

SUPREME COURT OF THE UNITED STATES

No. 26-5109

ELHADJ A. M. SQUARE, Petitioner, v. ELIZABETH TILTSCHER, Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Ohio

PETITION FOR REHEARING

Elhadj A. M. Souare

Pro Se Petitioner

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PETITION FOR REHEARING

Petitioner Elhadj A. M. Souare respectfully petitions, pursuant to Supreme Court Rule 44.2, for rehearing of the Court's October 5, 2026 order denying his petition for a writ of certiorari.

This petition is confined to a substantial ground not previously presented in this form: whether a state appellate court may foreclose ordinary review of federal constitutional claims concerning parental rights by applying a judicially imposed sequencing requirement to written objections that were filed within the period expressly provided by the governing state rule.

I. CORRECTION OF THE DECISION BELOW

The original petition incorrectly stated that the Ninth District found that no objections were filed and that the official docket contradicts that finding. The Ninth District made no such finding. Petitioner corrects the record here.

In Souare v. Tiltcher, 2026-Ohio-437 (9th Dist.), the Ninth District Court of Appeals considered the sequence in which Petitioner filed his notice of appeal and his written objections to the magistrate's decision. The chronology, as reflected in the trial-court docket (App. A-3), is as follows:

1. On May 19, 2025, the trial court adopted the magistrate's decision.
2. On May 19, 2025, Petitioner filed his notice of appeal.
3. On May 20, 2025, Petitioner filed written objections to the magistrate's decision.

Petitioner's objections were filed within the fourteen-day period prescribed by Ohio Civ.R. 53(D)(3)(b)(i), as measured from the filing of the magistrate's decision. The Ninth District nevertheless treated the objections as ineffective because the notice of appeal preceded them. Relying on Arthur v. Trimmer, 2003-Ohio-2034 (5th Dist.), the court concluded that objections must precede a notice of appeal and held that Petitioner had forfeited all but plain-error review. Souare, 2026-Ohio-437, ¶ 10. The court also cited the general rule that a notice of appeal divests the trial court of jurisdiction over matters inconsistent with the appeal. Id. (citing Pine v. Haddox Installation Services, LLC, 2005-Ohio-3635 (9th Dist.)). The court noted that the magistrate's decision conspicuously stated the fourteen-day period for filing objections. Id.

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[VERIFY AGAINST THE MAGISTRATE'S DECISION BEFORE KEEPING THIS

SENTENCE: The decision did not state that filing a notice of appeal would render later-filed objections ineffective.] The court then overruled Petitioner's assignments of error, including Assignment of Error IV, which asserted violations of due process and parental rights under the United States and Ohio Constitutions. *Id.*, ¶¶ 5, 10–11.

Petitioner does not contend that the Ninth District found that he never filed objections. The material point is that the court declined to give effect to timely objections because of the order in which his filings occurred. That distinction is central to the federal question.

II. THE FEDERAL QUESTION

Whether the Due Process Clause permits a state court to foreclose meaningful review of a parent's federal constitutional claims by treating written objections as ineffective, when those objections were filed within the period prescribed by the State's written rule, solely because the parent filed a notice of appeal one day earlier.

This question is fairly included in Question Presented I of the original petition, which asked whether a state court may treat objections filed within the state-created fourteen-day objection period as procedurally forfeited. See Rule 14.1(a).

A. Ohio Civ.R. 53(D)(3)(b)(i) expressly contemplates objections filed after adoption of the magistrate's decision. The rule provides that written objections may be filed within fourteen days of the filing of the magistrate's decision, "whether or not the court has adopted the decision

during that fourteen-day period." The rule's text addresses the relationship between adoption and

the continuing objection period. It does not state that filing a notice of appeal forfeits the ability to object. Notice of the fourteen-day period is not notice of an additional restriction on how that

period may be used. Nor does the general rule that a notice of appeal divests the trial court of jurisdiction appear in Civ.R. 53, whose text expressly contemplates objections filed after adoption, the very point at which an appeal becomes available.

Petitioner does not dispute that States may enforce valid procedural rules. His contention is narrower: where a written rule expressly preserves a fourteen-day objection period notwithstanding adoption of the decision, due process may require adequate notice of an additional, judicially imposed restriction that operates to eliminate ordinary review of federal constitutional claims.

B. The consequence implicated a fundamental parental interest. This Court has recognized that a parent's interest in the care, custody, and control of his children is a fundamental liberty interest protected by the Due Process Clause. *Troxel v. Granville*, 530 U.S. 57, 65–66 (2000) (plurality opinion); *Santosky v. Kramer*, 455 U.S. 745, 753 (1982). Due process requires an opportunity to be heard "at a meaningful time and in a meaningful manner," with procedures suited to the interest at stake. *Mathews v. Eldridge*, 424 U.S. 319, 333–34 (1976). Cf. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982) (State may not extinguish a claim through a procedural bar without affording a meaningful opportunity to be heard).

Petitioner does not contend that every procedural default of a parental-rights claim is unconstitutional, or that the Constitution eliminates reasonable filing requirements. He submits that the interaction between the express fourteen-day period and the additional sequencing requirement applied below presents a substantial question of fair notice and the meaningful opportunity to be heard. The sequencing requirement determined whether the constitutional claims received ordinary appellate review at all.

C. Thomas v. Arn, 474 U.S. 140 (1985), does not resolve this question. Petitioner does not ask the Court to overrule Thomas or to eliminate reasonable objection requirements.

Thomas

upheld a stated objection requirement governing review of a magistrate's report, and it rejected a

due process challenge to that requirement where the litigant had received clear notice, in the magistrate's report itself, that failing to object would waive appellate review. Here, the notice in the magistrate's decision addressed the fourteen-day period, and the challenged restriction is an additional sequencing gloss, applied to objections filed within the period established by the rule's

own text, which the text nowhere states. The distinction is material: the question is not whether a

State may establish procedural requirements, but whether due process permits this particular restriction, producing this particular consequence.

D. The federal question was raised below. Petitioner raised the federal constitutional challenge in Assignment of Error IV in the Ninth District, and the court disposed of it through application of the procedural-default rule. [INSERT CITATION: precise location and wording of the federal question in the jurisdictional memorandum filed in the Supreme Court of Ohio, Case No. 2026-0177, citing page or paragraph.] Petitioner does not ask the Court to decide a federal question divorced from the proceedings below. See Rule 14.1(g)(i).

III. THIS IS NOT A REQUEST TO CORRECT STATE-LAW ERROR

This Court does not grant certiorari merely to review a state court's interpretation of state law. Petitioner relies on the rule's text as context for the due-process question, not as an independent basis to correct an alleged error of Ohio law. The question is the constitutional adequacy of applying a restriction not found in the text of the governing rule to extinguish ordinary review of federal claims involving a fundamental parental interest.

IV. RELIEF REQUESTED

Petitioner respectfully requests that the Court: (1) grant rehearing of its October 5, 2026 order; (2) vacate that order and consider the petition in light of the narrower federal procedural-due-process question identified above; and (3) grant such further relief as the Court deems appropriate. Petitioner acknowledges that denial of certiorari is not an adjudication on the merits.

Respectfully submitted,

/s/ Elhadj A. M. Souare

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CERTIFICATE UNDER SUPREME COURT RULE 44

I certify that this petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Supreme Court Rule 44.2.

/s/ Elhadj A. M. Souare
Elhadj A. M. Souare, Pro Se Petitioner

Dated: oct-10, 2026

CERTIFICATE OF WORD COUNT

Pursuant to Supreme Court Rule 44.2(b) and Rule 44.5, the undersigned certifies that the foregoing petition for rehearing, exclusive of the caption, signature blocks, and certificates, contains 1,273 words, and that the word count was computed using Microsoft Word's word-count feature.

/s/ Elhadj A. M. Souare
Elhadj A. M. Souare, Pro Se Petitioner

Dated: oct-10, 2026

CERTIFICATE OF SERVICE

I certify that on oct-10, 2026, I served a copy of the foregoing Petition for Rehearing on Respondent Elizabeth Tiltscher by depositing the document in the United States mail, first-class postage prepaid, addressed as follows:

Elizabeth Tiltscher
9 Socrates Place

Akron, Ohio 44306

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Elhadj A. M. Souare

Elhadj A. M. Souare, Pro Se Petitioner

Dated: Oct -10, 2026