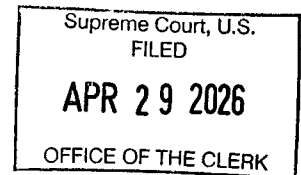


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No. **26-5109**

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



ELHADJ ALPHA MAHMOUD SQUARE,

Petitioner,

v.

ELIZABETH TILTSCHER,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF OHIO, SUMMIT COUNTY

PETITION FOR A WRIT OF CERTIORARI
FILED IN FORMA PAUPERIS PURSUANT TO SUPREME COURT RULE 39

Elhadj Alpha Mahmoud Souare

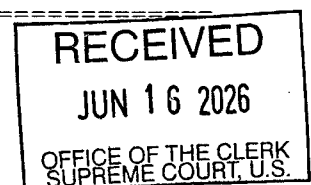
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QUESTIONS PRESENTED

I.

Whether the Due Process Clause of the Fourteenth Amendment permits a state court to adopt a magistrate's decision immediately upon issuance — eliminating any practical opportunity to object before adoption — and then treat objections filed within the state-created fourteen-day objection period as procedurally forfeited.

II.

Whether appellate affirmance of a custody determination affecting fundamental parental rights violates due process when based on an incomplete record after timely requested transcripts were not produced before appellate review.

III.

Whether due process is violated when a state appellate court affirms deprivation of fundamental parental rights based on a factual finding — that no objections were filed — that is directly contradicted by the official trial court docket.

IV.

Whether a documented conflict between the Eighth and Ninth Ohio Appellate Districts regarding notice requirements following same-day adoption of magistrate decisions results in non-uniform protection of federal due process rights under the Fourteenth Amendment.

PARTIES TO THE PROCEEDING

Petitioner Elhadj Alpha Mahmoud Souare is the biological father of a minor child and the plaintiff-appellant in the proceedings below. He is proceeding pro se and in forma pauperis.

Respondent Elizabeth Tiltscher is the defendant-appellee in the proceedings below.

CORPORATE DISCLOSURE STATEMENT

Petitioner is an individual and not a corporation. No publicly held company owns ten percent or more of any interest in Petitioner. Supreme Court Rule 29.6.

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OPINIONS BELOW

The decision of the Ninth District Court of Appeals is reported at *Souare v. Tiltcher*, 2026-Ohio-437 (9th Dist. Feb. 11, 2026), reproduced at Appendix A-2.

The entry of the Supreme Court of Ohio declining jurisdiction is reported at *Souare v. Tiltcher*, Ohio S.Ct. No. 2026-0177, 2026-Ohio-1471 (Apr. 28, 2026), reproduced at Appendix A-1.

JURISDICTION

The Supreme Court of Ohio entered final judgment denying discretionary review on April 28, 2026. This Court has jurisdiction under 28 U.S.C. § 1257(a). This petition is timely filed within ninety days of the state court judgment.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment provides in relevant part:

'No State shall deprive any person of life, liberty, or property, without due process of law.'

Ohio Civ.R. 53(D)(3)(b)(i) provides that parties may file objections to a magistrate's decision within fourteen days of filing, whether or not the court has already adopted the decision.

STATEMENT OF THE CASE

A. Background

Petitioner is the biological father of a minor child. In January 2023, Petitioner initiated proceedings in the Summit County Court of Common Pleas, Domestic Relations Division, Case No. DR-2023-01-0115, seeking allocation of parental rights and responsibilities.

B. Hearing Conducted in Petitioner's Absence

On November 17, 2023, the custody hearing proceeded in Petitioner's absence. The opposing party presented evidence without cross-examination or participation by Petitioner. The Ninth District acknowledged this fact in its opinion at 2026-Ohio-437, paragraph 1.

C. First Same-Day Adoption

On November 28, 2023, the magistrate issued a custody decision and the trial court adopted it the same day. Admitted at 2026-Ohio-437, paragraph 2. Although Ohio Civ.R. 53(D)(3)(b)(i) formally provides fourteen days to object, same-day adoption effectively collapsed the objection period before Petitioner could meaningfully receive, review, and challenge the decision.

D. Guardian Ad Litem Investigation Failure

Guardian ad litem Pamela Reid admitted she never observed Petitioner interacting with his child despite Ohio Sup.R. 48 requiring direct investigation and observation. Nevertheless, recommendations adverse to Petitioner were adopted and relied upon by the

court.

E. Second Same-Day Adoption

On May 19, 2025, the magistrate issued another decision denying Petitioner's pending motions. The trial court again adopted the decision the same day. Admitted at 2026-Ohio-437, paragraph 4. Petitioner filed written objections on May 20, 2025, within the fourteen-day period guaranteed by Civ.R. 53(D)(3)(b)(i). The official docket of DR-2023-01-0115 confirms the filing. Despite this, the Ninth District later held that Petitioner failed to file objections and therefore forfeited appellate review except for plain error.

F. Transcript Never Produced

Petitioner timely requested hearing transcripts in January 2025 through a signed praecipe. The transcripts were never produced before appellate review occurred. The Ninth District nevertheless decided the appeal on February 11, 2026 without the transcripts.

G. Decisions Below

The Ninth District affirmed the custody rulings at 2026-Ohio-437 and held that Petitioner failed to preserve objections. The Supreme Court of Ohio declined jurisdiction on April 28, 2026, 2026-Ohio-1471, without requiring a response from Respondent. No court reviewed the constitutional merits of whether the procedures used satisfied due process.

SUMMARY OF ARGUMENT

This case presents a structural denial of due process affecting fundamental parental rights.

Ohio created a statutory right to object within fourteen days under Civ.R. 53(D)(3)(b)(i), yet same-day adoption of magistrate decisions rendered that right practically unusable. The appellate court then used the resulting impossibility to declare forfeiture of constitutional claims.

The Ninth District's approach directly conflicts with the Eighth District, which requires explicit notice informing parties that objections remain available even after immediate adoption of a magistrate decision. This divergence creates unequal constitutional protections depending solely on geographic location within the same state.

The combination of the following procedures resulted in no court ever reaching the constitutional merits of Petitioner's parental rights claims:

1. exclusion from meaningful participation;
2. immediate judicial adoption;
3. denial of transcript access;
4. factual findings contradicted by the docket; and
5. forfeiture-based appellate review.

This Court's intervention is necessary to ensure uniform application of due process protections involving fundamental parental rights.

REASONS FOR GRANTING THE PETITION

I. THE DECISION BELOW CONFLICTS WITH THIS COURT'S DUE PROCESS PRECEDENTS BECAUSE IT RENDERS THE OPPORTUNITY TO BE HEARD ILLUSORY.

The Due Process Clause requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner. *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).

The procedures used in this case deprived Petitioner of any meaningful opportunity to challenge the magistrate's decisions before they became operative. Twice, the trial court adopted the magistrate's decisions on the same day they were issued — on November 28, 2023, and May 19, 2025. Although Ohio Civ.R. 53(D)(3)(b)(i) nominally provides fourteen days to object, same-day adoption rendered that right practically meaningless.

The State thus created a procedural right while simultaneously structuring proceedings in a manner that made meaningful exercise of that right impossible. This Court has held that due process cannot be satisfied by procedures that exist only formally while operating ineffectively in practice. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982).

The constitutional violation was compounded when the Ninth District held that Petitioner forfeited review by failing to object — even though the official docket confirms objections were filed on May 20, 2025 within the fourteen-day period authorized by Ohio law. The result is a structural deprivation of due process:

1. immediate judicial adoption;

2. ineffective objection procedures;
3. forfeiture-based appellate review; and
4. no merits review of constitutional claims.

This Court has never approved a procedural system in which a State creates a statutory safeguard while simultaneously rendering it functionally unusable. The petition presents a rare circumstance in which both a structural due process violation and a documented factual error combine to prevent any court from ever reaching the merits of a fundamental constitutional claim.

II. THE NINTH DISTRICT'S RULE CONFLICTS WITH THE EIGHTH DISTRICT AND RESULTS IN NON-UNIFORM APPLICATION OF FEDERAL DUE PROCESS RIGHTS.

This case presents a documented conflict among Ohio appellate districts regarding the constitutional sufficiency of notice following same-day adoption of magistrate decisions.

The Eighth District requires explicit notice informing litigants that objections remain available even after immediate adoption of a magistrate decision. See 2024-Ohio-4675 (8th Dist.). The Ninth District applies no such requirement and instead enforces forfeiture rules even where same-day adoption makes the objection process practically unusable.

This divergence creates unequal constitutional protections within the same State. Parents in one Ohio appellate district receive procedural safeguards denied to similarly situated parents in another district.

The conflict concerns federal constitutional rights under the Fourteenth Amendment — not merely state procedural rules. Under *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306 (1950), notice must be reasonably calculated to apprise parties of their opportunity to be heard. Where court procedures themselves undermine the practical ability to exercise that opportunity, due process requires meaningful notice explaining the consequences of immediate adoption.

Without this Court's intervention, fundamental parental rights recognized in *Troxel v. Granville*, 530 U.S. 57 (2000), will continue to receive inconsistent constitutional protection depending solely on geography.

III. AFFIRMING A CUSTODY DETERMINATION WITHOUT THE REQUESTED TRANSCRIPTS DENIED PETITIONER A MEANINGFUL APPEAL.

Petitioner timely filed a praecipe requesting hearing transcripts in January 2025. Those transcripts were never produced before appellate review occurred. Nevertheless, the Ninth District affirmed the custody determination on February 11, 2026 without the hearing transcripts and without a complete record.

This Court has long recognized that meaningful appellate review requires a record of sufficient completeness. *Griffin v. Illinois*, 351 U.S. 12 (1956). Although states retain discretion regarding procedural mechanisms, they may not structure appellate review in a manner that effectively denies review of constitutional claims affecting fundamental rights.

The absence of the transcripts prevented meaningful review of:

- the hearing conducted in Petitioner's absence;
- the evidentiary basis for custody findings;
- the GAL investigation deficiencies; and
- the procedural irregularities underlying the case.

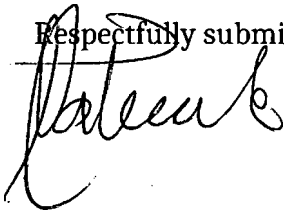
The denial of a complete record, combined with same-day adoption and forfeiture findings contradicted by the docket itself, resulted in a system where no court ever reviewed the constitutional merits of Petitioner's parental rights claims. This Court's intervention is necessary to ensure that fundamental liberty interests are not extinguished through procedural mechanisms that collectively foreclose meaningful judicial review.

CONCLUSION

This case presents a recurring and substantial constitutional question concerning the minimum procedural safeguards required before a State may alter parental rights.

The petition for a writ of certiorari should be granted.

Respectfully submitted,



/s/ Elhadj Alpha Mahmoud Souare

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Dated: April 28, 2026