

No. 24-5642

In the Supreme Court of the United States

NAWAZ AHMED,

Petitioner,

v.

BILL COOL,¹ Warden

Respondent.

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

BRIEF IN OPPOSITION

DAVE YOST

Attorney General of Ohio

MICHAEL J. HENDERSHOT*

Ohio Chief Deputy Solicitor General

**Counsel of Record*

TRANE J. ROBINSON

Deputy Solicitor General

30 East Broad Street, 17th Floor

Columbus, Ohio 43215

614.466.8980

michael.hendershot@ohioago.gov

Counsel for Respondent

¹ Warden Bill Cool is substituted for Warden Tim Shoop. See Rule 35.3

CAPITAL CASE – NO EXECUTION DATE SET

QUESTION PRESENTED

Did the Sixth Circuit err by dismissing Petitioner’s earlier-filed *pro se* appeal “as duplicative” of his subsequent counseled appeal?

LIST OF PARTIES

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

The Respondent is Bill Cool, the Warden of the Ross 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. *State v. Ahmed*, 2001-871 (Ohio) (reconsideration denied October 27, 2004)
4. *Ahmed v. Ohio*, 04-8302 (U.S.) (certiorari denied March 28, 2005)
5. *Ahmed v. Ohio*, 04-8302 (U.S.) (rehearing denied June 13, 2005)
6. *Ahmed v. Ohio*, 05-6113 (U.S.) (certiorari denied Oct. 31, 2005)
7. *Ahmed v. Ohio*, 99-cr-192 (Ct. of Common Pleas, Belmont County, OH) (judgment entered March 8, 2005)
8. *State v. Ahmed*, 05-BE-15 (Ohio Ct. App., 7th District) (judgment entered December 28, 2006)
9. *State v. Ahmed*, 2007-216 (Ohio) (appeal denied May 16, 2007)
10. *Ahmed v. Houk*, 2:07-cv-658 (S.D. Ohio) (order granting *in forma pauperis* status and appointing counsel Sept. 13, 2007)
11. *Ahmed v. Houk*, 07-4481 (6th Cir.) (appeal dismissed Feb. 8, 2008)
12. *In re: Nawaz Ahmed*, 09-3241 (6th Cir.) (appeal dismissed March 24, 2009)
13. *Ahmed v. Warden*, 2:08-cv-493 (S.D. Ohio) (administratively closed November 18, 2010)
14. *Ahmed v. Houk*, 2:07-cv-658 (S.D. Ohio) (order denying motion to invalidate reassignment of case entered May 15, 2015)
15. *Ahmed v. Houk*, 15-3684 (6th Cir.) (appeal dismissed Aug. 4, 2015)
16. *Ahmed v. Houk*, 15-3684 (6th Cir.) (rehearing *en banc* denied Nov. 12, 2015)
17. *Ahmed v. Sheldon*, 15-8912 (U.S.) (certiorari dismissed May 23, 2016)
18. *Ahmed v. Sheldon*, 15-8912 (U.S.) (reconsideration denied Oct. 3, 2016)
19. *Ahmed v. Houk*, 2:07-cv-658 (S.D. Ohio) (order granting counsel's motion to withdraw entered Jan. 30, 2018)
20. *Ahmed v. Houk*, 18-3292 (6th Cir.) (appeal dismissed May 1, 2018)

21. *Ahmed v. Houk*, 18-3292 (6th Cir.) (appeal dismissed Sept. 27, 2018)
22. *Ahmed v. Shoop*, 18-9331 (U.S.) (certiorari denied Oct. 7, 2019)
23. *In re Nawaz Ahmed*, 18-9332 (U.S.) (mandamus dismissed Oct. 7, 2019)
24. *Ahmed v. Houk*, 2:07-cv-658 (S.D. Ohio) (order denying habeas corpus and dismissing case entered Sept. 21, 2020)
25. *Ahmed v. Houk*, 2:07-cv-658 (S.D. Ohio) (order striking *pro se* motion to appoint counsel entered Oct. 9, 2020)
26. *Ahmed v. Houk*, 2:07-cv-658 (S.D. Ohio) (order striking *pro se* filing entered Nov. 30, 2020)
27. *Ahmed v. Houk*, 2:07-cv-658 (S.D. Ohio) (order striking *pro se* objections to report and recommendation entered Dec. 27, 2020)
28. *Ahmed v. Houk*, 20-4187 (6th Cir.) (appeal dismissed Feb. 17, 2021)
29. *Ahmed v. Shoop*, 21-3095 (6th Cir.) (appeal dismissed March 10, 2021)
30. *Ahmed v. Houk*, 20-4187 (6th Cir.) (rehearing denied March 30, 2021)
31. *Ahmed v. Houk*, 2:07-cv-658 (S.D. Ohio) (order adopting report and recommendation and denying motion to alter judgment entered May 7, 2021)
32. *Ahmed v. Shoop*, 21-3095 (6th Cir.) (rehearing en banc denied May 18, 2021)
33. *Ahmed v. Shoop*, 20-4302 (6th Cir.) (appeal dismissed July 30, 2021)
34. *Ahmed v. Shoop*, 2:07-cv-658 (S.D. Ohio) (order adopting report and recommendation and denying motion to reopen time to file appeal entered Jan. 6, 2022)
35. *Ahmed v. Shoop*, 21-7850 (U.S.) (certiorari dismissed Oct. 3, 2022)
36. *Ahmed v. Shoop*, 22-3039 (6th Cir.) (appeal dismissed in part Nov. 14, 2022)
37. *Ahmed v. Shoop*, 22-7574 (U.S.) (certiorari denied Oct. 2, 2023)
38. *Ahmed v. Shoop*, 20-4153 (6th Cir.) (appeal dismissed March 4, 2024)
39. *Ahmed v. Shoop*, 21-3542, 22-3039 (6th Cir.) (certificate of appealability denied Nov. 5, 2024)
40. *In re Nawaz Ahmed*, No. 24-5641 (mandamus petition pending).

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
LIST OF PARTIES	ii
LIST OF DIRECTLY RELATED PROCEEDINGS.....	iii
TABLE OF CONTENTS.....	v
TABLE OF AUTHORITIES	vi
INTRODUCTION	1
JURISDICTION.....	2
STATEMENT.....	2
REASONS FOR DENYING THE WRIT.....	6
I. The questions presented are unworthy of certiorari.....	7
A. The Sixth Circuit did not err.	7
B. The circuit courts are not divided.....	9
C. The question is neither cleanly presented nor important.	10
II. Ahmed’s conduct warrants the <i>Martin</i> restriction.....	11
CONCLUSION.....	13

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Ahmed v. Belmont Cnty. Ct. of Common Pleas of Ohio, Prob. Div.</i> , 569 U.S. 1006 (2013)	5
<i>Ahmed v. Hershey</i> , 538 U.S. 983 (2003)	4
<i>Ahmed v. Houk</i> , 6th Cir. No. 15-3684 (6th Cir. Aug. 4, 2015)	5
<i>Ahmed v. Houk</i> , No. 2:07-CV-658, 2020 WL 5629622 (S.D. Ohio Sept. 21, 2020)	2, 10, 11
<i>Ahmed v. Houk</i> , No. 2:07-CV-658, 2021 WL 1827121 (S.D. Ohio. May 7, 2021)	3
<i>Ahmed v. Ohio</i> , 544 U.S. 952 (2005)	5
<i>Ahmed v. Ohio</i> , 546 U.S. 985 (2005)	5
<i>Ahmed v. Sargus</i> , 540 U.S. 1154 (2004)	5
<i>State ex rel. Ahmed v. Sargus</i> , 99 Ohio St. 3d 1431 (2003)	5
<i>Ahmed v. Sheldon</i> , 578 U.S. 1001 (2016)	1, 11
<i>Ahmed v. Sheldon</i> , No. 578 U.S. 1001 (2016).....	5
<i>Ahmed v. Shoop</i> , 143 S. Ct. 276 (2022)	2, 11
<i>Ahmed v. Shoop</i> , 6th Cir. No. 18-3292, 2018 WL 11297909 (6th Cir. Sept. 27, 2018).....	5
<i>Ahmed v. Shoop</i> , No. 20-4302, 2021 WL 6197332 (6th Cir. July 30, 2021).....	6

<i>Ahmed v. Shoop</i> , No. 22-3039, 2022 WL 19836969 (6th Cir. Nov. 14, 2022).....	6
<i>Ahmed v. Shoop</i> , Nos. 20-4153, 21-3542, 22-3039, 2024 WL 4342868 (6th Cir. Mar. 4, 2024).....	4
<i>Ahmed v. Shoop</i> , Nos. 21-3542, 21-3309, 2024 WL 5125984 (6th Cir., Nov. 4, 2024).....	4, 6
<i>Anders v. California</i> , 386 U.S. 738 (1967)	9
<i>Banister v. Davis</i> , 590 U.S. 504 (2020)	7, 11
<i>Brown v. Allen</i> , 344 U.S. 443 (1953)	12
<i>Brunson v. Herring</i> , No. 24-5673, 2024 WL 5011806 (U.S. Dec. 9, 2024).....	11
<i>Collier v. Trump</i> , No. 24-5432, 2024 WL 4655083 (U.S. Nov. 4, 2024)	12
<i>Del Rantz v. Hartley</i> , 577 F. App'x 805 (10th Cir. 2014)	10
<i>Faretta v. California</i> , 422 U.S. 806 (1975)	8
<i>Firestone Fin. LLC v. Meyer</i> , 881 F.3d 545 (7th Cir. 2018)	8
<i>Fratta v. Davis</i> , 889 F.3d 225 (5th Cir. 2018)	10
<i>Green v. Paramount</i> , No. 24-5656, 2024 WL 4874733 (U.S. Nov. 25, 2024)	12
<i>Kerotest Mfg. Co. v. C-O-Two Fire Equip. Co.</i> , 342 U.S. 180 (1952)	8
<i>Martel v. Clair</i> , 565 U.S. 648 (2012)	8, 9

<i>Martin v. District of Columbia Court of Appeals</i> , 506 U. S. 1 (1992)	2, 4, 6, 11, 12
<i>McKaskle v. Wiggins</i> , 465 U.S. 168 (1984)	1, 8
<i>McQuiggin v. Perkins</i> , 569 U.S. 383 (2013)	13
<i>In re Nawaz Ahmed</i> , 140 S. Ct. 212 (2019)	2, 6, 11
<i>Neitzke v. Williams</i> , 490 U.S. 319 (1989)	12
<i>Roth v. Austin</i> , 62 F.4th 1114 (8th Cir. 2023)	8
<i>Sanders v. Washington</i> , 582 F. Supp. 3d 543 (W.D. Mich. 2022)	8
<i>State v. Ahmed</i> , 103 Ohio St. 3d 1496 (2004)	3
<i>State v. Ahmed</i> , 103 Ohio St. 3d 27 (2004)	2, 3, 4
<i>State v. Ahmed</i> , 113 Ohio St. 3d 1513 (2007)	3
<i>State v. Ahmed</i> , 2006-Ohio-7069 (Ohio Ct. App. 2006)	3
<i>United States v. Essig</i> , 10 F.3d 968 (3d Cir. 1993)	10
<i>United States v. Gwiazdzinski</i> , 141 F.3d 784 (7th Cir. 1998)	8
<i>United States v. Martinez</i> , 588 F.3d 301 (6th Cir. 2009)	8
<i>United States v. Williams</i> , 987 F.3d 700 (7th Cir. 2021)	9
<i>Wilson v. Hawaii</i> , No. 23-7517, 2024 WL 5036306 (U.S. Dec. 9, 2024)	10

Statutes

18 U.S.C. §3599.....	8
28 U.S.C. §1254.....	2
28 U.S.C. §1291.....	2
28 U.S.C. §1331.....	2
28 U.S.C. §1654.....	8
28 U.S.C. §1915.....	12
28 U.S.C. §2107.....	6
28 U.S.C. §2241.....	2

Other Authorities

<i>Ahmed v. Shoop</i> , No. 18-9331, Br. in Opp., at 13 (July 26, 2019).....	12
Fed. R. App. P. 4	3, 11
Fed. R. Civ. P. 11	9
Fed. R. Civ. P. 59	3, 7, 8, 10, 11
Order List, 604 U.S. - (Oct. 7, 2024)	12
S.Ct. Rule 13.1	12
S.Ct. Rule 15.1	6
S.Ct. Rule 33.1	2, 6
S.Ct. Rule 38	2
S.Ct. Rule 39.8	1, 2, 5, 6, 11

INTRODUCTION

Nawaz Ahmed is condemned to Ohio's death row for a quadruple aggravated murder. Ahmed has had consistent representation by appointed counsel well acquainted with capital appeals. Yet Ahmed has repeatedly filed *pro se* appeals. The present petition is only the most recent of these repeat filings. This latest petition (as best the Warden can tell) asks whether the Sixth Circuit erred by dismissing his *pro se* appeal "as duplicative" of an appeal he filed through counsel. Pet.2–3.

The Court should deny certiorari because it points to no error, implicates no circuit split, and challenges an early-stage appellate ruling. There is no error, first, because federal courts need not indulge hybrid representations. *See McKaskle v. Wiggins*, 465 U.S. 168, 183 (1984). Indeed, the apparent keystone of the petition is incorrect. To the Warden's eye, the petition rests on Ahmed's belief that the district court's order is not final. *See* Pet.2, 3. Ahmed's belief is mistaken. The district court dismissed all of Ahmed's claims. Pet.App.D (PageID#10612). Second, on these questions, the petition points to no circuit-level disagreement or other indicia of cert-worthiness. And to top it off, the petition arises from a preliminary step in the Sixth Circuit's review.

The Court should go further than denying certiorari and bar Ahmed from further unpaid *pro se* civil appeals. This marks the fifth certiorari petition in Ahmed's habeas case alone in which he filed *pro se* in a preliminary posture. Twice before, this Court denied Ahmed *in forma pauperis* status and dismissed (rather than denied) his certiorari petition; on a third occasion the Court did the same in a mandamus action. *Ahmed v. Sheldon*, No. 15-8912, *dismissed* 578 U.S. 1001 (2016) (citing Rule 39.8),

recon. denied, 580 U.S. 810 (2016); *Ahmed v. Shoop*, No. 21-7859, *dismissed* 143 S. Ct. 276 (2022) (same); *In re Nawaz Ahmed*, No. 18-9332, *dismissed* 140 S. Ct. 212 (2019) (same). Here too, the Court should dismiss the petition as “frivolous or malicious.” Rule 39.8. The Court should now go one step further—recognizing that Ahmed will continue to abuse the privilege of proceeding *in forma pauperis*—and not excuse Ahmed from paying the docketing fee and meeting the formatting requirements in all future noncriminal cases. *Martin v. District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (per curiam); *see* Rule 33.1, 38(a).

JURISDICTION

The District court had jurisdiction over Ahmed’s habeas case under 28 U.S.C. §§1331, 2241(a). The Sixth Circuit had jurisdiction over the district court’s dismissal order under 28 U.S.C. §1291. *See Ahmed v. Houk*, No. 2:07-CV-658, 2020 WL 5629622 (S.D. Ohio Sept. 21, 2020) (Pet.App.D). This Court has jurisdiction to review Ahmed’s petition for certiorari under 28 U.S.C. §1254(1).

STATEMENT

1. Authorities arrested Nawaz Ahmed one evening at John F. Kennedy International Airport before he could embark a one-way flight to Pakistan. *State v. Ahmed*, 103 Ohio St. 3d 27, 27 (2004). Earlier that day, in September of 1999, Ahmed committed the quadruple murder of his soon-to-be ex-wife and her father, sister, and two-year-old niece. *Id.* at 28–29. The slain victims had their throats slashed and skulls fractured. *Id.* at 57–58. An Ohio jury convicted Ahmed of aggravated murder and recommended a death sentence, which the trial court imposed. *Id.* at 30. The Ohio

Supreme Court affirmed the conviction and sentence. *Id.* at 58. The court declined Ahmed's application to reopen the case. *State v. Ahmed*, 103 Ohio St. 3d 1496 (2004).

On postconviction review, an Ohio trial court denied Ahmed's petition for collateral relief, the court of appeals affirmed, and the Ohio Supreme Court denied discretionary jurisdiction. *State v. Ahmed*, 2006-Ohio-7069 (Ohio Ct. App. 2006); *State v. Ahmed*, 113 Ohio St. 3d 1513 (2007).

2. His state remedies exhausted, Ahmed filed a petition for a writ of habeas corpus. The Southern District of Ohio denied Ahmed relief and dismissed his case with prejudice. Pet.App.D (PageID#10612). The district court denied Ahmed a certificate of appealability. *Id.* Ahmed sought to alter that judgment under Rule 59(e). *Ahmed v. Houk*, No. 2:07-CV-658, 2021 WL 1827121, *3 (S.D. Ohio. May 7, 2021) (Pet.App.C). When that effort failed, Ahmed filed a counseled appeal from the denial of his Rule 59 motion (6th Cir. No. 21-3542). By then, Ahmed had already filed a *pro se* appeal of the district court's denial of a certificate of appealability (6th Cir. No. 20-4153). Ahmed's *pro se* appeal was premature—like Ahmed's many prior *pro se* appeals that blossomed into *pro se* certiorari petitions, as discussed below (at 5, 11)—because counsel moved to alter the judgment before Ahmed noticed his appeal. Fed. R. App. P. 4(a)(4)(B)(i). Ahmed moved to strike the counseled notice of appeal. The district court denied that motion, and three months later Ahmed moved under Appellate Rule 4(a)(6) to reopen the time to appeal that denial. The district court, in turn, denied Ahmed's motion to file a belated appeal. Ahmed, again *pro se*, appealed the denial of his motion to reopen the time to appeal (6th Cir. No. 22-3039).

The Sixth Circuit consolidated those three cases and denied Ahmed relief in each. *Ahmed v. Shoop*, Nos. 20-4153, 21-3542, 22-3039, 2024 WL 4342868 (6th Cir. Mar. 4, 2024) (Order) (Pet.App.B). In case number 20-4153, the court dismissed Ahmed’s *pro se* appeal from the certificate of appealability denial “as duplicative” of his counseled appeal. Pet.App.B, at 4. Ahmed asked the court to dismiss the counseled case (6th Cir. No. 21-3542) and appoint substitute counsel in his *pro se* appeal instead, but the court did not oblige. The court held case number 21-3542 in abeyance to await counsel filing a certificate of appealability application. Pet.App.B, at 5. And in case number 22-3039, the Sixth Circuit denied Ahmed’s motion to proceed *in forma pauperis* to challenge the denial of his motion to reopen the time to file a notice of appeal. Pet.App.B, at 7.

On November 5, 2024 (after Ahmed filed this certiorari petition), the Sixth Circuit denied Ahmed’s application for a certificate of appealability in case number 21-3542 and dismissed case number 22-3039 because Ahmed failed to pay the filing fee. *Ahmed v. Shoop*, Nos. 21-3542, 21-3309, 2024 WL 5125984 (6th Cir. Nov. 4, 2024). Ahmed’s petition for certiorari challenges the Sixth Circuit’s March 4 order dismissing his *pro se* appeal as duplicative of the counseled appeal.

3. Ahmed has petitioned for certiorari nine times before. Because the Warden requests the *Martin* restriction, he catalogues those previous petitions briefly.

One petition arose from Ahmed’s federal lawsuit against the lawyers appointed for his defense in the capital case. *See Ahmed*, 103 Ohio St. 3d at 31. This Court denied a *pro se* petition in that case. *Ahmed v. Hershey*, 538 U.S. 983 (2003) [1]. The

same year, Ahmed sought a writ of mandamus in the Ohio Supreme Court against the judge presiding over his divorce proceeding. The court summarily dismissed the action, *State ex rel. Ahmed v. Sargus*, 99 Ohio St. 3d 1431 (2003), and Ahmed (again *pro se*) petitioned for certiorari from that dismissal, *Ahmed v. Sargus*, 540 U.S. 1154 (2004) [2].

In 2005, this Court denied two petitions for writs of certiorari from the Ohio Supreme Court's judgment affirming Ahmed's capital sentence on direct appeal. See *Ahmed v. Ohio*, 544 U.S. 952 (2005) (with counsel), *reh'g denied* 545 U.S. 1124 (2005) [3]; *Ahmed v. Ohio*, 546 U.S. 985 (2005) (*pro se*) [4].

In 2013, this Court denied certiorari in Ahmed's *pro se* litigation concerning guardianship of his children. *Ahmed v. Belmont Cnty. Ct. of Common Pleas of Ohio, Prob. Div.*, 569 U.S. 1006 (2013) [5].

Beginning in 2016, Ahmed filed a series of *pro se* certiorari petitions from interlocutory orders in his habeas case. First, this Court dismissed Ahmed's petition from the Sixth Circuit dismissing for lack of jurisdiction an appeal of the district court denying his challenge to the reassignment of his habeas case to a new judge. *Ahmed v. Houk*, No. 15-3684 (6th Cir. Aug. 4, 2015) (Order), *cert. dismissed sub nom., Ahmed v. Sheldon*, 578 U.S. 1001 (2016) (citing Rule 39.8), *recon. denied*, 580 U.S. 810 (2016) [6]. In 2018, this Court denied yet another *pro se* certiorari petition in a preliminary posture after the Sixth Circuit dismissed for lack of jurisdiction Ahmed's appeal from the district court allowing counsel to withdraw. *Ahmed v. Shoop*, No. 18-3292, 2018 WL 11297909 (6th Cir. Sept. 27, 2018) (Order), *cert. denied*, 140 S. Ct. 74 (2019) [7].

That process repeated in 2022, after the Sixth Circuit dismissed for lack of jurisdiction an appeal from an order referring post-judgment motions to a magistrate judge. *Ahmed v. Shoop*, No. 20-4302, 2021 WL 6197332 (6th Cir. July 30, 2021) (Order), *cert. dismissed*, 143 S. Ct. 276 (2022) (citing Rule 39.8) [8]. Most recently, the Court denied Ahmed’s *pro se* petition in 2023—a challenge to the Sixth Circuit partially dismissing his interlocutory appeal as untimely. *Ahmed v. Shoop*, No. 22-3039, 2022 WL 19836969 (6th Cir. Nov. 14, 2022) (Order) (citing 28 U.S.C. §2107(a)), *cert. denied*, 144 S. Ct. 131 (2023) [9].

This marks Ahmed’s tenth certiorari petition, and ninth *pro se* petition. (And an eleventh is possible following the Sixth Circuit’s most recent November judgment denying Ahmed’s certificate of appealability application. *Ahmed*, Nos. 21-3542, 21-3309, 2024 WL 5125984 (6th Cir. Nov. 5, 2024)). This also marks the Warden’s fourth brief in opposition to Ahmed’s uncounseled petitions. *See* Rule 15.1. Ahmed is responsible for two *pro se* mandamus actions as well, including one filed concurrent with Ahmed’s pending certiorari petition. *See In re Nawaz Ahmed*, No. 18-9332, *dismissed* 140 S. Ct. 212 (2019); *In re Nawaz Ahmed*, No. 24-5641 (pending).

REASONS FOR DENYING THE WRIT

The Court should dismiss as frivolous or deny Ahmed’s petition, which seeks fact-bound error correction of an unpublished order that implicates no circuit split or pressing legal issue. Because Ahmed habitually abuses *in forma pauperis* status—as well as this Court’s and the State’s resources—this Court in future cases should impose the filing restriction described in *Martin*, 506 U.S. at 3. *See* 39.8; *see also* Rule 33.1, 38(a).

I. The questions presented are unworthy of certiorari.

Ahmed’s four questions presented all seem to center on one issue: whether the court of appeals erred by dismissing Ahmed’s *pro se* appeal (No. 20-4153) “as duplicative” of his later-filed counseled appeal (No. 21-3542). Pet.App.B, at 4; Pet.2–3, 19. That decision was not error; the circuits have not divided on this question; and this is an inappropriate case to review any issues it may raise.

A. The Sixth Circuit did not err.

When the district court denied Ahmed habeas relief, he appealed *pro se*. Meanwhile, Ahmed’s appointed counsel moved under Rule 59(e) to alter or amend the district court’s judgment. The court denied that motion and Ahmed appealed through counsel. The Sixth Circuit consolidated the two appeals (6th Cir. Nos. 20-4153, 21-3542). Pet.App.B, at 2. Ahmed sought to dismiss the latter and appoint substitute counsel in the former. But seeing as Ahmed already had counsel, the Sixth Circuit found it more sensible “to dismiss [the *pro se*] appeal as duplicative” of Ahmed’s counseled appeal. Pet.App.B, at 4.

That dismissal was not error. For one thing, Ahmed’s *pro se* appeal was indeed duplicative of the counseled appeal filed after the Rule 59 order. The Rule 59 motion suspended finality until disposition of the Rule 59 order, which “merges with the prior determination, so that the reviewing court takes up only one judgment.” *Banister v. Davis*, 590 U.S. 504, 508–09 (2020). Thus, Ahmed’s counseled appeal from the Rule 59 order subsumed everything in Ahmed’s premature *pro se* appeal from the underlying habeas-denial decision. The appeals were not coextensive, however,

because only the later-filed, counseled appeal encompassed the district court’s Rule 59 denial.

The Sixth Circuit acted within its “discretionary authority” to dismiss Ahmed’s duplicative *pro se* appeal. *Kerotest Mfg. Co. v. C-O-Two Fire Equip. Co.*, 342 U.S. 180, 185 (1952). The “lower courts” retain “an ample degree of discretion” to implement “[w]ise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation.” *See id.* at 183–84. The authority to “dismiss a suit that is duplicative of another federal court suit” is inherent in a court’s “power to administer its docket.” *Sanders v. Washington*, 582 F. Supp. 3d 543, 547 (W.D. Mich. 2022). This authority extends to appeals, where one “proper remedy is to dismiss the duplicative claims or appeal.” *Roth v. Austin*, 62 F.4th 1114, 1118 (8th Cir. 2023); *see also, e.g., Firestone Fin. LLC v. Meyer*, 881 F.3d 545, 549 (7th Cir. 2018).

More fundamental here, capital habeas petitioners have the right to proceed with counsel or without—but not a bespoke “hybrid” of the two. *See McKaskle v. Wiggins*, 465 U.S. 168, 183 (1984); *Martel v. Clair*, 565 U.S. 648, 657 (2012) (citing 18 U.S.C. §3599); *Faretta v. California*, 422 U.S. 806, 807 (1975); *cf.* 28 U.S.C. §1654. Ahmed’s acceptance of appointed counsel justified the Sixth Circuit dismissing Ahmed’s uncounseled appeal. *See, e.g., United States v. Martinez*, 588 F.3d 301, 328 (6th Cir. 2009); *United States v. Gwiazdzinski*, 141 F.3d 784, 787 (7th Cir. 1998). The civil rules reflect the same idea: An “attorney of record” must sign a represented party’s

filings “in the attorney’s name”; otherwise the court “must strike an unsigned paper.” Fed. R. Civ. P. 11(a). Only an “unrepresented” party may sign on his own behalf. *Id.*

Ahmed cannot fairly say that he preferred to represent himself on appeal. He asked the court of appeals to dismiss the represented appeal and appoint substitute counsel in his *pro se* appeal. The Sixth Circuit thought better of it and also, after appraising the “interests of justice,” declined to swap in new counsel in the represented appeal that it retained. Pet.App.B, at 4–5 (citing *Martel*, 565 U.S. at 663). Ahmed had (and exercised) the right to counsel, but had no right to choose his counsel.

The Sixth Circuit’s nonprecedential order was error-free.

One last point. Recall that the reason Ahmed wants his counseled appeal dismissed is his erroneous belief that the district court order is not final. Ahmed believes that this strips the Sixth Circuit of jurisdiction. Ahmed is wrong about the district court order’s finality. In other words, the foundation of the order underlying the questions presented is also error-free.

B. The circuit courts are not divided.

The Warden knows of no case—certainly Ahmed has not cited any—holding that a court cannot dismiss the earlier-filed of two duplicative appeals when a represented litigant filed the first *pro se*. As far as the Warden is aware, circuit precedent sparsely addresses the question presented. And the general approach in the circuits recognizes that, outside of the circumstances outlined in *Anders v. California*, 386 U.S. 738, 744 (1967), “courts have discretion to consider or disregard *pro se* filings from represented litigants.” *United States v. Williams*, 987 F.3d 700, 704 (7th Cir.

2021); *see also United States v. Essig*, 10 F.3d 968, 973 (3d Cir. 1993). Many states take the same approach. *See Fratta v. Davis*, 889 F.3d 225, 229 n.10 (5th Cir. 2018) (explaining Texas rule); *Del Rantz v. Hartley*, 577 F. App'x 805, 809 (10th Cir. 2014) (Order) (noting the law of Colorado, Utah, Texas, and Massachusetts). The authority to disregard hybrid representations includes the discretion to disregard *pro se* notice-of-appeal filings.

C. The question is neither cleanly presented nor important.

This is a poor case to address the question presented, which, as noted above, would not merit review even in another vehicle. The vehicle problems here are numerous. The petition stems from an nonprecedential, unsigned, unpublished order, Pet.App.B, all signals cautioning against this Court's review.

Another problem is the petition's preliminary posture, which "weighs against" immediate review. *Wilson v. Hawaii*, No. 23-7517, 2024 WL 5036306, at *1 (U.S. Dec. 9, 2024) (Thomas, J., statement respecting the denial of certiorari); *see id.* at *5 (Gorsuch, J., statement respecting the denial of certiorari). Indeed, the Sixth Circuit left the door open to substituting counsel—calling its rejection of that request a decision "at least for now." Pet.App.B, at 5. The Sixth Circuit's order is open to later revision, which means much of the relief Ahmed seeks in this petition is still available in the circuit.

Yet another vehicle problem is that the *pro se* appeal that undergirds much of the petition is subsumed in the counseled appeal. Ahmed filed his *pro se* notice of appeal one week after counsel filed the motion to alter the judgment under Rule 59(e). *See Ahmed v. Houk*, 2:07-cv-658, R.160 (Mot'n to Alter) (Oct. 18, 2020); R.164 (Notice of

Appeal in No. 20-4153) (Oct. 26, 2020). The Rule 59 motion “suspend[ed] the finality,” *Banister*, 590 U.S. at 508, of the district court’s judgment, and counsel timely filed an appeal following the motion’s disposition, Fed. R. App. P. 4(a)(4)(A)(iv); *Houk*, 2:07-cv-658, R.195 (Notice of Appeal in 6th Cir. No. 21-3542) (June 4, 2021). Ahmed’s *pro se* appeal is best understood as “merge[d],” *Banister*, 590 U.S. at 508, into the counseled appeal that challenged both the original habeas denial and the denial of the Rule 59 motion.

II. Ahmed’s conduct warrants the *Martin* restriction.

This is Ahmed’s tenth petition for certiorari, ninth *pro se* petition, and fifth petition in this habeas case alone (all uncounseled). In addition, Ahmed has filed two *pro se* original actions in this Court. Ahmed’s repeated “abuse[] of this Court’s certiorari process” warrants withholding from him, at least in uncounseled cases, *in forma pauperis* status and the privilege of avoiding this Court’s docketing fee that comes with it. *Martin*, 506 U.S. at 2.

Like the petitioner in *Martin*, Ahmed has filed several frivolous certiorari petitions. *See id.*; *see above* at 4–5. Three times this Court has invoked Rule 39.8 to deny *in forma pauperis* status to Ahmed for filing a “frivolous or malicious” petition. *Shoop*, 143 S. Ct. 276 (2022); *In re Nawaz Ahmed*, 140 S. Ct. 212 (2019); *Sheldon*, 136 S. Ct. 2384 (2016). This petition shows that Ahmed has “continued in his accustomed ways.” *Martin*, 506 U.S. at 2. And his unabating pattern of abuse obstructs “this Court’s fair allocation of judicial resources.” *Id.* at 3 (quotation omitted). The Court should no longer exempt Ahmed from paying the docketing fee and following the Court’s formatting requirements for paid petitions. *Accord Brunson v. Herring*, No.

24-5673, 2024 WL 5011806, at *1 (U.S. Dec. 9, 2024); *Green v. Paramount*, No. 24-5656, 2024 WL 4874733, at *1 (U.S. Nov. 25, 2024); *Collier v. Trump*, No. 24-5432, 2024 WL 4655083, at *1 (U.S. Nov. 4, 2024); *see generally* Order List, 604 U.S. — (Oct. 7, 2024) (invoking *Martin* seven times).

To the extent the equities factor into the *Martin* restriction, two stand out. First, because this is a capital case, the Warden must respond to even the most futile of Ahmed’s petitions. Rule 13.1. This is the Warden’s fourth brief in opposition and another is foreseeable now that the Sixth Circuit denied Ahmed a certificate of appealability. As the Warden explained in opposition to one of Ahmed’s past petitions, responding to Ahmed absorbs Ohio’s scarce, taxpayer-funded resources. *See Ahmed v. Shoop*, No. 18-9331, Br. in Opp., at 13 (July 26, 2019) (requesting the *Martin* restriction). That is particularly true of Ahmed’s *pro se* arguments, which the State must labor to decipher before it can meaningfully respond. Second, the Warden seeks the *Martin* restriction only for *uncounseled, noncriminal* petitions. Able counsel currently represents Ahmed; and should a member of this Court’s bar sign a future petition, the Warden would not oppose awarding Ahmed *in forma pauperis* status.

Congress recognized that indigent prisoners may abuse *in forma pauperis* status. 28 U.S.C. §1915(e)(2). Ahmed, “whose filing fees and court costs are assumed by the public, unlike a paying litigant, lacks an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits.” *Neitzke v. Williams*, 490 U.S. 319, 324 (1989). Granting Ahmed a reprieve from the docketing fee benefits no one, not even Ahmed. Petitions like this one “trivializ[e] the writ,” *Brown v. Allen*, 344 U.S. 443,

536 (1953) (Jackson, J., concurring), by consuming “limited judicial resources” and “pil[ing] yet more dead weight onto a postconviction habeas system already creaking at its rusted joints,” *McQuiggin v. Perkins*, 569 U.S. 383, 412 (2013) (Scalia, J, dissenting). Ahmed—a vexatious *pro se* litigant—should no longer get a free pass to pile on this Court’s and Ohio’s workloads.

CONCLUSION

This Court should dismiss or deny the petition for a writ of certiorari and prevent Ahmed from proceeding *in forma pauperis* in future noncriminal cases.

Respectfully submitted,

DAVE YOST
Attorney General of Ohio

/s/ Michael J. Hendershot
MICHAEL J. HENDERSHOT*
Ohio Chief Deputy Solicitor General
**Counsel of Record*
TRANE J. ROBINSON
Deputy Solicitor General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
614.466.8980
michael.hendershot@ohioago.gov

Counsel for Respondent