

26-5468

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

ELHADJ ALPHA MAHMOUD SOUARE,

Petitioner,

v.

DIANA R. GUZZO,

Respondent.

Supreme Court, U.S.
FILED

MAY - 7 2026

OFFICE OF THE CLERK

Case No. _____

**On Petition for a Writ of Certiorari to the Court of Appeals of Ohio,
Ninth Appellate District**

PETITION FOR A WRIT OF CERTIORARI

Elhadj Alpha Mahmoud Souare

Pro Se Petitioner

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Date: June 9, 2026

RECEIVED

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTIONS PRESENTED

1. Whether the Fourteenth Amendment's Due Process Clause permits a state court to dismiss an appeal as untimely where state law makes clerk service of judgment the jurisdictional trigger for appeal, yet the clerk failed to provide the notice required by Ohio Civ.R. 58(B) and Ohio App.R. 4(A)(3).

2. Whether due process is violated when a litigant is denied appellate review because of the State's own procedural failure to provide notice, thereby creating the type of procedural deprivation prohibited by *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982).

3. Whether the entry of judgment by a retired judge whose assignment authority does not appear in the public record — while the same court subsequently obtained a documented Certificate of Assignment for a different judge in the same case — raises a substantial federal due process question concerning adjudicatory authority and lawful tribunal authorization under *Lucia v. SEC*, 585 U.S. 237 (2018), and *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009).

PARTIES TO THE PROCEEDING

Petitioner Elhadj Alpha Mahmoud Souare was Plaintiff-Appellant in the proceedings below.

Respondent Diana R. Guzzo was Defendant-Appellee in the proceedings below. Her address of record is 137 South Main Street, Suite 204, Akron, Ohio 44308.

TABLE OF AUTHORITIES

CASES

Caperton v. A.T. Massey Coal Co., 556 U.S. 868 (2009) 9, 11

Clermont Cty. Transp. Improvement Dist. v. Gator Milford, L.L.C., 2015-Ohio-241 . 7, 8

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In re Murchison, 349 U.S. 133 (1955) 10

Johnson v. Sailor, 2025-Ohio-571 (7th Dist.) 8

Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982) 6, 7, 8

Lucia v. SEC, 585 U.S. 237 (2018) 9, 10

Mathews v. Eldridge, 424 U.S. 319 (1976) 11

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Ohio Const. art. IV, §6(C)	9, 10

STATUTES AND RULES

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Ohio App.R. 4(A)(3)	6, 7, 8
Ohio App.R. 16(A)(7)	8, 9
R.C. 1901.121	9, 10
R.C. 2701.10	10

OPINIONS BELOW

The decision of the Ninth District Court of Appeals is reported at 2025-Ohio-5491 (December 10, 2025) and reproduced at Appendix A. The Ninth District's denial of reconsideration (February 19, 2026) is unreported and reproduced at Appendix B.

The Supreme Court of Ohio declined jurisdiction on March 31, 2026, in Case No. 2025-1694. That entry is reproduced at Appendix C.

The Akron Municipal Court judgment was entered March 20, 2024, in Case No. 23CV06670. The relevant portions of the official docket and judgment entry are reproduced at Appendix D.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. §1257(a).

The Supreme Court of Ohio denied discretionary review on March 31, 2026, in Case No. 2025-1694. This petition is timely because it is filed within ninety days of that judgment pursuant to Rule 13.1 of the Rules of this Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Constitution, Amendment XIV, §1:

'No State shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.'

Ohio Civ.R. 58(B):

The clerk shall serve all parties with notice of a judgment or final order and shall note that service on the docket. Under Ohio App.R. 4(A)(3), the 30-day appellate window does not

begin to run until the clerk completes this service.

Ohio Const. art. IV, §6(C):

The Chief Justice of the Supreme Court of Ohio has sole authority to assign judges temporarily to service in Ohio courts. R.C. 1901.121 implements this authority for municipal courts.

STATEMENT OF THE CASE

Petitioner Elhadj Alpha Mahmoud Souare is a pro se small business owner. He paid Respondent Diana R. Guzzo \$3,000 to represent him in a custody proceeding. Respondent accepted the payment and failed to perform. Petitioner filed a pro se money suit in the Akron Municipal Court, Case No. 23CV06670, in October 2023, seeking return of his \$3,000.

The matter proceeded before Retired Judge James Kimbler, who was assigned through an internal 'Conversion Case Assignment' on December 13, 2023. The official docket — Appendix D — contains no Certificate of Assignment, no IGOR (Integrated Governance of Resources) system authorization number, and no notation of Chief Justice approval. Under Ohio Const. Art. IV, §6(C) and R.C. 1901.121, only the Chief Justice may assign a retired judge to any Ohio court.

The same official docket shows that when Judge Mark Comstock was subsequently assigned to the same case on April 23, 2025, a 'Certificate of Assignment' was properly docketed. App. D. The contrast between the two assignments is documented on the face of the official record: a Certificate of Assignment for Comstock, none for Kimbler.

Judgment was entered against Petitioner on March 20, 2024. The docket contains no notation reflecting Civ.R. 58(B) service upon Petitioner. App. D. Despite this, the Ninth District Court of Appeals dismissed Petitioner's appeal as untimely in July 2024. Petitioner's second appeal was affirmed on December 10, 2025, without addressing the service failure, the silent record on judicial assignment authority, or the spousal conflict between Judge Kimbler and his wife, Judge Joyce V. Kimbler, who sits on the Ninth District Court of Appeals. App. A.

On February 19, 2026, the Ninth District denied reconsideration. App. B. The Ohio Supreme Court declined jurisdiction on March 31, 2026. App. C. As a result, Petitioner's \$3,000 property claim has been extinguished without merits review by any court.

REASONS FOR GRANTING THE PETITION

I. The Decision Below Permits a State to Extinguish Appellate Rights Through Its Own Failure to Provide Notice.

This Court held in *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982), that a State may not destroy a protected property interest through procedural default caused by the State's own failure to comply with mandatory procedures. That is what occurred here.

Ohio law expressly provides that the appellate filing period does not begin until the clerk serves notice of judgment and notes service on the docket pursuant to Civ.R. 58(B) and App.R. 4(A)(3). The docket (App. D) contains no notation reflecting service upon Petitioner. Yet the appeal was dismissed as untimely.

The decision below permits the State to impose a jurisdictional deadline that begins to run before the litigant is legally notified that judgment has been entered. That result is incompatible with due process.

II. The Decision Conflicts with Established Notice Principles Under *Mullane* and with Decisions of Other Ohio Appellate Districts.

This Court has repeatedly held that notice must be reasonably calculated to apprise interested parties of proceedings affecting their rights. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). A silent docket cannot satisfy this constitutional requirement.

Ohio appellate courts have applied App.R. 4(A)(3) inconsistently, creating a recurring federal due process question. In *Clermont Cty. Transp. Improvement Dist. v. Gator Milford, L.L.C.*, 2015-Ohio-241, the Ohio Supreme Court unanimously held that the appeal period does not begin absent docketed clerk service — resolving a documented conflict between the

Twelfth and Tenth Districts. In *Smirnova v. Flannery & Georgalis, L.L.C.*, 2025-Ohio-3033, the Eleventh District correctly applied App.R. 4(A)(3)'s exception for clerk service failures. In *Johnson v. Sailor*, 2025-Ohio-571, a 2025 conflict certification motion identified a live split among six Ohio appellate districts — including the Ninth District — on service-related questions. The decision below departed from *Gator Milford* by dismissing Petitioner's appeal despite the absence of documented service, without applying App.R. 4(A)(3) at all.

This inconsistency creates uncertainty regarding when appellate rights may be forfeited and raises a recurring federal due process question warranting this Court's review.

III. The Absence of Publicly Documented Assignment Authority Raises a Structural Due Process Question.

The judgment below was entered by a retired judge. The public record does not reflect a Certificate of Assignment or other documentation establishing assignment authority at the time judgment was entered. App. D. By contrast, the same official docket shows a properly documented 'Certificate of Assignment' for the judge who subsequently presided in the same case. The disparity is evident on the face of the record.

Due process requires adjudication by a lawfully authorized tribunal. In *re Murchison*, 349 U.S. 133, 136 (1955). In *Lucia v. SEC*, 585 U.S. 237, 251 (2018), this Court held that adjudicatory authority must derive from lawful appointment and that proceedings before an improperly appointed official require a new hearing. Where the public record is silent as to adjudicatory authority at the time of judgment — while the court demonstrably knew how to document such authority for other judges — substantial constitutional questions arise concerning the validity of the judgment entered.

The additional spousal relationship between the retired judge and an appellate judge on the direct reviewing court — which was never disclosed — presents an independent structural

due process question under *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 876 (2009). No Ohio court addressed this conflict.

IV. The Case Presents Important Questions of National Significance.

This case presents recurring constitutional questions concerning:

- whether appellate rights may be extinguished without the mandatory notice required by state law;
- whether a State may enforce procedural deadlines that its own procedures failed to trigger;
- whether a silent public record concerning judicial assignment authority satisfies due process, particularly where the same court documented assignment authority for other judges in the same case; and
- whether litigants may lose substantial property interests without any merits review because of state-created procedural omissions.

If permitted to stand, the decision below allows administrative failures attributable to the State itself to silently terminate constitutional rights without meaningful notice or judicial review, contrary to the Due Process Clause of the Fourteenth Amendment.

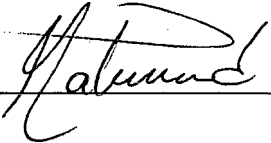
CONCLUSION

This case presents an important federal question concerning whether a State may extinguish appellate rights through its own failure to provide notice required by law — a question on which Ohio's appellate courts are demonstrably divided, as confirmed by five documented inter-district conflicts. The silent public record regarding judicial assignment authority raises an independent structural due process question. Petitioner's \$3,000 property

interest has been extinguished without any merits review by any court.

The petition for a writ of certiorari should be granted.

Respectfully submitted,



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Date: 5-18-2026