

No. 22-7574

**In the Supreme Court of the United States**

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NAWAZ AHMED,

*Petitioner,*

v.

TIM SHOOP, Warden

*Respondent.*

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

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**BRIEF IN OPPOSITION**

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## **CAPITAL CASE – NO EXECUTION DATE SET**

### **QUESTION PRESENTED**

Did the Sixth Circuit correctly hold that it lacked jurisdiction over Nawaz Ahmed’s appeal “to the extent” he sought to challenge an order denying his motion to strike a notice of appeal?

## **LIST OF PARTIES**

The Petitioner is Nawaz Ahmed, an inmate at the Chillicothe Correctional Institution.

The Respondent is Tim Shoop, the Warden of the Chillicothe Correctional Institution.

## LIST OF DIRECTLY RELATED PROCEEDINGS

1. *State v. Ahmed*, 99-CR-192 (Ct. of Common Pleas, Belmont County, OH) (judgment entered February 2, 2001)
2. *State v. Ahmed*, 2001-871 (Ohio) (judgment entered August 25, 2004)
3. *Ahmed v. Ohio*, 04-8302 (U.S.) (certiorari denied March 28, 2005)
4. *Ahmed v. Ohio*, 05-6113 (U.S.) (certiorari denied Oct. 31, 2005)
5. *Ahmed v. Ohio*, 99-CA-192 (Ct. of Common Pleas, Belmont County, OH) (judgment entered March 8, 2005)
6. *State v. Ahmed*, 05-BE-15 (Ohio Ct. App., 7th District) (judgment entered December 28, 2006)
7. *State v. Ahmed*, 2007-216 (Ohio) (appeal denied May 16, 2007)
8. *Ahmed v. Warden*, 08-cv-493 (S.D. Ohio) (administratively closed November 18, 2010)
9. *Ahmed v. Houk*, 07-cv-658 (S.D. Ohio) (motion to reopen the time to file a notice of appeal denied January 6, 2022)
10. *Ahmed v. Houk*, 07-4881 (6th Cir.) (order denying rehearing *en banc* entered June 10, 2008)
11. *Ahmed v. Houk*, 09-3241 (6th Cir.) (order dismissing case as improperly transferred March 24, 2009)
12. *Ahmed v. Houk*, 15-3684 (6th Cir.) (order denying rehearing *en banc* entered November 12, 2015)
13. *Ahmed v. Sheldon*, 15-8912 (U.S.) (in forma pauperis status and petition for a writ of certiorari dismissed May 23, 2016)
14. *Ahmed v. Houk*, 17-4481 (6th Cir.) (order that the case remain closed issued May 20, 2014)
15. *Ahmed v. Shoop*, 18-3292 (6<sup>th</sup> Cir.) (appeal denied September 27, 2018)
16. *Ahmed v. Shoop*, 18-9331 (U.S.) (certiorari denied October 7, 2019)
17. *Ahmed v. Shoop*, 18-9332 (U.S.) (petition for writ of mandamus denied October 7, 2019)

18. *Ahmed v. Shoop*, 20-4187 (6<sup>th</sup> Cir.) (appeal dismissed February 17, 2021)
19. *Ahmed v. Shoop*, 21-3095 (6<sup>th</sup> Cir.) (appeal dismissed March 10, 2021)
20. *Ahmed v. Shoop*, 20-4302 (6<sup>th</sup> Cir.) (appeal dismissed July 30, 2021)
21. *Ahmed v. Shoop*, 21-7850 (U.S.) (*in forma pauperis* status denied, and petition for a writ of certiorari dismissed October 3, 2022)
22. *Ahmed v. Shoop*, 22-3039 (6<sup>th</sup> Cir.) (appeal dismissed in part November 14, 2022)
23. *Ahmed v. Shoop*, 20-4153 (6<sup>th</sup> Cir.) (pending)
24. *Ahmed v. Shoop*, 21-3542 (6<sup>th</sup> Cir.) (pending)

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## INTRODUCTION

Nawaz Ahmed is a convicted murderer on Ohio's death row. He is also a serial abuser of this Court's docket. This case marks at least the seventh time that Ahmed, acting *pro se*, has petitioned this Court for writs of certiorari or mandamus. *Ahmed v. Shoop*, 21-7850; *In re Nawaz Ahmed*, No. 18-9332; *Ahmed v. Shoop*, 18-9331; *Ahmed v. Hershey*, No. 02-9018; *Ahmed v. Sargus*, No. 03-7512; *Ahmed v. Ohio*, No. 05-6113; *Ahmed v. Belmont County Court of Common Pleas of Ohio*, No. 12-9397. Each of Ahmed's prior *pro se* filings was meritless. The Court denied each. It should deny this one, too.

## JURISDICTION

The District Court had jurisdiction over Ahmed's habeas case under 28 U.S.C. §2254(a). The Sixth Circuit held that it lacked jurisdiction to hear one issue in his appeal for the reasons laid out in its opinion. *Ahmed v. Shoop*, No. 22-3039, 2022 WL 19836969, at \*1 (6th Cir. Nov. 14, 2022) (included in the appendix to Ahmed's petition). This Court has jurisdiction to review Ahmed's petition under 28 U.S.C. §1254(1).

## STATEMENT

Ahmed's petition stems from the same underlying proceedings as most of his previous petitions. This brief will incorporate, sometimes verbatim, portions of briefs filed in opposition to Ahmed's earlier filings.

1. Over two decades ago, a detective in Belmont County, Ohio responded to the St. Clairsville home of Dr. Lubaina Ahmed. *State v. Ahmed*, 103 Ohio St. 3d 27, 27–29 (2004). The detective discovered Lubaina's lifeless body, along with the bodies

of Abdul Bhatti (Lubaina's father), Ruhie Ahmed (Lubaina's sister), and Nasira Ahmed (Lubaina's two-year-old niece). The murderer had slashed their throats and fractured their skulls. *Id.* at 57–58.

Another detective discovered a work badge near the bodies. *Id.* at 29. The badge belonged to Nawaz Ahmed—Lubaina's estranged husband. Further inculpat- ing Ahmed, a forensic scientist at the Ohio Bureau of Criminal Identification and Investigation matched Ahmed's DNA profile to blood found at the crime scene. *Id.* at 30. Police discovered a motive, too: Lubaina initiated divorce proceedings a year before the murders. *Id.* at 27. Those proceedings boiled over into a hostile child- custody battle. The divorce court issued a restraining order, yet Ahmed continued to make harassing telephone calls to Lubaina. *Id.* The couple's final divorce hearing was scheduled for September 13, 1999, two days after the quadruple murder. *Id.* at 28.

The police arrested Ahmed on the evening of September 11 at John F. Kennedy Airport in New York. *Id.* at 29. He had a one-way ticket to Pakistan for a flight that was scheduled to depart within the hour. *Id.* Ahmed also had \$7,500 in traveler's checks, nearly \$7,000 in cash, his will, and a lacerated thumb. *Id.*

2. A grand jury indicted Ahmed on four counts of aggravated murder. *Id.* at 29. A jury convicted him on all counts and recommended that he be sentenced to death. *Id.* at 30. The trial court imposed the recommended sentence. *Id.* On direct appeal, the Supreme Court of Ohio unanimously affirmed the judgment and sentence. *Id.* at 58.

Ahmed sought reconsideration, which the Ohio Supreme Court denied. *State v. Ahmed*, 103 Ohio St. 3d 1496 (2004). He also filed two petitions for writs of certiorari. An attorney representing Ahmed filed the first one in January 2005. *See Ahmed v. Ohio*, No. 04-8302. Ahmed filed a second petition, *pro se*, in May of the same year. *See Ahmed v. Ohio*, No. 05-6113. When the Court denied both petitions, Ahmed returned to the state courts to seek postconviction relief. After a trial court denied each of his claims, an Ohio appellate court affirmed and the Ohio Supreme Court declined to hear his case. *State v. Ahmed*, 2006-Ohio-7069 (Ohio Ct. App. 2006); *State v. Ahmed*, 113 Ohio St. 3d 1513 (2007).

3. Ahmed sought federal habeas relief in the United States District Court for the Southern District of Ohio. That court denied Ahmed's request for relief, and dismissed his case with prejudice, on September 21, 2020. *Ahmed v. Houk*, No. 2:07-CV-658, 2020 WL 5629622 \*30 (S.D. Ohio Sept. 21, 2020). Ahmed moved to amend the judgment. The District Court denied the motion. Order, R.194, PageID#11164 (All citations to the District Court record refer to the record in Case No. 2:07-cv-658.) Ahmed appealed through counsel, and that appeal remains pending. *See Ahmed v. Shoop*, No. 21-3542 (6th Cir.); *see also Ahmed*, 2022 WL 19836969 at \*1.

4. Ahmed also filed a *pro se* post-judgment motion in the District Court asking the court to "cancel, remove the notice of appeal filed in this case" by his attorneys. Motion, R.198, PageID#11201. The magistrate denied the motion in a July 15, 2021 order entitled "Decision and Order Denying Motion to Strike." Decision and Order, R.199, PageID#11208. On August 6, 2021, Ahmed appealed the magistrate's order to

the District Court in a *pro se* motion entitled “Objections or Appeal from Maistrate [sic] Judge Order (ECF No. 199).” Motion, R.202, PageID#11216. The District Court overruled the objections in a September 7, 2021 order. Order, R.203, PageID#11262.

This “September 7 order” lies at the heart of this case.

5. On December 10, 2021, Ahmed filed a *pro se* “Motion to Reopen the Time to File Notice of Appeal under Fed. R. App. P. 4(a)(6) and 28 U.S.C.S 2107(c).” Motion, R.204, PageID#11263. Ahmed argued that he deserved more time to appeal the September 7 order; he claimed he had not been served until November 30, 2021, that he had issues with his mail, that the court had filed the document incorrectly, and that he continued to have issues with his court-appointed counsel. *Id.* at PageID#11263–69. The magistrate recommended denying the Motion to Reopen. R.205, PageID#11273. The magistrate explained that service on a party represented by an attorney could be made on the attorney under Rule 5(b)(1) of the Federal Rules of Civil Procedure. Report and Recommendations, R.205, PageID#11272–73. Even assuming Ahmed had not received notice of the September 7 order, his attorneys had. And that sufficed to provide the requisite notice. *Id.*

The District Court adopted the magistrate’s recommendations on January 6, 2022. Order, R.206, PageID#11275. Call this the “January 6 order.”

6. Ahmed filed another *pro se* appeal on January 12, 2022. *See* Notice of Appeal, R.207, PageID#11276. The Sixth Circuit *sua sponte* dismissed the case—though only in part. *See Ahmed*, 2022 WL 19836969 at \*1. The court explained that, under 28 U.S.C. §2107(a), parties have just thirty days to appeal district-court judgments.

The deadline “is a mandatory jurisdictional prerequisite that this court may not waive or alter.” *Ahmed*, 2022 WL 19836969 at \*1 (citing *Hamer v. Neighborhood Hous. Servs. of Chi.*, 138 S. Ct. 13, 17 (2017)). Ahmed had long-since blown the thirty-day deadline for appealing the September 7 order. On that ground, the court dismissed Ahmed’s appeal “to the extent” he sought to challenge “the September 7, 2021 order.” *Id.* (emphasis added). The Court *did not*, however, dismiss the appeal insofar as it sought to challenge “the January 6, 2022 order denying Ahmed’s motion to reopen the time to appeal the September 7 order.” *Id.*

The appeal remains pending on the Sixth Circuit’s docket. *See Ahmed v. Shoop*, 22-3039 (6<sup>th</sup> Cir.).

7. After trying and failing to win *en banc* review, Ahmed timely petitioned this Court for a writ of certiorari.

### **REASONS FOR DENYING THE WRIT**

The Court should deny Ahmed’s petition, which seeks, in an interlocutory posture, factbound error correction of an unpublished order in connection with a legal issue the order does not consider.

#### **I. Ahmed has failed to demonstrate that he should be allowed to seek certiorari before judgment.**

The Sixth Circuit’s decision below did not dismiss Ahmed’s appeal in its entirety. Instead, it dismissed his appeal only “to the extent” he sought to challenge the September 7 order denying his motion to strike a notice of appeal. *Ahmed*, 2022 WL 19836969 at \*1. Ahmed remains free to raise “issues regarding the January 6, 2022, order denying Ahmed’s motion to reopen the time to appeal the September 7 order.”

*Id.* And Ahmed’s case remains pending; the Sixth Circuit has not issued any judgment or mandate, and the parties have not even briefed the issues relating to the January 6 order.

All that makes this an exceptionally poor vehicle for review. For one thing, because the Sixth Circuit has not issued a judgment, Ahmed is seeking certiorari *before* judgment. That poses a problem for Ahmed, as this Court applies a “very demanding standard” in deciding whether “to grant certiorari at that stage”—a standard harder to satisfy than the already-demanding standard applied to petitions for writs of certiorari *after* judgment. *Mount Soledad Mem’l Ass’n v. Trunk*, 573 U.S. 954 (2014) (Alito, J., statement respecting the denial of the petition for a writ of certiorari before judgment). More precisely, the Court will grant certiorari before judgment “only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court.” Sup. Ct. R. 11.

Ahmed has not tried, and could not possibly, satisfy Rule 11’s demanding standard. For one thing, as discussed in greater detail below, he seeks factbound error correction of an unpublished decision containing no clear error. For another, the issues remaining on appeal could—in theory, and setting aside the frivolous nature of Ahmed’s arguments—give Ahmed the relief he wants. In his petition, Ahmed argues that the Sixth Circuit had jurisdiction to hear his appeal from the September 7 order. The Sixth Circuit rejected that argument, but permitted Ahmed to continue challenging the January 6 order “denying Ahmed’s motion to reopen the time to

appeal the September 7 order.” *Ahmed*, 2022 WL 19836969 at \*1. Were he to prevail on the latter theory, he would win the ability to appeal the September 7 order. So neither Ahmed nor the public needs an answer to the question whether Ahmed can appeal the September 7 order until the Sixth Circuit decides whether the District Court should have reopened the time for Ahmed to appeal that order.

## **II. Ahmed’s case presents no certworthy question.**

In addition to the vehicle problem, Ahmed fails to identify any question worth considering. Instead, he argues that the Sixth Circuit’s unpublished order failed to examine an issue that led to a factbound error. An alleged error relating to an issue never even discussed in the lower court’s unpublished decision is not the stuff of which certiorari grants are made.

### **A. The Sixth Circuit dismissed Ahmed’s appeal as untimely.**

Federal law requires litigants to file notices of appeal “within thirty days after the entry of such judgment.” 28 U.S.C. § 2107(a). “This 30-day time limit is mandatory and jurisdictional.” *Browder v. Dir., Dep’t of Corr. of Illinois*, 434 U.S. 257, 264 (1978) (quotation omitted). Because the rule is jurisdictional, courts must dismiss late-filed appeals. *Bowles v. Russell*, 551 U. S. 205, 209-213 (2007); *see also Hamer v. Neighborhood Hous. Servs.*, 138 S. Ct. 13, 16 (2017).

The Sixth Circuit applied this rule and deemed Ahmed’s petition untimely. Recall that he appealed in hopes of challenging (among other things) the District Court’s September 7 order. Under 28 U.S.C. §2107(a), he had thirty days in which to do so. But Ahmed noticed his appeal on December 10, 2021—*ninety-four* days after the order’s issuance. Thus, the Sixth Circuit held, Ahmed failed timely to appeal the

September 7 order. On this ground, the court dismissed Ahmed’s appeal “to the extent” he sought to challenge that order. *Ahmed*, 2022 WL 19836969 at \*1.

**B. Ahmed offers no persuasive reason to hear this factbound case.**

1. In his petition, Ahmed primarily insists that, under Rule 58(a) of the Federal Rules of Civil Procedure, he should have had 180 days in which to appeal. *See* Pet.4–8. By way of background, Rule 58 requires, with some exceptions, that “[e]very judgment and amended judgment ... be set out in a separate document.” Fed. R. Civ. P. 58(a). If a separate document is required, and if the court fails to issue that document, then the judgment will be deemed “entered” only after “150 days have run from” the decision in question. Fed. R. Civ. P. 58(c)(2)(B). Because the thirty-day jurisdictional period in which to appeal begins to run only once judgment is formally entered, this rule in effect gives appellants 180 days in which to appeal judgments that are not set forth in separate documents: such judgments are not “entered” for 150 days, and the thirty-day period begins to run only upon a judgment’s entry.

The September 7 order is not a “judgment” for purposes of the Federal Rules of Civil Procedure unless it is an “order from which an appeal lies.” Fed. R. Civ. P. 54(a). The Sixth Circuit did not, in its opinion, consider whether a post-judgment motion to strike a notice of appeal would fit the bill. But even assuming *arguendo* such orders are “judgments,” any error in Ahmed’s case was harmless twice over. For one thing, the Sixth Circuit’s decision does not deprive Ahmed of the ability to seek the relief he wants. In the exceptionally unlikely event that his qualified, highly respected attorneys are pursuing an appeal against his wishes, he can move the Sixth Circuit to dismiss that appeal. Further, the Sixth Circuit’s decision to dismiss any



appeal of the September 7 order is harmless because Ahmed had no chance to prevail. The District Court correctly determined that *it* lacked jurisdiction to strike the notice of appeal. “The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.” *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982); *accord Coinbase, Inc. v. Bielski*, \_\_\_ U.S. \_\_\_, 2023 WL 4138983 \*3 (June 23, 2023). While district courts may issue orders in aid of the appellate courts’ jurisdiction, they may not frustrate appellate courts’ jurisdiction. But frustration is precisely what striking Ahmed’s notice of appeal would have entailed. *See* Sept. 7 Order, R.203, PageID#11260–62. And even if the District Court had *authority* to strike the notice of appeal, its failure to do so would not constitute reversible error on appeal.

Because Ahmed’s appeal was frivolous, the Sixth Circuit’s alleged failure to apply Rule 58 was harmless for Ahmed. And it was harmless for everyone else, too. The decision does not even discuss Rule 58, meaning it establishes no precedent. Regardless, the opinion is unpublished and thus non-binding.

2. As a backup argument, Ahmed argues that the thirty-day period in which to appeal should not have started running until he received the September 7 order himself, which he says occurred in November 2021. *See* Pet.5. This argument fails. Rule 5(b)(1) of the Federal Rules of Civil Procedure says that service on a party represented by counsel must be made on the attorney. When counsel is registered for the court’s electronic-filing system, service is effected upon entry in the system. *See*

Fed. R. Civ. P. 5(b)(2)(E). Ahmed's appointed counsel, Keith Yeazel and Adele Shank, are registered users of the CM/ECF system. The clerk filed the September 7, 2021 order promptly, making service on Ahmed via his counsel. *See* Report and Recommendation, R.205, PageID#11272–73. Thus, they were properly served on September 7. By operation of law, so was Ahmed. *Id.* So, even if it is true that Ahmed did not personally receive the order until much later, that has no bearing on the timeliness of his appeal.

**3.** Finally, Ahmed occasionally makes arguments regarding his right to counsel. *See* Pet.10–11. Those arguments have no bearing on the jurisdictional questions presented and thus provide no basis for granting his petition.

## CONCLUSION

This Court should deny Ahmed's petition for a writ of certiorari.

Respectfully submitted,

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