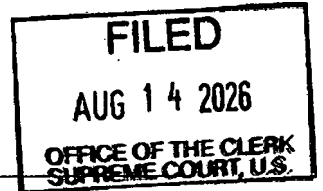


No.

26-5655

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



JOSEPH TYRELL DUHON,

PETITIONER,

V.

FCC COLEMAN – MEDIUM, ET. AL.,

RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

AMENDED PETITION FOR WRIT OF CERTIORARI

Joseph Tyrell Duhon, Pro Se

113 Tooke St

Fort Walton Beach, FL. 32547

(917) 951- 4062

QUESTIONS PRESENTED

1. Whether a federal appellate court denies Fifth Amendment due process and abdicates its appellate function by issuing a summary, unreasoned denial of review that insulates a lower court's structural error—namely, dismissing a plenary civil rights complaint under the Rehabilitation Act for lack of an administrative record to shield agency inaction

LIST OF PARTIES

The *Petitioner* is Joseph Tyrell Duhon, proceeding pro se.

The *Respondents* in this action are FCC Coleman Medium; FCC Coleman Medium Warden C.M Rijos; the Federal Bureau of Prisons; Supervisory Attorney for FCC Coleman Medium J. Middendorf; and Correctional Counselor M. Cortopassi

LIST OF DIRECTLY RELATED CASES

Pursuant to Supreme Court Rule 14. 1(b), the proceedings directly related to this case in the lower Federal court are:

1. United States Court of Appeals for the Eleventh Circuit:
Joseph Tyrell Duhon v. FCC Coleman, et al., No. 25-12552-J, judgement entered February 25, 2026; rehearing denied May 22, 2026; order denying recall of mandate entered July 28, 2026.
2. United States District Court for the Middle District of Florida:
Joseph Tyrell Duhon v. FCC Coleman Medium, et al., No. 5:23-cv-00264-KKM-PRL

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Petitioner is an individual and is not a corporation entity; therefore, no corporate disclosure statement is required.

TABLE OF CONTENTS

QUESTIONS PRESENTED.....	i
<i>Whether a federal appellate court denies Fifth Amendment due process and abdicates its appellate function by issuing a summary, unreasoned denial of review that insulates a lower court's structural error—namely, dismissing a plenary civil rights complaint under the Rehabilitation Act for lack of an administrative record to shield agency inaction</i>	
LIST OF PARTIES AND RELATED PROCEEDINGS.....	ii
CORPORATE DISCLOSURE STATEMENT.....	ii
TABLE OF AUTHORITIES.....	iv
OPINIONS BELOW.....	1
JURISDICTION.....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	2
STATEMENT OF THE CASE.....	4
REASONS FOR GRANTING THE PETITION.....	6
I. The lower court fundamentally distorted Twombly and Iqbal by demanding that a pro se plaintiff plead the outcome of an administrative process that the agency itself unlawfully suppressed under 5 U.S.C. § 706(1), thereby improperly converting a plenary civil rights action into a record-reviewing proceeding	6
A. Petitioner Satisfied the Plausibility Threshold by Pleading verified Administrative Invocation and Formal Agency Jurisdiction.....	6
B. The District Court Misapprehended the Record and Failed to Apply Equitable Principles Under Glus.....	7
C. Refusal to compel Agency Action Under 5 U.S.C. § 706(1) and the pretextual Agency Delay Under Department of Commerce v. New York.....	8
CONCLUSION.....	9
APPENDIX.....	1a

TABLE OF AUTHORITIES

Constitutional Provisions

- U.S Const. Amend. V (Due Process Clause) 6

Cases

- Ashcroft v. Iqbal, 556 U.S. 662(2009) 6, 7
- Bell Atlantic Corp v. Twombly, 550 U.S. 544(2007) 8
- Department of Commerce v. New York, 139 S. Ct. 2551(2019) 8
- Glus v. Brooklyn Eastern District Terminal, 359 U.S. 231(1959) 7, 8

Statutes

- Administrative Procedures Act, 5 U.S.C.§ 551 et Seq 8
- 5 U.S.C.§ 706(1) 8, 9
- 28 U.S.C.§ 1254(1) 1
- 28 U.S.C.§ 1331 1
- 28 U.S.C.§ 2101(C).....1
- Rehabilitation Act of 1973, U.S.C.§ 701 et seq 9,7

Regulation and Rules

- 28 C.F.R.§ Part 542 7,8
- 28 C.F.R.§ 39.170 7,8
- 28 C.F.R.§ 42.503 7,8
- Federal Rule of Civil Procedure 12(b)(6) 6,9
- Supreme Court Rule 13.1 1

CITATIONS TO OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit in Case No. 25-12552 is unpublished and is reproduced in the Appendix to this petition at App. A.

The order of the United States District Court for the Middle District of Florida in Case No. 5:23-cv-00264-KKM-PRL is unpublished and is reproduced in the Appendix to this petition at App. B.

JURISDICTIONAL STATEMENT

The judgement of the United States Court of Appeals for the Eleventh Circuit was entered on February 25, 2026 (App. 1a). Petitioner filed a timely petition for rehearing, which was denied by the Court of Appeals on May 22, 2026 (App. 15a).

Pursuant to 28 U.S.C § 2101(c) (App. 36a) and Supreme Court Rule 13.1(App. 39a), this petition for writ of certiorari is timely filed within 90 days after the entry of the order denying rehearing.

The jurisdiction of this Court is invoked under 28 U.S.C § 1254(1) (App. 35a) which authorizes review of decisions of the United States Court of Appeals by writ of certiorari. The jurisdiction of the United States District Court for the Middle District of Florida was invoked under 28 U.S.C. § 1331 (App. 36a) and 28 U.S.C. § 1343 (App. 36a).

CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

The pertinent constitutional provisions and statutory text are set forth below, and in their complete verbatim provisions are reproduced in the Appendix at App. E.

U.S. Const. Amend. V (Due Process Clause)

" No person shall be...deprived of life, liberty, or property, without due process of law..."

5 U.S.C § 706(1) — Scope of review

" To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall— (1) compel agency action unlawfully withheld or unreasonably delayed..."

28 U.S.C. § 1254(1) — Courts of appeals; certiorari; certified questions

" Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgement or decree..."

28 U.S.C § 2101(c) — Supreme Court; time for appeal or certiorari; docketing; stay

" Any other appeal or any writ of certiorari intended to bring any judgement or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgement or decree..."

29 U.S.C § 794(a) — Nondiscrimination under Federal grants and programs

" No otherwise qualified individual with a disability in the United States... shall solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States postal Service."

28 U.S.C. § 1331 — Federal question

" The district courts shall have original jurisdiction of all civil actions arising under the constitution, laws, or treaties of the United States."

28 U.S.C. § 1343 — Civil rights and elective franchise

" The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person... (4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights...."

28 U.S.C § 1915(e)(1), (2)(B)(ii) — Proceedings in forma pauperis

"(e)(1) The court may request an attorney to represent any person unable to afford counsel. (2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that...(B) the action or appeal...(ii) fails to state a claim on which relief may be granted..."

Fed. R. Civ. P. 12(b)(6) — Defenses and Objections: Failure to State a Claim

" Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion: ... (6) failure to state a claim upon which relief can be granted..."

Sup. Ct. R. 39. 7 — Proceedings in Forma Pauperis

" In a case in which certiorari has been granted, probable jurisdiction noted, or consideration of jurisdiction postponed, the Court may appoint counsel to represent a party financially unable to afford an attorney to the extent authorized by the criminal Justice Act of 1964, 18 U.S.C. § 3006A, or any other applicable federal statute."

Sup. Ct. R. 13.1 — Review on Certiorari: Time for Petitioning

" Unless otherwise provided by law, a petition for writ of certiorari to review a judgement in any case, civil or criminal, entered by a state court of last resort or a United States court of appeals... is timely when it is filed with the clerk of this Court within 90 days after entry of the judgement."

STATEMENT OF THE CASE

A. Factual Background and initial Exposure

On March 30, 2020, while Petitioner was incarcerated at FCI Coleman Medium, the facility was placed on an emergency modified lockdown due to the COVID-19 pandemic. On March 31, 2020, Defendant Cortopassi reassigned Petitioner to a cell with an inmate actively exhibiting symptoms of COVID-19. Under the facility's modified lockdown policy, Petitioner was confined to the cell with the symptomatic inmate (App. 9a).

Petitioner repeatedly requested COVID-19 testing through administrative grievances submitted on April 6 and April 29, 2020. Defendant Rios denied these requests on May 12, 2020. Petitioner filed a regional appeal on May 26, 2020; however, the Bureau of Prisons (BOP) Southeast Regional Director did not respond until September 23, 2020 (App. 9a).

Petitioner was denied testing until August 20, 2020—only after his cellmate tested positive. While Petitioner initially tested negative on August 20th, a retest administered two days later confirmed he was positive for COVID-19. Between

October 2020 and July 2021, Petitioner developed severe cognitive, cardiovascular, and pulmonary complications. On September 30, 2021, Petitioner was diagnosed with anxiety and depression resulting from these events and prescribed mirtazapine and buspirone (App. 9a).

B. Administrative Tort Claim and Oversight Filings

Petitioner filed an administrative tort claim under the Federal Tort Claims Act (FTCA) asserting that Coleman officials negligently caused his long-term health complications. BOP Supervisory Attorney Middendorf denied the claim and subsequently denied Petitioners administrative appeal (App.10a).

Petitioner then filed a formal complaint with the Department of Justice Office of Professional Responsibility (OPR) contesting the denial of his administrative tort claim and submitting a request for legal counsel under the Rehabilitation Act. Following an administrative delay, OPR issued a formal written communication to Petitioner apologizing for the delay in processing. OPR subsequently determined that the underlying allegations fell within the jurisdiction of the Department of Justice Office of the Inspector General (OIG) and explicitly forwarded the matter to the OIG for further handling (App. 10a).

C. District Court Proceedings and Judicial Speculation

Petitioner subsequently filed suit in the United States District Court. In evaluating the record, the District Court acknowledged that the DOJ OPR had forwarded the Petitioners Rehabilitation Act request and complaint to the OIG because the subject matter fell squarely within OIG jurisdiction (App. 10a).

In its final order, the District Court observed that Petitioner did not state whether his complaint was further investigated or denied by the OIG (App. 10a) and noted that it was "...unclear why Duhon was seeking legal counsel, presumably to help him litigate this claim." (App. 12a). The court further noted that Petitioner did not cite a specific DOJ or OIG program providing counsel to prisoners (App. 12a). The court did not compel the department of Justice to produce the OIG record addressing the status of the OIG referral and subsequently dismissed the action.

D. Court of Appeals Proceedings

Petitioner timely appealed the District Court's Judgement to the United States Court of Appeals for the Eleventh Circuit. On February 25, 2026, the Court of Appeals issued an order affirming the District Court's decision (App. 1a).

Petitioner filed a timely petition for panel rehearing, which the court of appeals denied on May 22, 2026 (App. 16a). Thereafter, Petitioner filed an emergency motion to recall the mandate, which the Court of Appeals denied on July 28, 2026 (App. 16a). This petition for writ of certiorari follows.

REASONS FOR GRANTING THE PETITION

REASON ONE: THE LOWER COURT FUNDAMENTALLY DISTORTED TWOMBLY AND IQBAL BY DEMANDING THAT A PRO SE PLAINTIFF PLEAD THE FINAL OUTCOME OF AN ADMINISTRATIVE PROCESS THAT THE AGENCY ITSELF UNLAWFULLY SUPPRESSED UNDER 5 U.S.C. § 706(1), THEREBY IMPROPERLY CONVERTING A PLENARY CIVIL RIGHTS ACTION INTO A RECORD-REVIEW PROCEEDING

Under *Bell Atlantic Corp. V. Twombly*, 550 U.S. 544(2007) and *Ashcroft v. Iqbal*, 556 U.S. 662(2009), a complaint does not require detailed factual allegations; it requires only sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. Dismissing a Rehabilitation Act Complaint under Federal Rule of Civil Procedure 12(b)(6) because a pro se plaintiff lacked an administrative record—created by an agency's own three-year unlawful silence under 5 U.S.C. § 706(1)—inverts notice pleading standards and transforms a federal civil rights action into an unconstitutional exhaustion barrier.

A. Petitioner Satisfied the Plausibility Threshold by Pleading Verified Administrative Invocation and Formal Agency Jurisdiction

To survive a Rule 12(b)(6) motion, a plaintiff must nudge their claims "across the line from conceivable to plausible." *Twombly*, 550 U.S. at 570. Petitioner met and exceeded this threshold by pleading concrete, verified facts:

1. **Formal Request & Administrative Grievance Invocation:** On December 27, 2022, Petitioner submitted a unified request for relief under section 504 of the Rehabilitation Act, placing the Department of Justice on notice of a disability-related claim within its programs and activities (App. 47a). As detailed in Petitioners rehearing petition, this formal submission invoked the administrative remedy and grievance procedures governed by 28 C.F.R Part 542(Bureau of Prisons Administrative Remedy Program), alongside 28 C.F.R § 39.170(DOJ Section 504 Compliance Procedures) and the non-discrimination mandates under 28 C.F.R. § 42.503.
2. **Unrebutted Notarized Evidentiary Record:** This submission alerted the Department of Justice to a notarized affidavit supported by official notary records and verified postal tracking numbers. The affidavit detailed specific statutory violations that, accepted as true under *Iqbal*, state a claim for relief. The Department failed to rebut this sworn record (App. 41a).
3. **Formal Assertion of Jurisdiction:** Rather than rejecting the submission as frivolous, the Department of Justice (OPR) formally responded on March 8, 2023, asserting jurisdiction over the matter (App. 51a).

B. The District Court Misapprehended the Record and Failed to Apply Equitable Principles Under *Glus*

In its June 16, 2025 order, the District Court justified dismissal by stating it was "not clear why Duhon was seeking legal counsel" and asserting that Petitioner failed to identify a DOJ program providing such assistance (App. 12a). The court further asserted that petitioner merely alleged respondents "should have known he was a qualified individual"(App. 10a) — overlooking the fact that Petitioner specifically detailed the exact functional limitations caused by his disability in his accommodation request (App. 46a). This conclusion is factually and legally irreconcilable with the record:

- **Failure to Recognize Regulatory Governance:** The District Court Ignored Petitioner's formal invocation of 28 C.F.R Part 542, 28 C.F.R. § 39.170, and 28

C.F.R § 42.503, which govern reasonable accommodations and grievance enforcement within executive branch programs (App. 47a).

• Violation of Equitable Principles (*Glus v. Brooklyn Eastern Terminal*): Under the long-standing principle that no party may take advantage of its own wrong (*Glus v. Brooklyn Eastern Terminal*, 359 U.S. 231(1959)), the Department of Justice cannot assert jurisdiction over an accommodation request and maintain a three-year silence to create a procedural shield for dismissal.

C. Refusal to Compel Agency Action Under 5 U.S.C. § 706(1) and Pretextual Agency Delay Under *Department of Commerce v. New York*

Under 5 U.S.C. § 706(1), a reviewing court "shall compel agency action unlawfully withheld or unreasonably delayed".

1. Unreasonable delay and pretextual silence: The Department of Justice's three-year silence following its formal assertion of jurisdiction and silent referral to the Office of the Inspector General constitutes an unreasonable delay of benefits. Under *Department of Commerce v. New York*, 139 S. Ct. 2551(2019), an agency must provide a reasoned, non-pretextual explanation for its choices and cannot rely on a record that mismatches its actual conduct.
2. District Court Abuse of Discretion: In the petition for panel rehearing, Petitioner explicitly alerted the court of appeals to these pending, acknowledged administrative matters. By refusing to exercise its statutory authority under 5 U.S.C. § 706(1) to compel the production of the administrative record while simultaneously penalizing Petitioner under 12(b)(6) for the absence of that record (App.10a), the District Court committed clear legal error and abuse of discretion.

When the U.S Court of Appeals issued its summary denial, it did so while remaining entirely silent on a critical, undisputed admission within the record: the Department of Justice explicitly asserted jurisdiction over petitioners Section 504

Rehabilitation Act grievance (App. 51a). The core of this constitutional and statutory controversy rests on a multi-tiered default:

1. Despite formally asserting jurisdiction, the Department of Justice completely failed to take administrative action or provide a reasoned record, violating 5 U.S.C. § 706(1).
2. The district court, fully aware of the agency's formal assertion of jurisdiction, committed structural error by dismissing a plenary civil rights complaint under 12(b)(6) for lack of an administrative record—thereby insulating executive inaction.

Supreme Court intervention is urgently warranted to prevent executive agencies from evading civil rights mandates through silent delay and ensure lower courts do not weaponize that delay to slam courthouse doors.

CONCLUSION

For the reasons set forth above, this petition for a writ of certiorari should be granted.

August 14, 2026

Respectfully Submitted,

A handwritten signature in cursive script, reading "Joseph Tyrell Duhon", followed by a horizontal line.

Joseph Tyrell Duhon, Petitioner Pro se

113 Tooke st

Fort Walton Beach, Fl. 32547

917 -951- 4062.