

IN THE SUPREME COURT OF THE UNITED STATES

OLAMIDE OLATAYO BELLO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals abused its discretion in dismissing petitioner's appeal from the initial judgment for failing to comply with a court order directing petitioner to state unequivocally whether he wanted to proceed pro se or with appointed counsel.

RELATED PROCEEDINGS

United States District Court (E.D. Tex.):

Bello v. United States, No. 24-cv-435 (Aug. 7, 2024)

Bello v. United States, No. 24-cv-549 (Aug. 7, 2024)

Bello v. United States, No. 24-cv-554 (Nov. 1, 2024)

Bello v. United States, No. 24-cv-550 (Feb. 14, 2025)

Bello v. Mazzant, No. 24-cv-817 (Feb. 24, 2025)

Bello v. Johnson, No. 24-cv-363 (Mar. 26, 2025)

Bello v. United States, No. 25-cv-536 (June 17, 2025)

Bello v. United States Dist. Court for the Eastern Dist. of Texas, No. 25-cv-896 (Aug. 27, 2025)

Bello v. United States, No. 25-cv-889 (Sept. 16, 2025)

Bello v. Mazzant, No. 25-cv-881 (Oct. 22, 2025)

United States v. Bello, No. 23-cr-136 (Oct. 28, 2025)

Bello v. United States Dep't of Gov't Efficiency, No. 25-cv-841 (Oct. 28, 2025)

Bello v. United States Dep't of Gov't Efficiency, No. 25-cv-895 (Apr. 6, 2026)

Bello v. United States, No. 25-cv-533 (Apr. 10, 2026)

Bello v. Amur Equip. Fin., No. 25-cv-902 (Apr. 23, 2026)

Bello v. United States, No. 25-cv-1405 (May 1, 2026)

Bello v. United States, No. 24-cv-551 (May 15, 2026)

Bello v. United States, No. 25-cv-933 (May 15, 2026)

Bello v. Warden, No. 25-cv-1184 (May 22, 2026)

Bello v. Warden, No. 26-cv-155 (Sept. 21, 2026)

United States District Court (N.D. Okla.):

Bello v. Corrections Corp. of Am., No. 24-cv-517 (Dec. 19, 2024)

United States District Court (N.D. Tex.):

Bello v. Warden No. 25-cv-2947 (Dec. 9, 2025)

United States Court of Appeals (5th Cir.):

United States v. Bello, No. 24-40203 (Sept. 13, 2024)

In re Bello, No. 24-40664 (Jan. 7, 2025)

In re Bello, No. 25-40025 (Mar. 14, 2025)

Bello v. United States, No. 24-40569 (Apr. 7, 2025)

United States v. Bello, No. 24-40751 (Apr. 8, 2025)

In re Bello, No. 25-40186 (May 14, 2025)

In re Bello, No. 25-40214 (June 24, 2025)

In re Bello, No. 25-40217 (June 24, 2025)

In re Bello, No. 25-40222 (June 24, 2025)

In re Bello, No. 25-40334 (June 24, 2025)

In re Bello, No. 25-40346 (June 24, 2025)

In re Bello, No. 25-40292 (Aug. 12, 2025)

United States v. Bello, No. 24-40839 (Aug. 22, 2025)

United States v. Bello, No. 25-40162 (Sep. 16, 2025)

United States v. Bello, No. 25-40043 (Sep. 17, 2025)

In re Bello, No. 25-40432 (Sep. 30, 2025)

In re Bello, No. 25-40523 (Oct. 6, 2025)

Bello v. Mazzant, No. 25-40130 (Oct. 10, 2025)

United States v. Bello, No. 25-40073 (Oct. 21, 2025)
United States v. Bello, No. 25-40772 (Nov. 26, 2025)
United States v. Bello, No. 25-40731 (Jan. 15, 2026)
Bello v. United States, No. 25-40727 (Jan. 23, 2026)
In re Bello, No. 25-40494 (Jan. 26, 2026)
In re Bello, No. 25-40696 (Jan. 26, 2026)
In re Bello, No. 25-40506 (Jan. 28, 2026)
In re Bello, No. 25-40805 (Feb. 2, 2026)
Bello v. United States, No. 25-40096 (Feb. 24, 2026)
Bello v. Guerrero, No. 25-40177 (Mar. 4, 2026)
Bello v. United States, No. 25-40736 (Apr. 2, 2026)
Bello v. United States, No. 25-40726 (Apr. 20, 2026)
United States v. Bello, No. 25-40725 (Apr. 28, 2026)
Bello v. United States Dep't of Gov't Efficiency, No. 25-40771 (May 6, 2026)
United States v. Bello, No. 26-40126 (July 8, 2026)
United States v. Bello, No. 26-40286 (July 27, 2026)
Bello v. Ciolli, No. 25-11381 (July 28, 2026)
Bello v. Amur Equip. Fin., No. 26-40408 (July 29, 2026)
Bello v. United States, No. 25-40385 (Sept. 15, 2026)
United States v. Bello, No. 26-40616 (Oct. 8, 2026)
United States v. Bello, No. 26-40642 (Oct. 15, 2026)
United States v. Bello, No. 26-40643 (Oct. 15, 2026)
United States v. Bello, No. 26-40652 (Oct. 20, 2026)

United States v. Bello, No. 26-40660 (Oct. 22, 2026)

Supreme Court of the United States:

In re Bello, No. 23-7496 (June 10, 2024)

In re Bello, No. 23-7497 (June 10, 2024)

In re Bello, No. 23-7831 (Oct. 7, 2024)

In re Bello, No. 23-7832 (Oct. 7, 2024)

In re Bello, No. 25-5372 (Oct. 20, 2025)

In re Bello, No. 25-5513 (Nov. 10, 2025)

Bello v. United States, No. 26A517 (Oct. 17, 2026)

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No. 26-5206

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OPINIONS BELOW

The order of the court of appeals (Pet. App. 3¹) is unreported. A subsequent order of the court of appeals (Pet. App. 6) is unreported.²

JURISDICTION

The judgment of the court of appeals was entered on September 17, 2025. The petition for a writ of certiorari was filed on November 27, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

¹ The appendix to the petition is not consecutively paginated. This brief uses the electronic PDF's pagination.

² The petition also refers to Appendices C, D, and E, see Pet. 1-2, which appear to be missing from petitioner's appendix.

STATEMENT

Following a jury trial in the United States District Court for the Eastern District of Texas, petitioner was convicted on one count of conspiring to commit wire fraud, in violation of 18 U.S.C. 1349 and 1343, and one count of conspiring to commit money laundering, in violation of 18 U.S.C. 1956(h) and 1957. Judgment 1. He was sentenced to an aggregate sentence of 293 months of imprisonment, to be followed by three years of supervised release. Judgment 2-3. The district court deferred the determination of restitution. Judgment 6. The court of appeals dismissed petitioner's appeal from that initial judgment. Pet. App. 3. The district court subsequently entered an amended judgment addressing restitution and petitioner filed several notices of appeal related to that judgment, one of which is still pending in the court of appeals. 23-cr-136 D. Ct. Doc. 847 at 1 (Dec. 1, 2025); 23-cr-136 D. Ct. Doc. 910 (Feb. 24, 2026).

1. Petitioner conspired with at least ten others to submit fraudulent applications for Paycheck Protection Program Loans and Economic Injury Disaster Loans, two types of emergency forgivable loans offered under programs authorized by the Coronavirus Aid, Relief, and Economic Security Act of 2020. Presentence Investigation Report (PSR) ¶¶ 1, 6-9, 12-15. Petitioner fraudulently obtained such loans for his own businesses and recruited various coconspirators to submit fraudulent loan applications for their businesses. PSR ¶ 9. After the coconspirators received the loan

proceeds, petitioner received a kickback. Ibid. Petitioner's scheme was designed to cause \$4,202,417 in losses to the Small Business Administration, and it resulted in an actual loss of \$3,547,068. Ibid.

A federal grand jury indicted petitioner and two codefendants on one count of conspiring to commit wire fraud, in violation of 18 U.S.C. 1349, and one count of conspiring to commit money laundering, in violation of 18 U.S.C. 1956(h). First Superseding Indictment 6-19. Petitioner and his codefendants proceeded to trial and the jury returned guilty verdicts on all counts. 23-cr-136 D. Ct. Doc. 541 (Jan. 16, 2025).

2. Before his criminal trial commenced, petitioner began filing federal civil actions, notices of appeal, and petitions for writs of habeas corpus related to his criminal case. See, e.g., 24-cv-352 D. Ct. Doc. 1 (Apr. 15, 2024) (Complaint); 24-40203 C.A. Doc. 1 (Apr. 2, 2024) (Notice of Appeal); In re Bello, 145 S. Ct. 360 (2024). As of the date of this filing, petitioner had filed at least 33 civil actions, 52 notices of appeal, and seven petitions for various writs before this Court, including the current petition for writ of certiorari.³ All but nine of petitioner's federal actions have been dismissed or denied.⁴

³ Most of these proceedings are listed above as related proceedings. Those not listed do not meet the "directly related" definition. Sup. Ct. R. 14.1(b)(iii).

⁴ In addition to this one, the pending proceedings are United States v. Bello, No. 25-40772 (5th Cir.); United States v. Bello, No. 26-40616 (5th Cir.); United States v. Bello, No. 26-40623 (5th Cir.); United States v. Bello, No. 26-40642 (5th Cir.);

a. In January 2025, after his criminal conviction but before his sentencing, petitioner filed two pro se notices of appeal to the Fifth Circuit, one appealing from the district court's denial of his motions for severance and for a judgment of acquittal, and another appealing "from the trial and guilty verdict * * * and all pleadings related thereto." 25-40043 C.A. Doc. 5 (Jan. 31, 2025); see 25-40043 C.A. Doc. 1 (Jan. 31, 2025). The notices were docketed together as No. 25-40043.

In May 2025, the court of appeals mailed petitioner a case processing notice, which observed that petitioner had "filed [his] notice of appeal as pro se." 25-40043 C.A. Doc. 21, at 1 (May 30, 2025). The notice informed petitioner that before his appeal could proceed he needed to: (1) retain appellate counsel; (2) file a motion for appointment of counsel with the required documentation; or (3) "clearly and unequivocally express [his] intent to proceed pro se in writing." Ibid. In response, petitioner filed a motion styled as a "motion for leave to proceed on appeal as pro se." 25-40043 C.A. Doc. 26, at 1 (June 18, 2025) (capitalization omitted). In that motion, petitioner asked for permission to "represent[] myself with the appointment of an assistant Counsel paid for by this Court." Ibid.

United States v. Bello, No. 26-40643 (5th Cir.); United States v. Bello, No. 26-40652 (5th Cir.); United States v. Bello, No. 26-40660 (5th Cir.); Bello v. United States, No. 24-cv-552 (E.D. Tex.); and Bello v. Warden, No. 26-cv-155 (E.D. Tex.).

Meanwhile, on July 24, 2025, the district court sentenced petitioner to 293 months of imprisonment, to be followed by three years of supervised release. Judgment 1-3. The district court deferred a determination of restitution. Id. at 6. Petitioner filed a notice of appeal from that judgment, and then filed two more notices of appeal. 25-40043 C.A. Doc. 46 (Aug. 6, 2025); 25-40043 C.A. Doc. 54 (Sept. 15, 2025); 25-40043 C.A. Doc. 57 (Sept. 15, 2025). The court of appeals docket for No. 25-40043 was updated to include the three additional notices of appeal.

On August 12, 2025, the court of appeals entered an order finding that petitioner's request to proceed pro se was not clear and unequivocal because of petitioner's "request for the appointment of assistant counsel." 25-40043 C.A. Doc. 52-2, at 2. Noting that "there is no constitutional right to hybrid representation on appeal," the court ordered petitioner to provide notice within 30 days about whether he would proceed pro se or with counsel. Id. at 1-2.

Petitioner "failed to timely comply" with that order. Pet. App. 3. Because of that failure, the court of appeals entered an order dismissing petitioner's appeal under 5th Circuit Rule 42.3 for want of prosecution. Ibid.

b. Petitioner filed a motion asking the court of appeals to vacate its dismissal, reinstate his appeal, and permit any required filings out of time. 25-40043 C.A. Doc. 74 (Oct. 28, 2025). Petitioner asserted that he had been transferred among several

prisons between July 28, 2025 and August 28, 2025, and that "[d]uring these transfers, [he] had no access to legal mail or Fifth Circuit electronic notices" and thus did not receive the court's August 12th order or subsequent dismissal. Id. at 1. Petitioner's motion did not indicate whether he wished to proceed pro se or with appointed counsel. Id. at 1-2.

The court of appeals denied petitioner's motion for reinstatement the same day it was filed. 25-40043 C.A. Doc. 80 (Oct. 28, 2025). The docket entry for petitioner's reinstatement motion stated that petitioner's "[d]efault has NOT been remedied." 25-40043 Docket entry no. 74 (Oct. 28, 2025).

Petitioner filed an emergency motion to recall the mandate and reinstate his appeal. 25-40043 C.A. Doc. 83 (Nov. 17, 2025). Petitioner stated in this motion that he was "request[ing] appointment of CJA counsel for assistance in further proceedings," but he did not specifically address his prior request to proceed pro se with the assistance of appointed counsel. Id. at 1.

The court of appeals treated the motion as a motion for reconsideration and denied it. Pet. App. 6. One week later, petitioner filed the current petition for a writ of certiorari.

3. After petitioner's appeal had been dismissed, but before the court of appeals had addressed petitioner's motion for reinstatement, the district court entered an amended judgment ordering restitution. Am. Judgment 6. Twenty-nine days later, petitioner filed a notice of appeal "from the Amended Judgment * * * and

from all adverse orders merged into that Judgment.” 23-cr-136 D. Ct. Doc. 847, at 1. That notice of appeal was untimely under Federal Rule of Appellate Procedure 4(b)(1)(A)(i), which requires a criminal defendant, in cases in which the government has not itself appealed, to file a notice of appeal within 14 days after the entry of the judgment or order being appealed. The notice of appeal was docketed in the court of appeals as a new appeal, No. 25-40772. Petitioner also filed a motion in the district court to reopen the time to file a notice of appeal, claiming that he did not receive service of the amended judgment before the 14-day deadline for his appeal had expired. 23-cr-136 D. Ct. Doc. 848 at 1 (Dec. 1, 2025).

The parties proceeded to brief the new appeal. Proceeding pro se, petitioner contended that his judgment and sentence must be vacated because the sentencing transcript was missing and could not be reconstructed. 25-40772 C.A. Doc. 168, at 2 (Jan. 21, 2026). The government responded that the appeal should be dismissed as untimely or that the judgment should be summarily affirmed, because the only reason the sentencing transcript was not in the record was because petitioner had failed to order it. 25-40772 C.A. Doc. 203, at 5-9 (Feb. 20, 2026). In his reply brief, petitioner requested a remand for the district court to determine whether excusable neglect or good cause existed to extend the time to file the notice of appeal. 25-40772 C.A. Doc. 215, at 3 (Feb. 20, 2026).

On February 24, 2026, the district court issued a summary order denying petitioner's motion to reopen the time to file a notice of appeal. 23-cr-136 D. Ct. Doc. 901. Petitioner filed a timely notice of appeal of that order. 23-cr-136 D. Ct. Doc. 910. The court of appeals eventually consolidated that appeal with petitioner's appeal of the amended judgment. 26-40126 C.A. Doc. 134-1, at 3 (July 8, 2026). The court then issued a per curiam opinion dismissing petitioner's appeal from the amended judgment as untimely and remanding the appeal from the motion to reopen the time to file a notice of appeal. 25-40772 C.A. Doc. 386-1, at 2-3 (July 17, 2026). The court instructed the district court to determine whether excusable neglect or good cause justified extending the time to file a notice of appeal. Ibid. The court of appeals also retained jurisdiction over the appeal. Ibid.

On remand, petitioner filed an affidavit arguing that his untimeliness should be excused because he did not receive a copy of the amended judgment until November 26, 2025, a date that was past the 14-day deadline to file a notice of appeal, but within the additional 30-day period provided in cases of excusable neglect or good cause under Federal Rule of Appellate Procedure 4(b)(4). 23-cr-136 D. Ct. Doc. 956, at 1-4 (Aug. 6, 2026). The district court agreed, finding that the untimely filing was due to excusable neglect and that it should therefore be permitted. 23-cr-136 D. Ct. Doc. 974, at 2 (Aug. 27, 2026). On September 2, 2026, the district court's order was docketed in the appeal over which the

court of appeals had retained jurisdiction. 25-40772 C.A. Doc. 404.

Since then, petitioner has filed several motions in appeal No. 25-40772, including one asking the court of appeals to “clarify the scope” of that appeal and to allow him “to present his challenges to the conviction and custodial sentence.” 25-40772 C.A. Doc. 410 at 1, 5 (Sept. 21, 2026). As of the date of this filing, those motions remain pending.

ARGUMENT

Petitioner challenges (Pet. 2-3) the court of appeals’ dismissal of his appeal from the original judgment (which addressed his custodial sentence but deferred ordering restitution) for failing to comply with the court’s order directing him to clearly and unequivocally state whether he wished to proceed pro se or be represented by appointed counsel. That factbound order does not merit further review, particularly because petitioner has a pending appeal of the amended judgment in which he challenges the custodial sentence that was the subject of the original judgment and renders his current petition interlocutory.

1. It is well established that courts have discretion to manage their dockets by dismissing cases for failure to prosecute, Link v. Wabash R.R., 370 U.S. 626, 629-633 (1962), and that the “[t]he courts of appeals have significant authority to fashion rules to govern their own procedures,” Cardinal Chem. Co. v. Morton Int’l, Inc., 508 U.S. 83, 99 (1993). In directing petitioner to

state clearly and unequivocally whether he wished to proceed pro se or be represented by appointed counsel on appeal after he asked for both, the court of appeals acted in line with this Court's precedent and its own.

Under that precedent, criminal defendants may proceed pro se upon a "clear[] and unequivocal[]" waiver of the right to counsel, Faretta v. California, 422 U.S. 806, 835 (1975), but courts are "not require[d]" to "permit 'hybrid' representation" involving the pro se defendant and appointed counsel, McKaskle v. Wiggins, 465 U.S. 168, 183 (1984); see Myers v. Johnson, 76 F.3d 1330, 1335 (5th Cir. 1996) (per curiam) (holding that because "there is no constitutional right to hybrid representation * * * when a criminal appellant accepts the assistance of counsel" he "cannot then expect to be allowed to file a supplemental pro se brief"). When petitioner failed to comply with the court of appeals' order to clearly and unequivocally state his choice regarding representation, the court was within its discretion to dismiss petitioner's appeal.

2. Petitioner's equal-protection challenge (Pet. 3) to the dismissal of his appeal is unsound. Petitioner does not allege that others similarly situated to him have been treated differently. Instead, he contends (ibid.) that the court of appeals engaged in disparate treatment of his own appeals by reinstating one and not another. But as made clear in the authority that petitioner himself invokes, prevailing on any equal-protection

claim would at least require him to show that he was "intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000) (per curiam) (emphasis added). The differential treatment petitioner himself experienced at different points does not indicate that he was subject to unlawful discrimination.

Nor was petitioner in this appeal "similarly situated," Village of Willowbrook, 528 U.S. at 564, to his circumstances in the other cases that he mentions. In those cases, petitioner filed petitions for emergency writs of mandamus, but missed the deadline to pay the docketing fee. 25-40494 C.A. Doc. 2-1 (Aug. 13, 2025); 25-40494 C.A. Doc. 6 (Sept. 19, 2025); 25-40506 C.A. Doc. 2-1 (Aug. 19, 2025); 25-40506 C.A. Doc. 10-2 (Oct. 16, 2025). In one case, the court of appeals gave petitioner additional time to pay the fee and petitioner responded by filing a motion to proceed in forma pauperis, which cured his failure. 25-40494 C.A. Doc. 7 (Oct. 15, 2025); 25-40494 C.A. Doc. 9-1 (Oct. 27, 2025). Contrary to petitioner's contention (Pet. 3), that petition was not dismissed and reinstated. In the other case, the court of appeals reinstated the petition after petitioner filed a motion to proceed in forma pauperis along with his motion for reinstatement. 25-40506 C.A. Doc. 12 (Oct. 27, 2025); 25-40506 C.A. Doc. 16-1 (Nov. 3, 2025). The dismissal in this case, in contrast, was not based on the later-cured failure to pay a docketing fee.

3. Petitioner also contends (Pet. 2-3) that the court of appeals' dismissal of his appeal from the initial judgment was an abuse of its discretion and violated his due-process rights. As a threshold matter, it is far from clear that petitioner ever, at any point, complied with the court of appeals' directive to clearly and unequivocally state whether he wished to proceed pro se: although his motion for reconsideration "request[ed] appointment of CJA counsel for assistance in further proceedings," 25-40043 C.A. Doc. 83, at 1, he did not expressly distinguish that request from his earlier request to proceed pro se with an "assistant Counsel," 25-40043 C.A. Doc. 26, at 1. Regardless, that claim does not warrant this Court's review.

Petitioner raises only factbound contentions regarding the court of appeals' determinations that dismissal and denial of reinstatement of petitioner's appeal were appropriate because he had failed to comply with the court's order. This Court "do[es] not grant * * * certiorari to review evidence and discuss specific facts." United States v. Johnston, 268 U.S. 220, 227 (1925); see Sup. Ct. R. 10. And notwithstanding his assertion (Pet. 3) that the issue presented is "recurring and important," petitioner identifies no case reaching the opposite result on comparable facts. Nor does he demonstrate that the question presented will ultimately matter in his own case.

In Manrique v. United States, 581 U.S. 116 (2017), this Court has made "clear that deferred restitution cases involve two ap-

pealable judgments, not one.” Id. at 123. Both before and after Manrique, courts of appeals considering the question have uniformly indicated that a defendant’s notice of appeal after an amended judgment ordering restitution allows for challenges to the initial conviction and sentence. See Lee v. United States, 149 F.4th 981, 986 (8th Cir. 2025); United States v. Anthony, 25 F.4th 792, 803-805 (10th Cir. 2022); United States v. Shehadeh, 962 F.3d 1096, 1099 (9th Cir. 2020); Gonzalez v. United States, 792 F.3d 232, 237 (2d Cir. 2015) (per curiam); United States v. Muzio, 757 F.3d 1243, 1250 (11th Cir.), cert. denied, 574 U.S. 948 (2014).

Here, when petitioner filed his notice of appeal from the amended judgment, he also appealed “from all adverse orders merged into that Judgment.” 23-cr-136 D. Ct. Doc. 847, at 1. He has also filed a brief in that appeal in which he challenged the entirety of his sentence based on the sentencing transcript’s alleged unavailability. 25-40772 C.A. Doc. 168. In addition, currently pending before the court of appeals is a motion to further expand the appeal to allow petitioner to assert additional challenges to his conviction and sentence. 25-40772 C.A. Doc. 410.

4. At a minimum, the pendency of an appeal in which petitioner challenges the entirety of his amended criminal judgment puts this case in an interlocutory posture, which “alone furnishe[s] sufficient ground for the denial” of the petition for a writ of certiorari. Hamilton-Brown Shoe Co. v. Wolf Bros. & Co., 240 U.S. 251, 258 (1916). “[E]xcept in extraordinary cases, [a]

writ [of certiorari] is not issued until final decree." Ibid.
And following completion of the pending appeal, this Court will
have "authority to consider questions determined in earlier stages
of the litigation where certiorari is sought from the most recent
of the judgments of the Court of Appeals." Major League Baseball
Players Ass'n v. Garvey, 532 U.S. 504, 508 n.1 (2001) (per curiam).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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