

26-5787

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

BRENDA KAY LEAVY
Petitioner,

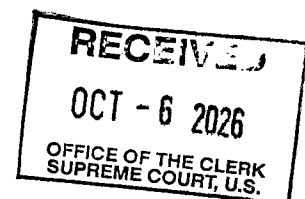
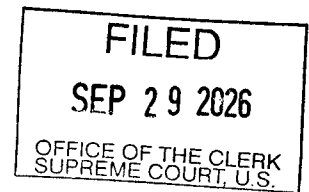
v

FEDERAL EXPRESS CORPORATION
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether, in determining whether a Rule 60(b)(4) motion was filed within a “reasonable time” under Rule 60(c)(1), a court must consider the movant’s stated explanation for the timing of the motion and documented intervening efforts to obtain review.
2. Whether a Rule 60(b)(4) motion constitutes impermissible relitigation when the movant alleges defects in the procedures by which judgment was entered—including the failure to adjudicate an asserted federal claim and the treatment of identified record evidence and disputed material facts as though they had not been presented—rather than merely challenging the correctness of the underlying merits determination.
3. Whether a federal court may refuse to adjudicate a *pro se* plaintiff’s ADA failure-to-accommodate claim solely because the plaintiff left the corresponding box blank on a standardized complaint form, where the court itself acknowledged that the plaintiff had asserted reasonable-accommodation discrimination under the ADA.

PARTIES TO THE PROCEEDING

Petitioner Brenda Kay Leavy was the plaintiff-appellant in the proceedings below.

Respondent Federal Express Corporation was the defendant-appellee.

RELATED PROCEEDINGS

This case arises from *Leavy v. Federal Express Corporation*, No. 2:19-cv-02705-JTF-tmp, in the United States District Court for the Western District of Tennessee. Judgment was entered in that action on August 23, 2021.

Petitioner appealed that judgment to the United States Court of Appeals for the Sixth Circuit in *Leavy v. Federal Express Corporation*, No. 21-5882. The Sixth Circuit affirmed on December 20, 2022.

Petitioner later filed a motion under Federal Rule of Civil Procedure 60(b)(4) in the same district-court action. The district court denied that motion on December 18, 2025.

Petitioner appealed that order to the United States Court of Appeals for the Sixth Circuit in *Leavy v. Federal Express Corporation*, No. 25-6162. The Sixth Circuit affirmed on July 24, 2026, and denied rehearing and rehearing en banc on September 21, 2026.

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The order of the United States Court of Appeals for the Sixth Circuit affirming the denial of Petitioner's motion under Federal Rule of Civil Procedure 60(b)(4), entered July 24, 2026, is unpublished and is reproduced at Appendix A, 1a–4a.

The order of the United States District Court for the Western District of Tennessee denying Petitioner's Rule 60(b)(4) motion, entered December 18, 2025, is unpublished and is reproduced at Appendix B, 5a–6a.

The order of the United States Court of Appeals for the Sixth Circuit denying Petitioner's petition for rehearing and rehearing en banc, entered September 21, 2026, is reproduced at Appendix C, 7a–8a.

The earlier order of the United States Court of Appeals for the Sixth Circuit affirming the district court's original summary-judgment disposition, entered December 20, 2022, is unpublished and is reproduced at Appendix D, 9a–19a.

The order of the United States District Court for the Western District of Tennessee granting summary judgment and dismissing the action, entered August 23, 2021, is reproduced at Appendix E, 20a–35a.

JURISDICTION

The The United States Court of Appeals for the Sixth Circuit entered its judgment on July 24, 2026. App. 1a–4a. Petitioner timely sought panel rehearing and rehearing en banc, which the court denied on September 21, 2026. App. 7a–8a.

This Court has jurisdiction under 28 U.S.C. § 1254(1).

Under Supreme Court Rule 13.3, when a timely petition for rehearing is filed, the time to file a petition for a writ of certiorari runs from the date rehearing is denied. This petition is timely because it is filed within 90 days of the Sixth Circuit's September 21, 2026 denial of rehearing.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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

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

The Seventh Amendment to the United States Constitution provides:

“In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.”

42 U.S.C. § 12112(b)(5)(A) provides, in relevant part:

“The term ‘discriminate against a qualified individual on the basis of disability’ includes—

(A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity.”

Federal Rule of Civil Procedure 56(a) provides:

“The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”

Federal Rule of Civil Procedure 56(e) provides:

“If a party fails to properly support an assertion of fact or fails to properly address another party’s assertion of fact as required by Rule 56(c), the court may:

- (1) give an opportunity to properly support or address the fact;
- (2) consider the fact undisputed for purposes of the motion;
- (3) grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it; or
- (4) issue any other appropriate order.”

Federal Rule of Civil Procedure 60(b)(4) provides:

“On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding” if “the judgment is void.”

Federal Rule of Civil Procedure 60(c)(1) provides, in relevant part:

“A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.”

Federal Rule of Civil Procedure 83(a)(2) provides:

“A local rule imposing a requirement of form must not be enforced in a way that causes a party to lose any right because of a nonwillful failure to comply.”

STATEMENT OF THE CASE

Petitioner Brenda Leavy brought this action arising from the termination of her employment following her breast-cancer diagnosis and requests relating to her medical condition. The litigation included claims under the Americans with Disabilities Act and the Family and Medical Leave Act.

During radiation treatment, Petitioner's oncologist completed a medical certification stating that she was "unable to work" and "incapacitated from work from 4/3/18 through 5/27/18," an approximately eight-week period. App. 39a–45a. Despite that certification, Petitioner continued working during radiation. She stated that her supervisor, Karen Galambos, Staff Vice President of Human Resources, told her, "we're already accommodating you" and "just because you're on FMLA leave doesn't mean that you can put your work off on others." Petitioner stated that she continued working because she wanted to remain employed. Those circumstances were presented in her original appellate brief.

In granting summary judgment, the district court determined that Petitioner satisfied the first four elements of the ADA *prima facie* case, including that she was disabled, otherwise qualified for her position, and that FedEx knew of her disability. App. 20a–35a. On appeal, FedEx expressly stated that it "concedes for purposes of this appeal that Ms. Leavy was disabled under the ADA." Brief of Appellee at 12, *Leavy v. Federal Express Corporation*, No. 21-5882 (6th Cir. June 23, 2022), Doc. 17. See App. 47a.

The magistrate judge's Report and Recommendation acknowledged that "the parties provide widely diverging accounts" of the events giving rise to Petitioner's claims. R.48, PageID 580. Petitioner's position in the later Rule 60 proceedings was that genuine factual disputes were

nevertheless treated as effectively resolved through summary-judgment and local-rule procedures rather than evaluated under the protections required by Rule 56.

The district court also expressly acknowledged that Petitioner asserted reasonable-accommodation discrimination under the ADA. It nevertheless concluded that, because Petitioner had left the “failure to accommodate my disability” box blank on her *pro se* complaint form, she “cannot now assert a claim for failure to accommodate under the ADA.” R.52, PageID 659 n.5. App. 20a–35a.

On appeal, the Sixth Circuit stated that Petitioner’s accommodation and interactive-process arguments “cannot be considered on appeal because Leavy did not raise a failure-to-accommodate claim in the district court.” App. 9a–19a. Thus, the district court expressly recognized that Petitioner had asserted reasonable-accommodation discrimination but declined to adjudicate that claim because of the unchecked box, while the court of appeals later characterized the claim as not having been raised below.

Petitioner’s original appellate brief argued that failure-to-accommodate claims are governed by the Sixth Circuit’s direct-evidence framework under *Kleiber*, *Brumley*, and *Hostettler*, rather than the *McDonnell Douglas* indirect-evidence framework. She also cited *Fisher* for the same proposition.

Petitioner also expressly identified the completed medical certification at R.39-9, PageID 443–449 and quoted her physician’s certification that she was incapacitated from work from April 3 through May 27, 2018. App. 39a–45a. The Sixth Circuit nevertheless stated that, although Petitioner asserted that her physician had certified her as incapacitated for eight weeks, she had identified no record evidence supporting that assertion. App. 9a–19a.

The Sixth Circuit issued its mandate in Petitioner’s original appeal on February 28, 2023. Eight days later, on March 8, 2023, Petitioner submitted a Motion to Vacate. The appellate docket reflects that the motion was returned unfiled that same day. App. 36a. Petitioner thereafter continued seeking review through additional motions, correspondence, requests concerning the status and filing of her submissions, an Emergency Motion seeking docketing of her motions, and requests for judicial consideration. See App. 37a–38a.

That procedural history continued into the present Rule 60(b)(4) proceedings. In her 2026 Reply Brief, Petitioner specifically argued that the elapsed period should not be treated as unexplained inactivity because she had repeatedly sought review and several submissions had been returned or not docketed.

On July 24, 2026, the Sixth Circuit affirmed the denial of Rule 60(b)(4) relief, stating that Petitioner had filed her Rule 60(b) motion “more than four years after the judgment without providing any reason for the delay.” App. 1a–4a. The court concluded that the motion did not satisfy Rule 60(c)(1)’s “reasonable time” requirement and also characterized Petitioner’s motion as an attempt to relitigate the merits. The July 24 order itself contains those statements. Order - 25-6162(6).

Petitioner sought rehearing, emphasizing that the record contained both an explanation for the passage of time and documented efforts to obtain review following the original mandate. She further explained that her due-process contention concerned the treatment of claims, disputed facts, and record evidence—not merely the absence of an evidentiary hearing. Her rehearing petition distinguished between rejecting an explanation as insufficient and stating that no explanation had been supplied at all.

The Sixth Circuit denied rehearing and rehearing en banc on September 21, 2026. App. 7a–8a. Petitioner now seeks review of the Rule 60(b)(4) disposition and the procedural questions presented by that ruling.

REASONS FOR GRANTING THE WRIT

The questions presented extend beyond Petitioner’s individual case because they concern the application of Rule 60(c)(1)’s reasonable-time requirement, the treatment of alleged procedural defects under Rule 60(b)(4), and whether a *pro se* litigant may be denied adjudication of a federal claim because of a formal omission on a standardized complaint form despite having otherwise asserted the substance of that claim.

I. The Rule 60(c)(1) “Reasonable Time” Determination Did Not Address Petitioner’s Stated Explanation and Intervening Procedural History

The court of appeals held that Petitioner filed her Rule 60(b)(4) motion “more than four years after the judgment without providing any reason for the delay.” App. 1a–4a. Petitioner, however, had specifically explained in her appellate briefing that she did not remain inactive during that period.

The original appellate mandate issued on February 28, 2023. Eight days later, on March 8, 2023, Petitioner submitted a Motion to Vacate, which was returned unfiled the same day. App. 36a. She thereafter continued seeking review through additional motions and correspondence, including submissions that were returned or not docketed because the original appeal had been closed. Her 2026 Reply Brief expressly argued that the elapsed period should not be treated as unexplained inactivity because she had repeatedly pursued review.

The documentary record confirms those efforts. On March 8, 2023, Senior Case Manager Patricia J. Elder returned Petitioner's Motion to Vacate unfiled because the case was considered closed. App. 36a. Petitioner nevertheless continued seeking review. In a May 8, 2024 letter, Sixth Circuit Clerk Kelly L. Stephens acknowledged receipt of Petitioner's Emergency Motion for Order Requiring Clerk to File Plaintiff-Appellant's Motions and stated that the motion would be referred to a three-judge panel for review and decision. The Clerk further explained that, "in light of [Petitioner's] repeated concerns," the emergency motion would be treated similarly to a request for reconsideration of a clerk's order and submitted to the Court for review. App. 37a–38a.

Petitioner thereafter submitted a written request for a hearing dated May 13, 2024, again seeking judicial consideration following issuance of the mandate. (Dkt. 40 (May 15, 2024)). The appellate docket later reflected correspondence concerning that request and a subsequent status inquiry. These submissions formed part of the procedural history Petitioner relied upon to explain that she had not remained inactive during the period later characterized as unexplained delay.

Petitioner did not offer that procedural history merely after the fact. Her Reply Brief specifically argued that "the relevant period does not run from the original judgment in isolation, but from the conclusion of appellate proceedings and subsequent efforts to obtain review," and distinguished her circumstances from cases involving delay without explanation.

The issue, therefore, is not whether Rule 60(c)(1) applies to Rule 60(b)(4). This Court has held that it does. *Coney Island Auto Parts Unlimited, Inc. v. Burton*, 146 S. Ct. 579, 582–85 (2026). Rather, the question is what consideration the "reasonable time" inquiry requires when the movant supplied an explanation for the timing of the motion and documented intervening efforts to obtain review.

The court of appeals' characterization of the four-year period as one for which Petitioner provided "no reason" did not address the explanation she actually presented. App. 1a–4a. That distinction matters because Petitioner's Rule 60(b)(4) argument did not rest on an unexplained four-year period of inactivity; she maintained that she had repeatedly sought review following the conclusion of the original appeal and had documented those efforts in the proceedings below.

II. Petitioner's Rule 60(b)(4) Challenge Alleged Procedural Defects Rather Than Merely Seeking To Relitigate the Merits

The court of appeals also characterized Petitioner's Rule 60(b)(4) motion as an attempt to relitigate her original claims. App. 1a–4a. Petitioner's contention, however, was narrower: that claims and record evidence actually presented were excluded from adjudication or treated as though they had never been presented.

Two portions of the record illustrate that contention. First, the district court expressly acknowledged that Petitioner "asserts reasonable accommodation discrimination under the ADA," but declined to adjudicate that theory because the corresponding box on her standardized *pro se* complaint had been left blank. R.52, PageID 659 n.5. App. 20a–35a.

Second, the original appellate disposition stated that Petitioner had identified no record evidence supporting her physician's certification of eight weeks of incapacity, although her opening appellate brief expressly cited R.39-9, PageID 443–449 and described that certification. App. 9a–19a; see also App. 39a–45a.

Petitioner also relied on the treatment of disputed facts at summary judgment. The magistrate judge's Report and Recommendation expressly acknowledged that "the parties provide widely diverging accounts" of the events giving rise to Petitioner's claims. R.48, PageID 580.

Petitioner's position throughout the later Rule 60 proceedings was that genuine factual disputes were nevertheless treated as effectively resolved through summary-judgment and local-rule procedures rather than evaluated under the protections required by Rule 56.

That contention rests on familiar summary-judgment principles. In *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986), this Court explained that, at summary judgment, the judge's function is not "to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." The Court further emphasized that "[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge." *Id.* at 255. Likewise, in *Tolan v. Cotton*, 572 U.S. 650, 656–57 (2014), this Court reiterated that courts must view the evidence and draw reasonable inferences in favor of the nonmoving party.

This Court has also recognized that a court need not adopt the nonmovant's version of events where that version is "blatantly contradicted by the record, so that no reasonable jury could believe it." *Scott v. Harris*, 550 U.S. 372, 380 (2007). Petitioner's contention, however, is that the record here reflected competing accounts and evidence—not an objective record that rendered her version impossible. Indeed, the Report and Recommendation itself acknowledged that "the parties provide widely diverging accounts." R.48, PageID 580.

Petitioner also relied on *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 270–71 (2010), which distinguishes ordinary legal error from the narrow circumstances in which a judgment may be void under Rule 60(b)(4), including certain due-process defects.

Petitioner's Rule 60(b)(4) theory was also grounded in the distinction between ordinary legal error and a judgment alleged to be void. See *Antoine v. Atlas Turner, Inc.*, 66 F.3d 105, 108

(6th Cir. 1995) (explaining that review of a Rule 60(b)(4) ruling is *de novo* and that a void judgment must be vacated). Petitioner relied on *Antoine* below to frame her challenge as one directed to the validity of the judgment rather than merely to the correctness of the underlying result.

Petitioner's contention was therefore not merely that the underlying merits determination was incorrect. Rather, she argued that the procedures leading to judgment failed to adjudicate an asserted federal claim, treated acknowledged factual conflicts as effectively undisputed, and failed to account for record evidence that her filings expressly identified.

III. The Checkbox Ruling Prevented Application of the Governing ADA Failure-to-Accommodate Framework

The consequence of the checkbox ruling was substantive, not merely clerical. The district court expressly acknowledged that Petitioner "asserts reasonable accommodation discrimination under the ADA" in her objections. It nevertheless declined to adjudicate that claim because Petitioner had checked the discriminatory-conduct boxes for termination and retaliation on her standardized *pro se* complaint form but had left the "failure to accommodate my disability" box blank. The court concluded: "Accordingly, Plaintiff cannot now assert a claim for failure to accommodate under the ADA." R.52, PageID 659 n.5. App. 20a-35a.

On appeal, the Sixth Circuit did not reach the merits of the accommodation theory. It acknowledged that Petitioner "devotes much of her appellate brief" to arguing that FedEx failed to provide a reasonable accommodation and failed to engage in the interactive process required under the ADA. The court nevertheless declined to consider those arguments because, in its words, "Leavy did not raise a failure-to-accommodate claim in the district court." App. 9a-19a. Thus, the district court acknowledged that Petitioner asserted reasonable-accommodation discrimination but

declined to adjudicate the claim on a pleading-form ground, while the court of appeals later characterized the claim as not having been raised below.

That distinction matters. The issue is not whether Petitioner first attempted to introduce an accommodation theory years later in the Rule 60 proceedings. The written district-court order itself establishes that the court understood Petitioner to be asserting reasonable-accommodation discrimination. The procedural question is whether that asserted federal claim could be foreclosed because one box on a standardized *pro se* complaint form was left unchecked.

This Court has long required *pro se* pleadings to be liberally construed and held to less stringent standards than pleadings drafted by lawyers. *Haines v. Kerner*, 404 U.S. 519, 520–21 (1972). That principle is especially pertinent where the substance of the asserted federal claim is apparent from the filing and was expressly recognized by the court itself.

This Court applied that principle to a federal complaint filed on a standardized form by an unrepresented litigant in *Hughes v. Rowe*, 449 U.S. 5, 9–10 (1980) (per curiam). There, the Court noted that the plaintiff had filed his complaint “on the form used by prisoners who are not represented by counsel” and reiterated that allegations in a *pro se* complaint, “however inartfully pleaded,” are held “to less stringent standards than formal pleadings drafted by lawyers.” *Id.* at 9–10. The Court then construed the factual allegations as presenting a procedural due-process contention. *Id.* at 10–11. *Hughes* therefore supports looking to the substance of a *pro se* federal complaint, rather than demanding technical precision in the completion of a standardized form, when identifying the claim the pleading presents.

This Court has applied a related principle concerning the construction of employee filings in the employment-discrimination context. In *Federal Express Corp. v. Holowecki*, 552 U.S. 389

(2008), the Court considered whether an EEOC Intake Questionnaire and accompanying affidavit could constitute an ADEA “charge” even though the employee had not filed the usual formal charge form. The Court held that a filing may qualify where, viewed as a whole, it can reasonably be construed as a request for the agency to take remedial action to protect the employee’s rights. *Id.* at 402. In explaining that approach, the Court observed that even in formal litigation, *pro se* pleadings are liberally construed and that employment-discrimination procedures must remain accessible to individuals who lack detailed knowledge of statutory mechanisms and agency processes. *Id.* The Court further stated that employee filings should, “to the extent consistent with permissible rules of interpretation,” be construed to protect statutory rights and remedies. *Id.* at 406. The Court also cautioned that ADEA procedures are not automatically transferable to Title VII or ADA cases. *Id.* at 393. Accordingly, *Holowecki* is not controlling on the pleading issue presented here, but its treatment of an employee filing according to its substance rather than formal label provides relevant support for the broader question whether a formal omission on a standardized *pro se* form should be dispositive where the substance of the claim was otherwise asserted.

Other federal courts likewise have recognized that an unchecked box need not be dispositive where the substance of the claim appears elsewhere in the filing. In *Jones v. UPS, Inc.*, 502 F.3d 1176, 1186–87 (10th Cir. 2007), the Tenth Circuit explained that failure to mark a particular box creates a presumption that the claimant is not asserting the claim represented by that box, but that the presumption may be rebutted where the text of the filing clearly sets forth the basis of the claim. The court rejected the failure-to-accommodate claim there because the claimant had answered “no” when asked whether he had advised the employer that he needed an accommodation and because the charge contained no facts that would have prompted an

accommodation investigation. *Id.* at 1187. Here, by contrast, the district court itself expressly acknowledged that Petitioner asserted reasonable-accommodation discrimination under the ADA.

The Sixth Circuit itself has distinguished between an unchecked box standing alone and an unchecked box accompanied by no supporting factual allegations. In *Younis v. Pinnacle Airlines, Inc.*, 610 F.3d 359, 362–63 (6th Cir. 2010), the court declined to consider an unmarked retaliation claim because, in addition to the unchecked box, “there [was] nothing in the narrative portion of the EEOC charge that could be interpreted as claiming retaliation.” That circumstance is materially different here, where the district court expressly acknowledged that Petitioner had asserted reasonable-accommodation discrimination under the ADA.

The checkbox ruling also affected the legal framework applied to Petitioner’s ADA allegations. Failure-to-accommodate claims are analytically distinct from ordinary discriminatory-discharge claims. Sixth Circuit precedent recognizes that such claims are analyzed under a direct-evidence framework rather than the familiar burden-shifting framework of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). See *Kleiber v. Honda of Am. Mfg., Inc.*, 485 F.3d 862, 868–69 (6th Cir. 2007); *Brumley v. United Parcel Serv., Inc.*, 909 F.3d 834, 839 (6th Cir. 2018); *Fisher v. Nissan N. Am., Inc.*, 951 F.3d 409, 416–17 (6th Cir. 2020).

The district court analyzed Petitioner’s general disability-discrimination claim under the indirect-evidence *McDonnell Douglas* framework, addressing the *prima facie* case, FedEx’s asserted nondiscriminatory reason, and pretext. But because the court foreclosed the separate failure-to-accommodate claim on the pleading-form ground, it never determined whether Petitioner’s accommodation allegations satisfied the distinct framework governing such claims. The Sixth Circuit likewise did not decide those questions on their merits; it declined to consider

the accommodation and interactive-process arguments because it concluded that the claim had not been raised below.

In the district court, FedEx argued that Petitioner's breast cancer was a "temporary condition" that was not substantially limiting. Def.'s Mem. in Supp. of Mot. for Summ. J. 6-7, ECF No. 31-1, PageID 84-85; App. 46a. On appeal, FedEx expressly stated: "FedEx concedes for purposes of this appeal that Ms. Leavy was disabled under the ADA." Appellee Br. 12, No. 21-5882, Doc. 17; App. 47a.

By the time of the first appeal, FedEx had expressly conceded Petitioner's disability and acknowledged that the district court had determined that she was otherwise qualified and that FedEx knew of her disability. Yet the court of appeals still did not adjudicate Petitioner's failure-to-accommodate or interactive-process arguments. Instead, it declined to consider them because it concluded that the claim had not been raised below. When Petitioner later sought Rule 60(b)(4) relief on the ground that the accommodation claim and supporting record evidence had been presented but never adjudicated, that challenge was rejected as an effort to relitigate the merits. Petitioner's contention is that the procedural omission therefore remained uncorrected.

The significance of the issue is therefore procedural as well as substantive. Petitioner does not ask this Court, in the first instance, to decide whether FedEx ultimately violated the ADA by failing to accommodate her. The question is whether an asserted federal accommodation claim may be excluded from adjudication because of an unchecked box on a standardized *pro se* complaint form when the district court itself expressly recognized that the litigant had asserted reasonable-accommodation discrimination.

IV. The Original Appellate Disposition Stated That Petitioner Had Not Identified Record Evidence That Her Brief Expressly Cited

The record contained two materially different versions of the medical certification. FedEx submitted R.31-3, PageID 196–202, which did not contain the completed physician information on which Petitioner relied. Petitioner separately submitted R.39-9, PageID 443–449, which included Dr. Schwartzberg’s completed certification stating that she was “unable to work,” needed to “remain off work while completing radiation treatments,” and would be incapacitated from April 3 through May 27, 2018, with an expected return to work on May 28, 2018. App. 39a–45a. Petitioner’s opening appellate brief expressly cited the completed certification. The original appellate disposition nevertheless stated that she had identified no record evidence supporting her assertion that her physician certified an eight-week period of incapacity. App. 9a–19a.

Petitioner later identified that discrepancy in the Rule 60(b)(4) proceedings as an example of record evidence that, in her view, had been presented but not meaningfully addressed in the earlier adjudication. Her rehearing petition again cited R.39-9, PageID 443–449 and contrasted the completed certification with the incomplete certification submitted by FedEx.

The completed certification was significant to Petitioner’s procedural contention because it did more than document the existence of a medical condition. It contained the physician-completed information concerning her inability to work, the need to remain off work during radiation treatment, and the period of incapacity. Petitioner nevertheless continued working during that period while undergoing radiation treatment.

The question presented here is not whether this Court should independently resolve the underlying ADA or FMLA merits. Rather, the certification forms part of Petitioner’s contention

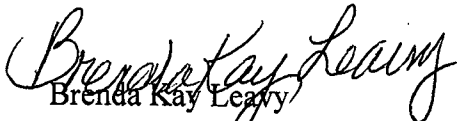
that the earlier proceedings treated material record evidence as though it had not been identified even though her appellate brief expressly cited the location of that evidence.

That discrepancy therefore supported Petitioner's broader Rule 60(b)(4) contention that her challenge concerned the integrity of the adjudicative process rather than merely disagreement with the result reached on the merits.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,


Brenda Kay Leavy
Petitioner, *pro se*

Signed: September 29, 2026