upon allegedly fabricated or sham facts to terminate a case, the litigant has been denied a

meaningful hearing, and he expressly requested reversal based in part upon the violation of his right to due process.

The Supreme Court of New Jersey denied certification. This petition followed.

REASONS FOR GRANTING THE PETITION

I. The case presents a federal question concerning the minimum process required before a State may terminate a litigant's civil claims through procedural default at summary judgment.

The Fourteenth Amendment requires that a person affected by judicial action receive notice and a meaningful opportunity to be heard. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). The opportunity to be heard must occur "at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).

This case does not present the broad proposition that pro se litigants are exempt from procedural rules. They are not. Nor does Petitioner contend that a State may not impose reasonable requirements governing summary-judgment submissions.

The narrower constitutional question is whether those requirements may operate so mechanically that a court terminates a litigant's claims with prejudice even though the court knows that the litigant actually disputes the movant's factual assertions and has attempted to place contrary evidence before it.

Petitioner attempted to dispute Respondent's factual account. He submitted written opposition, identified witness evidence, attempted to point to contradictions within Respondent's own submissions, and at oral argument explained that witnesses were available to testify. Nevertheless, because Petitioner's opposition did not assume the required technical form, Respondent's extensive factual statement was treated as admitted.

Once those facts were deemed admitted and Petitioner's witness statements were excluded from consideration, the conclusion that no genuine factual dispute existed was largely predetermined. The result was dismissal with prejudice without trial.

II. The decision below is in tension with this Court's requirement that procedural due process provide a real, rather than merely formal, opportunity to be heard.

Due process is not satisfied merely because a litigant is physically permitted to appear before a judge. The opportunity must be meaningful. See *Armstrong*, 380 U.S. at 552. This Court has likewise recognized that when a State establishes procedures governing the adjudication of protected legal interests, the State may not arbitrarily extinguish those interests through procedures that deny the affected person a meaningful chance to present his position. See *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 429-37 (1982).

Here, Petitioner was permitted to speak, but the evidence through which he sought to demonstrate factual disputes was not treated as competent because he had failed to place it in the required procedural form. That distinction is especially significant because the consequence was not a

modest evidentiary ruling at trial. It was elimination of the trial itself.

Respondent's statement of material facts became admitted not because Petitioner agreed with the facts, but because he did not dispute them in the precise form required by Rule 4:46-2. The court knew the difference. At the hearing, Petitioner made clear that he disagreed with Respondent's factual allegations and attempted to rely upon witnesses and documents.

III. The differential treatment of the parties' evidence intensified the due-process consequences of the procedural default.

Petitioner's concern was not simply that one evidentiary ruling went against him. The rulings operated together. Petitioner attempted to use witness statements to contradict Respondent's evidence. Those statements were excluded from the summary-judgment record because they were not sworn or certified.

Respondent, however, relied upon an internal investigation containing statements from employees concerning Petitioner's alleged conduct. The courts below reasoned that Respondent's materials could properly be considered to demonstrate the information upon which Respondent based its employment decision.

Standing alone, differing evidentiary treatment does not establish a constitutional violation. Different evidence may properly be subject to different evidentiary rules. The constitutional concern instead arises from the cumulative operation of the procedures: Petitioner's evidence was excluded because of its form; Petitioner's written factual responses were rejected because of their form; Respondent's factual assertions were then deemed admitted; and the supposed absence of disputed material facts was then used to extinguish Petitioner's claims without trial.

IV. The case presents an important question concerning the intersection between summary judgment and procedural due process.

Summary judgment performs an important function by eliminating claims for which no genuine issue of material fact exists. But the fundamental premise of summary judgment is that the court determines whether a genuine factual issue exists - not which side's disputed account is ultimately true. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986).

Petitioner does not invoke *Anderson* on the theory that Federal Rule of Civil Procedure 56 governs New Jersey courts. It does not. Rather, *Anderson* illustrates the basic distinction between determining whether a factual controversy exists and resolving that controversy on its merits.

The issue has significance beyond this case. State courts routinely confront dispositive motions involving unrepresented civil litigants. Rules requiring orderly presentation of facts are legitimate and important, but those rules can become constitutionally consequential when their operation determines whether a litigant receives any merits adjudication at all.

V. The federal question was expressly preserved in the State's highest court.

There is no uncertainty concerning whether Petitioner attempted to present the constitutional issue to the Supreme Court of New Jersey. His petition for certification specifically invoked the

Fourteenth Amendment and asserted that excluding his evidence while allowing Respondent's evidence deprived him of his right to due process, including his opportunity to be heard. He further argued that the failure to consider the evidence he identified denied him a meaningful hearing, and he expressly requested reversal on the ground that the proceedings violated his constitutional right to due process.

VI. This petition does not merely ask the Court to correct an error of state law.

Petitioner recognizes that certiorari is not ordinarily granted simply because a state court may have misapplied its own evidentiary or procedural rules. The petition does not ask this Court to decide whether the New Jersey courts correctly interpreted N.J.R.E. 803, Rule 1:6-6, Rule 1:1-2, or Rule 4:46. Those rules provide the background.

The question for this Court is instead whether, whatever the correct interpretation of those state rules, their combined application in this case afforded Petitioner the meaningful opportunity to be heard required by the Fourteenth Amendment before his causes of action were extinguished with prejudice.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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Dated: August ~~22~~ 2026



Kevin Kirk