

26-5611

No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

KEVIN M. CARDWELL,

Petitioner,

v.

OFFICE OF THE ATTORNEY GENERAL, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF INDIANA

PETITION FOR A WRIT OF CERTIORARI

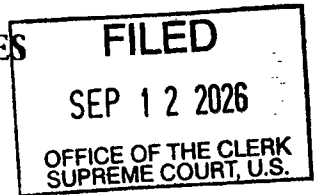
Kevin M. Cardwell

Petitioner, Pro Se

5770 North Alton Avenue

Indianapolis, Indiana 46228

Telephone: _____



QUESTIONS PRESENTED

1. Whether a state procedural dismissal is an adequate ground to foreclose review of a preserved federal due-process claim when the state appellate court dismissed a civil appeal with prejudice after the petitioner had mailed corrected briefing and a motion for leave to file belatedly before dismissal, the papers were delayed in the United States mail, and the state courts made no finding of bad faith, abandonment, or prejudice to the opposing parties.
2. Whether the Fourteenth Amendment permits a State, after expressly allowing an indigent pro se litigant's appeal to continue on specified Rule 60(B) issues, to terminate that appeal with prejudice for curable filing defects without considering a correction already in transit before dismissal, where the litigant continuously sought to comply and preserve merits review.

PARTIES TO THE PROCEEDING

Petitioner Kevin M. Cardwell was the appellant in the Court of Appeals of Indiana and the petitioner seeking transfer in the Supreme Court of Indiana.

Respondents are the parties who appeared as appellees or defendants in the proceedings below:

Office of the Attorney General; Todd Rokita; Melissa Gustafson; Paul D. Bojrab; Carol B. Sheridan; Keith Michaels; Rafael McLaughlin; Edna M. Koch; Joseph McPike; Erin E. Meyers; and John Doe.

CORPORATE DISCLOSURE STATEMENT

Petitioner is an individual. No nongovernmental corporate party is identified in the state-court caption or the materials relied upon for this petition; therefore no corporate disclosure is required from Petitioner under Supreme Court Rule 29.6.

DIRECTLY RELATED PROCEEDINGS

Howard Superior Court 4. Kevin M. Cardwell v. Todd Rokita, et al., Cause No.

34Do4-2504-CT-001363. Relevant orders entered January 6, 2026 and February 26, 2026.

Court of Appeals of Indiana. Kevin M. Cardwell v. Office of the Attorney General, et al., Cause No.

26A-CT-274. Order allowing the January 6 appeal to continue entered May 1, 2026; dismissal with prejudice entered May 19, 2026; rehearing-related orders entered June 5 and June 19, 2026.

Supreme Court of Indiana. Kevin M. Cardwell v. Office of the Indiana Attorney General, et al.,

Court of Appeals Case No. 26A-CT-00274. Petition to Transfer denied September 10, 2026.

TABLE OF CONTENTS

Questions Presented	i
Parties to the Proceeding and Corporate Disclosure	ii
Directly Related Proceedings	iii
Table of Contents	iv-v
Table of Authorities	vi-vii
Opinions and Orders Below	I
Jurisdiction	I
Constitutional Provision Involved	2
Preservation of the Federal Question	2
Statement of the Case	3

TABLE OF CONTENTS - Continued

Reasons for Granting the Writ	7
I. Adequacy of the State Procedural Ground Is a Federal Question	7
II. The Particular Application Warrants Review	9
III. The Due-Process Question Warrants Review Under Logan	11
IV. The Case Is a Suitable Vehicle	13
Conclusion	14

INDEX TO APPENDIX

Appendix A - Court of Appeals dismissal, May 19, 2026	App. 1-2
Appendix B - Court of Appeals rehearing-related order, June 5, 2026	App. 3
Appendix C - Court of Appeals order denying second rehearing, June 19, 2026	App. 4
Appendix D - Indiana Supreme Court denial of transfer, Sept. 10, 2026	App. 5
Appendix E - Court of Appeals order granting dismissal in part and allowing January 6 appeal to continue, May 1, 2026	App. 6-7
Appendix F - Trial court order denying motion to correct error and granting indigent appeal status, Feb. 26, 2026	App. 8
Appendix G - Trial court Rule 60(B) order, Jan. 6, 2026	App. 9
Appendix H - Petition to Transfer excerpts preserving federal issue	App. 10-12

TABLE OF AUTHORITIES

Cases

Beard v. Kindler, 558 U.S. 53 (2009)	8
Boddie v. Connecticut, 401 U.S. 371 (1971)	2, 12
Bounds v. Smith, 430 U.S. 817 (1977)	2, 12
Cruz v. Arizona, 598 U.S. 17 (2023)	8, 10
Foster v. First Merchants Bank, N.A., 242 N.E.3d 794 (Ind. 2024)	9
In re Adoption of O.R., 16 N.E.3d 965 (Ind. 2014)	9
James v. Kentucky, 466 U.S. 341 (1984)	8
Lee v. Kemna, 534 U.S. 362 (2002)	7-10
Lewis v. Casey, 518 U.S. 343 (1996)	2, 12
Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982)	2, 11-12

TABLE OF AUTHORITIES – Continued

Marlett v. State, 878 N.E.2d 860 (Ind. Ct. App. 2007)	10
Mayberry v. American Acceptance Co., LLC, 242 N.E.3d 799 (Ind. 2024)	
.....	9
NAACP v. Alabama ex rel. Patterson, 357 U.S. 449 (1958)	8
Tennessee v. Lane, 541 U.S. 509 (2004)	2, 12

Constitutional and Statutory Provisions

U.S. Const. amend. XIV	2, 11-12
28 U.S.C. § 1257(a)	1
28 U.S.C. § 2101(c)	1

Rules

Sup. Ct. R. 10	7, 13
Sup. Ct. R. 13	1
Sup. Ct. R. 14	2, 13
Ind. Appellate Rule 23	10
Ind. Appellate Rule 45(D)	4, 13
Ind. Trial Rule 60(B)	3, 13

PETITION FOR A WRIT OF CERTIORARI

OPINIONS AND ORDERS BELOW

The Court of Appeals of Indiana's May 19, 2026 order dismissing Petitioner's remaining appeal with prejudice under Indiana Appellate Rule 45(D) is unpublished and appears at App. 1-2. The Court of Appeals' June 5 and June 19, 2026 rehearing-related orders are unpublished and appear at App. 3 and App. 4. The Supreme Court of Indiana's September 10, 2026 order denying transfer is unpublished and appears at App. 5. Other relevant orders appear at App. 6-9.

JURISDICTION

The Court of Appeals entered the judgment sought to be reviewed on May 19, 2026. App. 1-2. The Court of Appeals denied rehearing-related relief on June 5 and June 19, 2026. App. 3-4. The Supreme Court of Indiana denied discretionary transfer on September 10, 2026. App. 5. This Court has jurisdiction under 28 U.S.C. § 1257(a). Under 28 U.S.C. § 2101(c) and Supreme Court Rule 13, the 90-day period runs from the September 10 denial of discretionary review; the ordinary filing deadline is December 9, 2026.

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment provides in relevant part: “No State shall ... deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

PRESERVATION OF THE FEDERAL QUESTION

Petitioner expressly presented the federal access-to-courts and due-process issue to the Supreme Court of Indiana. His Petition to Transfer argued that dismissal based on curable technical defects and mailing/processing delay denied meaningful appellate review; expressly invoked the Fourteenth Amendment; and cited *Logan v. Zimmerman Brush Co.*, *Boddie v. Connecticut*, *Tennessee v. Lane*, *Bounds v. Smith*, and *Lewis v. Casey*. Pet. to Transfer 12-14; App. 10-12. The transfer petition also asked the Indiana Supreme Court to vacate the May 19 dismissal and reinstate the appeal. App. 12.

STATEMENT OF THE CASE

A. The trial court denied the Rule 60(B) motions, but granted indigent appeal status.

This case arises from Howard Superior Court 4, Cause No. 34Do4-2504-CT-001363. On January 6, 2026, the trial court denied Petitioner's Motion to Show Damages and both Motions for Relief from Order Dismissing Claims. App. 9. On February 26, 2026, the court denied Petitioner's motion to correct errors but granted his motion to proceed with a civil appeal as an indigent litigant. App. 8.

On May 1, 2026, the Court of Appeals granted several appellees' motions to dismiss in part. It dismissed appellate challenges to earlier October and November 2025 orders because the Notice of Appeal was untimely as to those orders. But the court separately held that the January 6, 2026 order denying Petitioner's Rule 60(B) motions was a final judgment, that Petitioner timely appealed that order, and that the appeal from that order could continue. App. 6-7.

The Court of Appeals ordered Petitioner to file within ten days a brief and appendix fully complying with the Indiana Rules of Appellate Procedure and limited to the January 6 order. App. 7.

B. The Court of Appeals found the May 4 tender defective; Petitioner mailed a later correction before dismissal.

The May 19 dismissal order states that on May 4, 2026 Petitioner tendered a defective Appellant's Brief and Appendix that did not fully comply with the rules and did not confine itself to the January 6 order. The court also noted motions seeking to confirm jurisdiction and obtain leave to file a corrected appendix and amended brief. App. 1.

Petitioner then prepared corrected materials and a Motion for Leave to File Corrected Appellant's Brief and Corrected Appendices Belatedly. On May 15, 2026 - after the original May 11 compliance date, but before dismissal - Petitioner placed that corrective package in the United States mail addressed to the Indiana appellate clerk.

The package was associated with USPS tracking number 42042042728940013010935536022337; the Click-N-Ship label reflected tracking number 9004130109355366022337. USPS reflected an expected delivery date of May 18, 2026. When the package did not arrive as expected, Petitioner opened USPS Service Request 88220872. Pet. to Transfer 4-5, 8. Petitioner relies on these records only to document his correction effort and external delivery delay, not to allege intentional postal interference.

D. Petitioner presented the federal access-to-courts issue; transfer was denied.

Petitioner sought transfer to the Supreme Court of Indiana. The transfer petition argued that dismissal for curable defects and mailing/processing delay denied meaningful appellate review; that the opposing parties suffered no prejudice from acceptance of corrected filings; and that the appeal had already been limited to two Rule 60(B) issues that were never reviewed on their merits.

The petition expressly relied on the Fourteenth Amendment and federal access-to-courts cases. It identified five claimed constitutional harms: loss of meaningful appellate review; loss of the opportunity to be heard; a disproportionate sanction for curable defects; punishment for delay outside Petitioner's control; and denial of open-courts principles. App. 10-12.

On September 10, 2026, the Supreme Court of Indiana denied transfer and denied all pending motions as moot. The order states that the court had reviewed the Court of Appeals decision, the appellate record and briefs, and the materials filed in connection with transfer. App. 5.

REASONS FOR GRANTING THE WRIT

This petition does not ask the Court to decide whether Indiana's default, service, or Rule 60(B) law was correctly applied. It asks whether the procedural dismissal that prevented appellate review is an adequate state ground and whether its application comported with due process where a correction accompanied by a request for belated leave had been mailed before dismissal and the record documented external delivery delay.

Supreme Court Rule 10(c) recognizes review where a state court decides an important federal question in a way that conflicts with relevant decisions of this Court. The adequacy of a state procedural ground is itself a federal question.

I. ADEQUACY OF THE STATE PROCEDURAL GROUND IS A FEDERAL QUESTION.

A state procedural ground ordinarily bars review when it is independent of federal law and adequate to support the judgment. But adequacy is not established merely by labeling a ruling procedural. In *Lee v. Kemna*, 534 U.S. 362, 376 (2002), this Court explained that even a generally legitimate state rule may be inadequate in an exceptional case when its application is exorbitant in relation to the State's legitimate procedural interests.

I. ADEQUACY OF THE STATE PROCEDURAL GROUND IS A FEDERAL QUESTION -

Continued

James v. Kentucky, 466 U.S. 341, 348-351 (1984), requires a procedural bar to be firmly established and regularly followed before it forecloses federal review. NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 457-458 (1958), likewise declined to permit an unexpected procedural requirement to prevent consideration of a federal claim.

Beard v. Kindler, 558 U.S. 53, 60-61 (2009), makes clear that discretion in a state procedural rule does not itself make the rule inadequate. But Beard also confirms that adequacy remains a federal question. And Cruz v. Arizona, 598 U.S. 17, 25-32 (2023), demonstrates that a procedural interpretation that is sufficiently novel or unsupported can fail the adequacy requirement.

Those cases supply the proper framework here. The question is not whether Indiana may demand compliant briefing. It plainly may. The question is whether dismissal with prejudice was an adequate bar under the specific circumstances shown by the state record and the correction effort documented before dismissal.

II. THE PARTICULAR APPLICATION WARRANTS REVIEW.

Several circumstances support review. First, Petitioner did not abandon the appeal. The May 1 order expressly held that his appeal from the January 6 Rule 60(B) judgment was timely and could continue. App. 6-7. Although the Court of Appeals found the May 4 tender defective and Petitioner missed the May 11 compliance date, he prepared a corrected filing and a motion seeking leave to file it belatedly, and mailed that package before the May 19 dismissal.

Second, the correction effort was independently documented. The package bore tracking information 42042042728940013010935536022337 and 9004130109355366022337; USPS initially projected delivery before the dismissal; and Service Request 88220872 was opened after the delay. The package was ultimately received on May 26.

Third, Indiana law itself recognizes discretion to avoid disproportionate dismissal where a litigant continues prosecution and the violation is not egregious, in bad faith, or prejudicial. See *Mayberry v. American Acceptance Co., LLC*, 242 N.E.3d 799 (Ind. 2024); *Foster v. First Merchants Bank, N.A.*, 242 N.E.3d 794 (Ind. 2024); *In re Adoption of O.R.*, 16 N.E.3d 965 (Ind. 2014). Those state decisions do not themselves create a federal right, but they bear on whether the application here was ordinary and predictable.

II. THE PARTICULAR APPLICATION WARRANT'S REVIEW - Continued

Fourth, Indiana Appellate Rule 23 treats documented mailing as legally significant in appellate filing. See *Marlett v. State*, 878 N.E.2d 860, 864 (Ind. Ct. App. 2007). Petitioner does not contend that every postal delay excuses every missed deadline. His narrower contention is that the State employed the most severe sanction - dismissal with prejudice - before the appellate court had the correction and belated-leave request that Petitioner had already mailed.

Fifth, the June 5 and June 19 orders show that Petitioner continued to seek correction and rehearing after the package arrived. App. 3-4. His later June 18 tracking record, 9400 1301 0935 5376 6654 18, likewise corroborated continued prosecution. These facts distinguish abandonment from persistent, though imperfect, efforts to secure merits review.

Under *Lee* and *Cruz*, the Court should decide whether this application of Indiana's procedural rules was adequate to foreclose consideration of the preserved federal claim.

III. THE DUE-PROCESS QUESTION WARRANTS REVIEW UNDER LOGAN.

Petitioner does not argue that the Constitution requires a State to create a civil appeal in every case or to excuse all pro se filing errors. His claim is narrower. Indiana created an appellate process, the Court of Appeals expressly held his January 6 appeal timely and allowed that appeal to continue, and the trial court had granted him indigent status for the civil appeal. App. 6-9. Once that process was made available, Petitioner contends that it could not be extinguished through an arbitrary application of procedural rules without a meaningful opportunity to have the correction and belated-leave request considered.

In *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428-437 (1982), the Court held that a State may not destroy a protected claim through the operation of its own procedural machinery where the claimant timely invoked the process and the loss resulted from the procedure rather than adjudication of the claim. *Logan* arose in a different setting, but its due-process principle was expressly invoked in Petitioner's transfer petition. App. 10-12.

Here, the asserted injury is the loss of appellate review itself. The Rule 60(B) issues were not rejected on their appellate merits; the appeal ended through procedural dismissal while a corrected package and request for belated leave were in transit.

III. THE DUE-PROCESS QUESTION WARRANTS REVIEW UNDER LOGAN - Continued

The transfer petition also cited *Boddie v. Connecticut*, 401 U.S. 371 (1971), *Tennessee v. Lane*, 541 U.S. 509 (2004), *Bounds v. Smith*, 430 U.S. 817 (1977), and *Lewis v. Casey*, 518 U.S. 343 (1996), to frame the access-to-courts injury. App. 10-12. Those cases arise in different contexts and Petitioner does not suggest that they create a general right to forgiveness of state filing rules. They demonstrate, however, that meaningful access and actual loss of a legal claim are constitutionally significant considerations.

The February 26 order is also relevant context. The trial court expressly granted Petitioner leave to proceed with the civil appeal as an indigent litigant. App. 8. The federal claim is therefore not that indigency excused compliance, but that the State's chosen appellate mechanism should not have become merely nominal when a self-represented indigent appellant continuously attempted correction and the appeal was terminated before the correction could be considered.

The Indiana Supreme Court denied transfer without addressing that federal question in a written merits opinion. App. 5. Review is warranted to clarify the due-process boundary between legitimate procedural enforcement and arbitrary extinguishment of a state-created avenue of review.

IV. THE CASE IS A SUITABLE VEHICLE.

The Court need not decide the underlying state-law default questions to resolve the issues presented. Whether Dr. Bojrab's response was untimely, whether service defenses were waived, and whether Koch, McPike, and Meyers were properly subject to default are matters for the Indiana courts if appellate review is restored.

The federal procedural question rests principally on documentary facts: the January 6 judgment; the February 26 indigent-appeal order; the May 1 order allowing the January 6 appeal to continue; the May 19 dismissal; the June 5 and June 19 rehearing orders; the September 10 transfer denial; and the mailing history preserved in the transfer papers. Those documents are reproduced in the appendix.

Supreme Court Rule 10 makes clear that certiorari is discretionary and is not granted simply to correct an asserted error. Petitioner's request is therefore limited to the recurring federal issue recognized in *Lee, Beard, Cruz, James, and Logan*: what federal limits apply when a state procedural ground terminates review in an exceptional factual setting involving documented corrective action, a request for belated leave, and external transmission delay.

CONCLUSION

The petition for a writ of certiorari should be granted. Alternatively, the Court should vacate the judgment sustaining the procedural dismissal and remand for further consideration consistent with the federal principles governing adequate state procedural grounds and due process.

Respectfully submitted,

/s/ Kevin M. Cardwell

Kevin M. Cardwell

Petitioner, Pro Se

5770 North Alton Avenue

Indianapolis, Indiana 46228

Telephone: _____

Dated: September 11, 2026