

No. 26-5611
IN THE
SUPREME COURT OF THE UNITED STATES

KEVIN M. CARDWELL,

Petitioner,

v.

OFFICE OF THE INDIANA ATTORNEY GENERAL, et al.,

Respondents.

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

**REPLY OF PETITIONER TO THE BRIEF IN OPPOSITION
OF RESPONDENT PAUL DAVID BOJRAB, M.D.**

Kevin M. Cardwell

Petitioner, Pro Se

5770 North Alton Avenue

Indianapolis, Indiana 46228

Telephone: _____

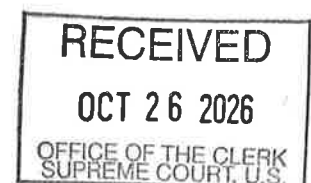


TABLE OF CONTENTS

REPLY OF PETITIONER	1
I. THE OPPOSITION REFRAMES, RATHER THAN ANSWERS, THE FEDERAL QUESTION.	1
II. THE USPS RECORD IS RELEVANT BECAUSE RESPONDENT NOW CHARACTERIZES PETITIONER'S CONDUCT AS WILLFUL.	2
III. RESPONDENT'S OWN APPENDIX UNDERCUTS PART OF ITS PROCEDURAL NARRATIVE.	3
IV. BEARD DOES NOT RESOLVE THE ADEQUACY QUESTION AGAINST PETITIONER.	3
V. RESPONDENT'S DISTINCTIONS OF LOGAN AND MAYBERRY DO NOT ELIMINATE THE QUESTION PRESENTED.	4
VI. THE SEPARATE CASES LISTED BY RESPONDENT WERE NOT REQUIRED AS "DIRECTLY RELATED" CASES.	4
CONCLUSION	4

TABLE OF AUTHORITIES

Cases

Beard v. Kindler, 558 U.S. 53 (2009)	3
Cruz v. Arizona, 598 U.S. 17 (2023)	1, 3
Lee v. Kemna, 534 U.S. 362 (2002)	1, 3
Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982)	4
Mayberry v. American Acceptance Co., 242 N.E.3d 1053 (Ind. 2024)	4

Rules

Indiana Appellate Rule 45(D)	1
Supreme Court Rule 14.1(b)(iii)	4

REPLY OF PETITIONER

Respondent's opposition does not answer the question actually presented. Petitioner does not contend that Indiana lacks authority to require timely, rule-compliant briefing, or that every late filing must be accepted. The petition asks the narrower federal question whether, in the particular circumstances shown by this record, dismissal with prejudice supplied an adequate state ground and comported with due process after the Court of Appeals had expressly held the January 6, 2026 Rule 60(B) appeal timely and allowed it to continue. Pet. App. 6-7.

I. THE OPPOSITION REFRAMES, RATHER THAN ANSWERS, THE FEDERAL QUESTION.

Respondent restates the issue as whether state appellate courts may dismiss appeals after giving litigants multiple opportunities to correct procedural errors. Opp. i. That proposition is not disputed. The petition instead invokes the adequate-state-ground doctrine recognized in *Lee v. Kemna*, 534 U.S. 362, 376 (2002), and *Cruz v. Arizona*, 598 U.S. 17, 25-26 (2023). Those decisions recognize that adequacy is a federal question and that, in an exceptional case, even a generally sound procedural rule may be applied in a manner inadequate to foreclose review of a federal question.

The opposition does not discuss *Lee* or *Cruz*. It therefore never addresses the petition's central contention: whether the particular use of Indiana Appellate Rule 45(D), in the documented factual setting here, was an adequate and proportionate procedural ground rather than merely whether Rule 45(D) is valid in the abstract.

II. THE USPS RECORD IS RELEVANT BECAUSE RESPONDENT NOW CHARACTERIZES PETITIONER'S CONDUCT AS WILLFUL.

The opposition repeatedly characterizes the dismissal as the result of Petitioner's own negligence and, ultimately, a "willful violation" of the appellate rules. Opp. 5-6. The state appellate orders cited by Respondent, however, made no express finding that Petitioner acted willfully or in bad faith. The May 19 order dismissed because the court concluded that Petitioner had not complied with the May 1 order and had not filed an acceptable Appellant's Brief. Pet. App. 1-2.

The USPS evidence matters for this limited purpose. Petitioner does not argue that postal delay transformed every untimely tender into a timely filing. Rather, it rebuts the new accusation that Petitioner deliberately ignored the Court of Appeals. The petition identifies a separate corrective package placed in the United States mail on May 15, 2026, before the May 19 dismissal, together with a motion seeking leave to file the corrected brief and appendices belatedly. USPS tracking numbers 42042042728940013010935536022337 and 9004130109355366022337 reflected an expected delivery date of May 18. When delivery did not occur as expected, USPS Service Request No. 88220872 was opened. The package was received after dismissal. Pet. 4-5, 9-10.

Respondent's own appendix corroborates continuing corrective activity: it records a certificate of service mailed May 15 and later records the Court of Appeals' consideration of Petitioner's Notice of Compliance and Motion for Leave to File Corrected Appellant's Brief and Appendices. Resp. App. 36a-37a. Respondent's brief focuses on the separate May 12 tender, but does not address why the later documented correction effort should be treated as evidence of willful abandonment rather than continued prosecution.

III. RESPONDENT'S OWN APPENDIX UNDERCUTS PART OF ITS PROCEDURAL NARRATIVE.

The opposition states that Petitioner "filed his appeal on February 3, 2026." Opp. 2. Respondent's own appendix shows otherwise. The Court of Appeals case is identified as filed January 26, 2026, and the trial court CCS likewise shows the Notice of Appeal file-stamped January 26. Resp. App. 25a. More importantly, the Court of Appeals itself held on May 1 that the January 6 Rule 60(B) order was a final judgment and that Petitioner "timely filed a Notice of Appeal" from that order. Pet. App. 6-7. The February 3 date concerns later docket processing, not the filing date of the Notice of Appeal.

That error does not by itself decide certiorari, but it illustrates why the Court should examine the actual procedural record rather than Respondent's characterization of Petitioner's conduct as simply negligent or willful. The record shows a timely appeal from the January 6 judgment, repeated attempts to cure defects, a request for belated leave, and documented mailing activity surrounding the dismissal.

IV. *BEARD* DOES NOT RESOLVE THE ADEQUACY QUESTION AGAINST PETITIONER.

Respondent relies on *Beard v. Kindler*, 558 U.S. 53 (2009), and compares Petitioner's conduct to the escape at issue there. Opp. 5-6. But *Beard* held only that a discretionary state procedural rule is not automatically inadequate merely because it is discretionary. Id. at 60-61. It also confirms that the adequacy of a state procedural ruling remains a question of federal law. Petitioner does not argue that Rule 45(D) is inadequate merely because Indiana courts possess discretion. He argues that the particular application here warrants review under *Lee* and *Cruz*.

V. RESPONDENT'S DISTINCTIONS OF *LOGAN* AND *MAYBERRY* DO NOT ELIMINATE THE QUESTION PRESENTED.

Respondent says *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982), and *Mayberry v. American Acceptance Co.*, 242 N.E.3d 1053 (Ind. 2024), are different because the procedural loss there involved government or clerk error. Opp. 5. Petitioner has never claimed those cases are factually identical. *Logan* supplies the due-process principle that state-created procedure cannot be applied arbitrarily to extinguish a protected opportunity to be heard, while *Mayberry* is relevant to the ordinary scope of Indiana appellate discretion. The question remains whether the combination of a timely Rule 60(B) appeal, curable defects, continued correction efforts, a request for belated leave, and documented transmission delay made dismissal with prejudice an exceptional application warranting this Court's review.

VI. THE SEPARATE CASES LISTED BY RESPONDENT WERE NOT REQUIRED AS "DIRECTLY RELATED" CASES.

Respondent labels several different actions as "Related Cases Not Identified by Petitioner." Opp. ii. Supreme Court Rule 14.1(b)(iii), however, defines a directly related civil case as one arising from the same trial court case as the matter before this Court. The separate Howard County causes identified by Respondent - including Cause Nos. 34D01-2309-CT-002645 and 34D04-2503-CT-000964 - are different trial court cases. Their omission from the petition's directly-related-proceedings section therefore does not establish a Rule 14 violation.

CONCLUSION

The opposition confirms that the decisive dispute is not whether Indiana may enforce appellate rules, but whether the particular dismissal here is an adequate procedural ground under this Court's cases. The petition for a writ of certiorari should be granted. In the alternative, the Court should vacate and remand for further consideration of the preserved federal question.

Respectfully submitted,
/s/ Kevin M. Cardwell
Kevin M. Cardwell
Petitioner, Pro Se
5770 North Alton Avenue
Indianapolis, Indiana 46228
Dated: October 19, 2026