

ORIGINAL

26-5403

FILED

AUG 22 2026

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

SHYAMAL GHOSH,
Petitioner,

v.

NEW YORK CITY HOUSING AUTHORITY,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether, consistent with *Thomas v. Arn*, 474 U.S. 140 (1985), a court of appeals may refuse to excuse a pro se litigant's failure to object to a magistrate judge's report and recommendation under the nonjurisdictional forfeiture rule when the record reflects health-related and communication difficulties affecting compliance with court deadlines.
2. Whether a court of appeals may treat the failure to object to a magistrate judge's report and recommendation as a complete bar to appellate merits review of a pro se litigant's federal employment-discrimination claims, where those claims were dismissed at the pleading stage before any factual record was developed through discovery.

PARTIES TO THE PROCEEDING

Petitioner is Shyamal Ghosh.

Respondent is the New York City Housing Authority ("NYCHA").

No other parties were involved in the proceedings below.

CORPORATE DISCLOSURE STATEMENT

Petitioner Shyamal Ghosh is an individual.

Respondent New York City Housing Authority is a public housing authority, not a nongovernmental corporation. Accordingly, no corporate disclosure statement is required under Supreme Court Rule 29.6.

DIRECTLY RELATED PROCEEDINGS

United States Court of Appeals for the Second Circuit:

Ghosh v. New York City Housing Authority, No. 23-822, judgment entered May 27, 2026; mandate issued June 18, 2026.

United States District Court for the Southern District of New York:

Ghosh v. New York City Housing Authority, No. 21-cv-6139-AT-BCM, order adopting the Report and Recommendation and dismissing the action entered March 20, 2023.

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OPINIONS BELOW

The summary order of the United States Court of Appeals for the Second Circuit in *Ghosh v. New York City Housing Authority*, No. 23-822, was entered on May 27, 2026. The mandate issued on June 18, 2026. The summary order and mandate are reproduced in Appendix A.

The order of the United States District Court for the Southern District of New York in *Ghosh v. New York City Housing Authority*, No. 21-cv-6139 (AT) (BCM), adopting the magistrate judge's Report and Recommendation and dismissing petitioner's claims, was entered on March 20, 2023. It is reproduced in Appendix B.

The Report and Recommendation of Magistrate Judge Barbara C. Moses in *Ghosh v. New York City Housing Authority*, No. 21-cv-6139 (AT) (BCM), recommending dismissal of petitioner's claims, was entered on February 27, 2023. It is reproduced in Appendix C.

JURISDICTION

The judgment of the United States Court of Appeals for the Second Circuit in *Ghosh v. New York City Housing Authority*, No. 23-822, was entered on May 27, 2026. The mandate issued on June 18, 2026.

This Court has jurisdiction under 28 U.S.C. § 1254(1). This petition is timely because it is filed within 90 days after entry of the May 27, 2026 judgment sought to be reviewed. See Sup. Ct. R. 13.1.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The provisions principally involved are 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b). The relevant portions provide:

28 U.S.C. § 636(b)(1)(C): “Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.”

Federal Rule of Civil Procedure 72(b)(2): “Within 14 days after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations.”

Federal Rule of Civil Procedure 72(b)(3): “The district judge must determine de novo any part of the magistrate judge’s disposition that has been properly objected to.”

STATEMENT OF THE CASE

A. Statutory and Procedural Background

Petitioner Shyamal Ghosh has worked for the New York City Housing Authority (“NYCHA”) since July 2002 and continues to do so. [App. 7–9] He alleges that, despite long service and qualifications, NYCHA repeatedly denied him promotion and advancement opportunities on the basis of race, age, ethnicity, and national origin. [App. 7–11] He further alleges that, after complaining of discrimination, he was subjected to retaliation, including adverse memoranda, marginalization, and continued obstruction of advancement. [App. 7–11]

Proceeding without counsel, petitioner filed this action in 2021, asserting federal and related employment-discrimination claims arising from an alleged longstanding pattern of discriminatory and retaliatory treatment. [App. 7, 13] After removal to the United States District Court for the Southern District of New York, petitioner amended his pleadings while attempting to comply with federal pleading requirements. [App. 13–16]

Before the initial case-management conference set for September 29, 2021, petitioner filed a pre-conference letter drawing the court’s attention to his proposed discovery plan, which contemplated disclosure and testimony from approximately twenty NYCHA employees and several external individuals with information relevant to his promotion and retaliation allegations. [App. 36–37] Petitioner identified NYCHA employees, supervisors, human-resources officials, and other persons whom he believed had discoverable information concerning NYCHA’s promotion practices, retaliation, and his employment history. [App. 36–37] No transcript of the September 29, 2021 case-management conference is available to petitioner despite his later requests, leaving those case-management discussions outside the appellate record. [App. 38–39]

Before dismissal, petitioner sought discovery concerning NYCHA’s promotion practices and internal records, but the case was dismissed at the Rule 12(b)(6) stage before discovery was conducted. [App. 6–7, 36–37] At a January 24, 2022 telephonic conference, the magistrate judge asked NYCHA’s counsel, “Eighteen years with no promotion, why is that?” The magistrate judge also asked whether NYCHA considered petitioner’s experience before he came to this country for the positions he sought. [App. 42–48] The court later advised that a transcript of the September 29, 2021 conference could not be produced because of low-quality audio, leaving no transcript of that earlier case-management proceeding. [App. 38–39]

In July 2022, while this case was pending, Kings Criminal Court records documented a workplace assault on petitioner. The criminal complaint states that the assailant struck petitioner in the chest and pushed him to the ground, causing bruising and lacerations; the court issued a temporary order of protection directing the assailant to stay away from petitioner and his place of employment and to have no contact with him. [App. 49–50] On July 18, 2022, petitioner submitted a letter to the magistrate judge titled “Prayer for Plaintiff Safety Protection,” explaining that he was seriously injured in the July 5 assault, was under medication, could not properly walk, and requested workplace-safety protection and consideration of a safer placement. [App. 51–52] The district-court docket reflects that the magistrate judge concluded the letter raised matters outside the scope of petitioner’s claims in the action and directed that no response was required from NYCHA. [App. 53–54]

B. Proceedings in the District Court

After removal to the United States District Court for the Southern District of New York, petitioner amended his complaint to assert Title VII, ADEA, and related state and local employment-discrimination claims. [App. 7, 13–16] Proceeding pro se, he attempted to comply with the pleading requirements while alleging more than eighteen years of denied promotion, retaliation, and marginalization. [App. 7–11]

The case was assigned to a district judge, who referred pretrial matters to a magistrate judge. [App. 6, 13] Before any discovery was conducted, NYCHA moved to dismiss the operative complaint under Federal Rule of Civil Procedure 12(b)(6). [App. 6, 15–16] On February 27, 2023, the magistrate judge issued a Report and Recommendation advising dismissal for failure to comply with Rule 8(a)’s short-and-plain-statement requirement or, alternatively, for failure to state a claim. [App. 7, 18–35] The Report notified petitioner that he had fourteen days to file written objections and that failure to file timely objections would preclude appellate review. [App. 35]

Petitioner did not file objections within the stated period. [App. 6, 35] On March 20, 2023, the district court adopted the Report and Recommendation in full, dismissed petitioner’s federal claims with prejudice, dismissed his state claims without prejudice, and closed the case. [App. 6] No discovery into NYCHA’s promotion practices, internal records, or petitioner’s retaliation allegations occurred before dismissal. [App. 6–7, 36–37]

C. The Report and Recommendation and Objections

The magistrate judge's February 27, 2023 Report and Recommendation concluded that the operative complaint did not satisfy Rule 8(a) and, alternatively, failed to state a claim under Rule 12(b)(6). [App. 18–35] The Report informed petitioner that objections were due within fourteen days and warned that a failure to file timely objections would result in waiver and preclude appellate review. [App. 35]

Petitioner did not file objections within the prescribed period. [App. 6, 35] In April 2023, after the district court entered judgment, petitioner moved for an extension of time to file a notice of appeal. He stated that he was sick and depressed, was under medication, and could not access his email during late February and March 2023. The district court granted the extension. [App. 40–41]

The district court adopted the Report and Recommendation in full on March 20, 2023 and dismissed petitioner's claims. [App. 6] As a result, the claims did not proceed to discovery or further factual development.

D. Proceedings in the Court of Appeals

Petitioner appealed from the March 20, 2023 district-court judgment to the United States Court of Appeals for the Second Circuit in *Ghosh v. New York City Housing Authority*, No. 23-822. [App. 1, 40–41] Proceeding pro se, he sought review of the dismissal of his employment-discrimination action at the pleading stage. [App. 1–3]

In its May 27, 2026 summary order, the Second Circuit stated that petitioner alleged NYCHA had refused to promote him based on race, age, ethnicity, and national origin and had retaliated after he complained of discrimination. [App. 1–3] The court further stated that the magistrate judge recommended dismissal for failure to state a claim and failure to comply with Rule 8(a), and that the district court adopted that recommendation after petitioner did not object. [App. 1–3]

The court of appeals held that a litigant who receives clear notice of the consequences of failing to object to a Report and Recommendation and nonetheless does not object forfeits further judicial review. It stated that this rule applies to pro se litigants when proper notice is provided. [App. 1–4] The court concluded that petitioner received explicit notice and therefore had forfeited appellate review. [App. 1–4]

The Second Circuit acknowledged that it could excuse the failure to object “in the interests of justice,” but declined to do so because it concluded that petitioner had made no argument showing that his case met that standard. [App. 1–5] The court affirmed, and the mandate issued June 18, 2026. [App. 1–5]

REASONS FOR GRANTING THE PETITION

This petition concerns the limits of a nonjurisdictional forfeiture rule when it is applied to a pro se litigant whose employment-discrimination claims were dismissed before discovery and received no appellate merits review. Petitioner alleged that NYCHA repeatedly denied him promotion and retaliated after he complained of discrimination. The Court of Appeals held that petitioner forfeited appellate review because he did not file objections to the magistrate judge’s Report and Recommendation. [App. 1–5, 6–35]

The Second Circuit acknowledged that it may excuse a failure to object “in the interests of justice,” but declined to do so because it concluded that petitioner had made no argument showing that his case met that standard. [App. 1–5] This Court’s review is warranted to clarify how courts should exercise that acknowledged discretion when a pro se litigant’s claims have never proceeded beyond the pleading stage.

I. The decision below treats a nonjurisdictional forfeiture rule as an effectively complete bar to appellate review.

The Court of Appeals held that petitioner forfeited appellate review because he did not file objections after receiving notice in the Report and Recommendation that objections were due within fourteen days and that a failure to object would preclude appellate review. [App. 1–5, 35] It recognized that the forfeiture rule may be excused “in the interests of justice,” but declined to exercise that discretion. [App. 1–5]

That result is difficult to reconcile with *Thomas v. Arn*, 474 U.S. 140 (1985). *Thomas* approved an objections rule but emphasized that it is nonjurisdictional and that a court of appeals may excuse a default in the interests of justice. *Id.* at 155. The Second Circuit’s own precedents likewise recognize the distinction between forfeiture and an absolute jurisdictional bar. See *Mario v. P&C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002); *Roldan v. Racette*, 984 F.2d 85, 89 (2d Cir. 1993).

The question is therefore not whether the Second Circuit recognized its discretion, but whether a nonjurisdictional exception retains meaningful content when record circumstances directly bearing on the litigant’s ability to comply with the objection deadline are not considered in determining whether the default should be excused. [App. 40–41, 49–52]

The record presented circumstances calling for meaningful consideration of that discretion. In April 2023, after judgment, petitioner stated that he was sick and depressed, under medication, and unable to access email during late February and March 2023; the district court granted an extension of time to file his notice of appeal. [App. 40–41] The record also reflects that, while the case was pending in July 2022, petitioner reported to the district court that he had been seriously injured in a workplace assault, was under medication, and could not properly walk. [App. 49–52] The magistrate judge concluded that petitioner’s safety letter raised matters outside the scope of the operative claims and required no response from NYCHA. [App. 53–54]

These facts do not alter the undisputed fact that petitioner did not file timely objections. They do, however, provide context for the exercise of a rule that Thomas identifies as nonjurisdictional and subject to an interests-of-justice exception. The decision below instead allowed the procedural default to foreclose all appellate consideration of the merits. [App. 1–5]

II. The forfeiture ruling prevented merits review of employment-discrimination claims before discovery or factual development.

Petitioner alleged that NYCHA denied him promotion because of race, age, ethnicity, and national origin and retaliated after he complained of discrimination. [App. 1–3, 7–11] Before dismissal, he submitted a proposed discovery plan and identified NYCHA employees, supervisors, human-resources officials, external witnesses, records, and testimony that he believed were relevant to his promotion history and retaliation allegations. [App. 36–37]

At the January 24, 2022 telephonic conference, the magistrate judge asked NYCHA’s counsel, “Eighteen years with no promotion, why is that?” The magistrate judge also asked whether NYCHA considered petitioner’s experience before he came to this country for the positions he sought. [App. 42–48] Yet NYCHA’s motion to dismiss was granted before discovery, and the Court of Appeals declined appellate merits review because no objections were filed to the Report and Recommendation. [App. 1–6, 18–35]

The record also contains no transcript of the September 29, 2021 initial case-management conference because the audio recording was of insufficient quality to transcribe. [App. 38–39] Although the later January 2022 transcript is available, the absence of a transcript from the initial conference further limited petitioner’s ability to present a complete procedural record on appeal. [App. 38–39, 42–48]

Employment-discrimination claims may depend upon information held by the employer, including comparative employment records, hiring and promotion information, internal communications, and testimony from supervisors and other employees. Here, the action was dismissed at the pleading stage before any discovery occurred. [App. 6–7, 36–37] The significance of that procedural posture is not that discovery was necessarily required before a Rule 12(b)(6) dismissal, but that the subsequent forfeiture ruling foreclosed appellate merits review before any factual record had been developed.

This case therefore presents an important question: whether a nonjurisdictional forfeiture rule may operate as a complete barrier to appellate review of a pro se litigant’s employment-discrimination claims, notwithstanding the court of appeals’ acknowledged discretion to excuse the default in the interests of justice. Review is warranted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,
Shyamal Ghosh
Petitioner, pro se
Date: August 22, 2026

