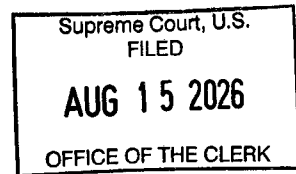


No. 20-311



In the Supreme Court of the United States

MICHELET MICHAEL SMITH,

Petitioner,

v.

JESSICA REYNOLDS, ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE ARIZONA COURT OF APPEALS
DIVISION ONE

PETITION FOR WRIT OF CERTIORARI

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AUGUST MMXXVI

QUESTION PRESENTED

Whether a State may treat a Fourteenth Amendment due-process objection as waived because a civil litigant did not seek leave to file an additional memorandum not provided for by the governing briefing rule, where neither the rule nor the court identified a deadline for that request and the trial court decided the dispositive motion approximately two days after the movant's reply.

PARTIES TO THE PROCEEDINGS

Petitioner, and plaintiff-appellant below is Michelet Michael Smith.

Respondents, and defendants-appellees below are Jessica Reynolds and Nikki Petit.

RELATED PROCEEDINGS

Superior Court of Arizona (Maricopa Cty):

Michelet Michael Smith v. Jessica Reynolds, et al.,
No. CV2024-029230 (Dec. 23, 2024) (final judgment)

Arizona Court of Appeals (Div. One):

Michelet Michael Smith v. Jessica Reynolds, et al.,
No. 1 CA-CV 25-0147 (Sep. 30, 2025) (memorandum decision)

Supreme Court of Arizona:

Michelet Michael Smith v. Jessica Reynolds, et al.,
No. CV-25-0281-PR (Mar. 19, 2026) (discretionary review denied)

Supreme Court of the United States

Michelet Michael Smith v. Jessica Reynolds, et al.,
No. 25A1418 (Jun. 18, 2026) (time to petition for writ of certiorari extended to August 16, 2026)

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OPINIONS BELOW

The Arizona Court of Appeals memorandum decision is reproduced in Appendix at App. 1–7. The Supreme Court of Arizona’s order denying review is reproduced in Appendix at App. 13–14. The Superior Court of Arizona, Maricopa County’s minute entry and judgment are reproduced in the Appendix at App. 8–12.

JURISDICTION

The Arizona Court of Appeals filed its memorandum decision on September 30, 2025. The Supreme Court of Arizona denied discretionary review on March 19, 2026. Justice Kagan extended the time to petition for writ of certiorari until August 16, 2026. This Court has jurisdiction under 28 U. S. C. §1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the United States Constitution provides in relevant part: “nor shall any State deprive any person of life, liberty, or property, without due process of law.”

STATEMENT OF THE CASE

1. Petitioner filed this Arizona civil action against Jessica Reynolds and Nikki Petit alleging, among other things, that conduct arising out of separate family-court representation caused procedural harm and severe emotional distress. The superior court dismissed the action under Arizona Rule of Civil Procedure 12(b)(6). App. 2.

2. Respondents moved to dismiss, petitioner responded, and respondents filed their reply on

December 2, 2024. The filing-stamped reply is reproduced in the Appendix at App. 15–18. The ordinary briefing sequence under Arizona Rule of Civil Procedure 7.1 ended with the reply; the rule did not provide for a response to a reply. App. 2, 5, 15.

3. The superior court dated its unsigned dismissal minute entry December 4, 2024—approximately two days after the reply—granting dismissal, allowing respondents to seek taxable costs, and directing them to submit a proposed judgment. The decision below and appended rulings identify no rule-established deadline or court notice requiring petitioner to seek leave for additional briefing before that ruling. App. 2, 5, 8–10, 15.

4. The superior court later entered a signed judgment on December 23, 2024. The court of appeals held that the signed judgment made the earlier dismissal ruling final and appealable for state-law purposes. App. 3–4.

5. On appeal, petitioner argued that granting the motion without permitting a surreply denied him due process. The court of appeals expressly identified and reviewed that federal due-process claim *de novo*. App. 3, 5.

6. The court of appeals rejected the claim on the merits, holding that petitioner had received a “full and fair opportunity” to respond and had identified no new argument in the reply. It also relied on an alternative state procedural ground: because petitioner had not moved for leave to file a surreply, the court held that he waived any claim that the superior court should have allowed one. App. 5.

7. The Supreme Court of Arizona denied discretionary review on March 19, 2026. App.13. This petition follows.

REASONS FOR GRANTING THE PETITION

I. The waiver ruling presents a federal adequacy question within this Court's jurisdiction.

The decision below rests on both a federal merits ruling and an alternative state waiver ruling. This Court ordinarily does not review a federal question when the judgment rests on a state-law ground that is independent of the federal question and adequate to support the judgment. *Coleman v. Thompson*, 501 U.S. 722, 729 (1991). But whether a state procedural ground is adequate is itself a federal question. *Cruz v. Arizona*, 598 U.S. 17, 25–26 (2023); *Lee v. Kemna*, 534 U.S. 362, 375 (2002). Petitioner therefore does not ignore the waiver holding; he asks this Court to decide whether that ground was adequate as applied.

A firmly established and regularly followed procedural rule will ordinarily foreclose federal review. *Lee*, 534 U.S., at 376. A rule does not become inadequate merely because it permits discretion. *Beard v. Kindler*, 558 U.S. 53, 60–61 (2009). Yet this Court has repeatedly recognized a narrow exception when a generally sound rule is applied in an exceptional, unforeseeable, or exorbitant manner. *Lee*, 534 U.S., at 376; *Cruz*, 598 U.S., at 26; *Walker v. Martin*, 562 U.S. 307, 320 (2011). The application here falls within that narrow question.

II. The waiver rule was applied in an unforeseeable and disproportionate manner.

Rule 7.1 supplied an ordinary sequence of motion, response, and reply. The decision below emphasized that the rule did not provide for a surreply. App. 5. Yet the same decision treated petitioner's failure to seek leave for that unprovided filing as waiver. Respondents filed their reply on December 2, 2024, and the superior court dated its dispositive ruling on December 4, 2024. App. 8, 15. The decision below identified no Rule 7.1 provision establishing a deadline for seeking leave to file an additional memorandum, and the December 4, 2024 ruling reflected no advance notice of when the motion would be decided. App. 5, 8–10.

The ruling thus created a procedural catch-22: the governing rule furnished no ordinary surreply, but the constitutional objection was forfeited because petitioner did not predict an imminent ruling and request permission to file one before an unstated deadline. *Cruz* confirms that a state procedural application may be inadequate when it generates a novel catch-22 unsupported by the rule's ordinary operation. 598 U. S., at 26–29.

The Arizona decision cited *Gross v. Shores at Rainbow Lake Community Assn.*, 258 Ariz. 365, 373, ¶ 24 (App. 2024), for waiver. App. 5. But *Gross* involved an argument not presented to the superior court and first advanced on appeal. *Gross*, 258 Ariz., at 373, ¶ 24. It did not involve a surreply, an unannounced post-reply deadline, or a dispositive ruling approximately two days after briefing closed. Extending

that general preservation rule to this materially different setting was not clearly established by *Gross*.

III. The underlying federal issue was expressly presented and decided.

Petitioner does not claim that seeking leave was physically impossible, nor does he claim an automatic constitutional right to a surreply in every civil case. His narrower contention is that fair notice and a meaningful opportunity were absent when waiver depended on an extraordinary filing not provided by the rule and on compliance with a deadline not identified in the rule, the decision below, or the appended rulings.

The court of appeals expressly identified petitioner's Fourteenth Amendment claim, reviewed it de novo, and held that his due-process rights were not violated. App. 3, 5. The federal question is therefore not presented here in the first instance. The court's alternative waiver holding is the obstacle to review, and adequacy of that obstacle is the precise federal question addressed by *Lee* and *Cruz*.

Due process requires an opportunity to be heard at a meaningful time and in a meaningful manner. *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965); *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). In *Nelson v. Adams USA, Inc.*, 529 U.S. 460, 466–467 (2000), this Court likewise required a fair chance to respond before judgment imposed liability. This petition seeks no general right to additional briefing; it asks whether a State may impose waiver before a litigant receives fair notice of the

procedural step and a reasonable opportunity to take it.

IV. The petition presents a narrow application of this Court's adequate-state-ground precedents.

The relevant facts appear in the decision and appendices: the filing-stamped reply is dated December 2, 2024; the dispositive ruling was dated December 4, 2024; the court of appeals stated that Rule 7.1 provided no surreply; and it used petitioner's failure to request one as an alternative ground for rejecting the federal claim. App. A, ¶¶ 3, 13–14; App. B; App. E.

The petition does not ask this Court to supervise Arizona pleading law, amendment practice, or general treatment of self-represented parties. Nor does it ask the Court to decide that every reply requires a surreply. It asks only whether a State may foreclose review of a federal due-process claim through an as-applied waiver requirement not stated in the governing rule and not tied in the decision below or appended rulings to an announced deadline.

This Court may resolve that antecedent adequacy question without announcing a broad constitutional rule. At minimum, the Court should grant review, vacate the judgment, and remand for reconsideration without reliance on the challenged waiver ground. See *Cruz*, 598 U. S., at 32.

CONCLUSION

This Court should grant certiorari.

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AUGUST 2026

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APPENDIX

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