

26-5526

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

AUG - 5 2026

OFFICE OF THE CLERK

ELHADJ ALPHA MAHMOUD SOUARE,

PETITIONER

v.

No. 26-_____

U.S. CITIZENSHIP AND IMMIGRATION SERVICES;
PAMELA BONDI, Attorney General of the United States;
U.S. ATTORNEY, Northern District of Ohio,

RESPONDENTS

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

PETITION FOR A WRIT OF CERTIORARI

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PRO SE

RECEIVED

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SUPREME COURT, U.S.

QUESTION PRESENTED

Whether the Sixth Circuit violated the Due Process Clause by dismissing an indigent pro se litigant's appeal for want of prosecution based solely on his inability to pay the appellate filing fee, where the district court simultaneously conditioned any reopening on prepayment of a separate district-court filing fee and certified under 28 U.S.C. § 1915(a)(3) that any appeal would not be taken in good faith, thereby constructing a procedural trap that denied petitioner access to any federal court.

LIST OF PARTIES

All parties appearing in the United States Court of Appeals for the Sixth Circuit are listed below:

Petitioner:

Elhadj Alpha Mahmoud Souare

Respondents:

1. U.S. Citizenship and Immigration Services
2. Pamela Bondi, in her official capacity as Attorney General of the United States
3. U.S. Attorney for the Northern District of Ohio

No corporation that is a parent, subsidiary, or affiliate of a party appears in this Court.

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OPINIONS BELOW

The opinion and order of the United States District Court for the Northern District of Ohio, dated January 14, 2026, denying Petitioner's application to proceed in forma pauperis and dismissing Petitioner's complaint, is reproduced at Appendix A, pp. A-1 to A-4. The order is reported on the district court's electronic docket as Doc. No. 4 in Case No. 5:25-cv-02673-SL.

The order of the United States Court of Appeals for the Sixth Circuit, dated June 29, 2026, denying Petitioner's motion to proceed in forma pauperis on appeal, is reproduced at Appendix B, p. B-1. The order is reported on the court of appeals' electronic docket as Doc. No. 7 in Case No. 26-3063.

The order of the United States Court of Appeals for the Sixth Circuit, dated August 3, 2026, dismissing the appeal for want of prosecution, is reproduced at Appendix C, p. C-1. The order is reported on the court of appeals' electronic docket as Doc. No. 8 in Case No. 26-3063.

JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit was entered on August 3, 2026. On August 4, 2026, the district court docket reflected the filing of the Sixth Circuit's dismissal order. This petition is timely filed within ninety days of the entry of judgment. See Sup. Ct.

R. 13.1. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides, in relevant part: "No person shall . . . be deprived of life, liberty, or property, without due process of law."

8 U.S.C. § 1421(c) provides that a person whose application for naturalization has been denied may seek a de novo review of the denial in a United States district court.

28 U.S.C. § 1915(a)(1) provides that a court may authorize the commencement of any suit without prepayment of fees if the litigant submits an affidavit that includes a statement of all assets, income, and debt that demonstrates the person is unable to pay the filing fee.

28 U.S.C. § 1915(a)(3) provides: "An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith."

Federal Rule of Appellate Procedure 24(a)(3)(A) provides: "If the district court denies the [IFP] certificate, the party may proceed in the court of appeals without prepayment of fees only if the court of appeals issues a certificate stating that the appeal is not frivolous and that the party is indigent. If the district court issues the certificate, the district court must state in writing the reasons for the certification."

STATEMENT OF THE CASE

A. Factual Background

Petitioner Elhadj Alpha Mahmoud Square is a pro se litigant who filed a complaint in the United States District Court for the Northern District of Ohio seeking de novo review of the denial of his naturalization application

under 8 U.S.C. § 1421(c). Petitioner also filed an application to proceed in forma pauperis ("IFP"), asserting that he receives \$540.00 per month in Supplemental Nutrition Assistance Program ("SNAP") benefits, owns a 2016 Dodge Caravan, and has \$4.80 in a checking account. App. A at A-1.

Petitioner is indigent. He has no wage income. His sole monthly income consists of SNAP benefits. He has no savings, no investments, and no source of funds beyond the SNAP allotment. His vehicle is necessary for transportation and has no liquid value. Petitioner's five-year-old daughter relies on him for support.

B. Proceedings in the District Court

On December 10, 2025, Petitioner filed his complaint and IFP application in the Northern District of Ohio, Case No. 5:25-cv-02673-SL. The case was assigned to Chief District Judge Sara Lioi.

On January 14, 2026, the district court issued a four-page order denying Petitioner's IFP application and dismissing his complaint. App. A. The court found Petitioner's IFP application "implausible on its face" because he listed "0" or "N/A" for expenses other than food and laundry, and because he owns a vehicle without disclosing its value or associated costs. App. A at A-1 to A-2.

Critically, the court noted that Petitioner had paid the \$405 filing fee in "at least nine other civil actions filed in this district within the last year, totaling over \$3,600.00 in filing fees alone." App. A at A-2. The court cited these prior payments as evidence that Petitioner "does, in fact, have the means to pay the filing fees." App. A at A-4.

The district court's order contained three mutually incompatible directives that constructed a procedural trap:

First, the court invited Petitioner to reopen the case within thirty days by paying the full \$405 filing fee and filing a motion to reopen "contemporaneous with the payment of the full filing fee." App. A at A-4.

Second, the court announced that it "will not accept any document for filing in this case, including a motion to reopen or a motion for reconsideration, unless the filing fee is first paid in its entirety to the Court's satisfaction." App. A at A-4.

Third, the court certified under 28 U.S.C. § 1915(a)(3) that "an appeal from this decision could not be taken in good faith." App. A at A-4. The court provided no written reasons for this certification -- only a single

conclusory sentence.

C. Proceedings in the Court of Appeals

On January 26, 2026, Petitioner filed a Notice of Appeal to the Sixth Circuit Court of Appeals. The appeal was docketed as Case No. 26-3063. Petitioner also filed a motion to proceed in forma pauperis on appeal.

On January 26, 2026, the Sixth Circuit docket reflected a "FILING ERROR -- filed in wrong court" notation regarding Petitioner's IFP motion. The court did not transfer or construe the motion as constructively filed in the court of appeals. Instead, the court treated the filing as an error to be corrected by the litigant.

On January 27, 2026, the Sixth Circuit acknowledged receipt of the Notice of Appeal.

On June 29, 2026, the Sixth Circuit issued an order denying Petitioner's motion to proceed in forma pauperis. App. B. The order stated that unless Petitioner paid the \$605 filing fee to the District Court within thirty days of the entry of the order, "this appeal will be dismissed for want of prosecution." App. B at B-1.

On August 3, 2026, the Sixth Circuit issued an order dismissing the appeal for want of prosecution. App. C. The order stated that "the proper fee was not paid by 7/29/26" and that the appeal was "dismissed for want of prosecution." App. C at C-1.

Petitioner was thereby excluded from both courts. He could not reopen in the district court without \$405. He could not appeal to the Sixth Circuit without \$605. He could not do both simultaneously because the filing of an appeal divests the district court of jurisdiction. And the district court had already pre-certified that any appeal would be frivolous. With no forum available, Petitioner's challenge to the denial of his naturalization application was extinguished without any court ever reaching the merits.

REASONS FOR GRANTING THE PETITION

- I. The Sixth Circuit's Dismissal for Want of Prosecution Based Solely on an Indigent Pro Se Litigant's Inability to Pay the Appellate Filing Fee Violates the Due Process Right of Access to Courts and Deepens an Acknowledged Circuit Split

The Sixth Circuit dismissed Petitioner's appeal because he could not pay \$605. That is the entire basis for the dismissal. App. C at C-1 ("the

proper fee was not paid by 7/29/26"). This dismissal for want of prosecution, grounded exclusively on indigency, violates the Due Process Clause's guarantee of meaningful access to the courts.

In *Boddie v. Connecticut*, 401 U.S. 371 (1971), this Court held that a State cannot deny access to its courts for divorce proceedings to indigent litigants unable to pay filing fees. The Court explained that "due process requires, at a minimum, that [a person] be given a meaningful opportunity to be heard." *Id.* at 377. The Court has since extended this principle to civil cases where fundamental interests are at stake. See *M.L.B. v. S.L.J.*, 519 U.S. 102, 116-17 (1996) (requiring fee waivers for indigent parents in termination-of-parental-rights appeals because "a State may not constitutionally impose a financial barrier that denies an indigent litigant the same meaningful access to review that is available to a litigant with means").

The right of access is not absolute, but it is fundamental when a litigant has no alternative forum. Here, Petitioner has no alternative. The Sixth Circuit was his only avenue for appellate review. The district court had already dismissed his complaint. By dismissing the appeal for want of prosecution based solely on Petitioner's inability to pay, the Sixth Circuit converted a filing fee into an impermissible barrier to court access.

The circuits are divided on how to treat dismissals for want of prosecution when the sole cause is inability to pay. The D.C. Circuit has held that when an IFP application is denied, the litigant is not treated as having filed an appeal in forma pauperis and is not required to pay the full fee unless he chooses to proceed. See *Smith v. District of Columbia* (D.C. Cir.).

Under the D.C. Circuit's approach, the litigant has a choice: pay and proceed, or do not pay and the appeal is dismissed -- but the litigant is not penalized with a fee obligation he cannot satisfy. By contrast, the Second, Seventh, and Eighth Circuits have required prisoners to pay the full filing fee whenever their IFP application is denied. See *Leonard v. Lacy*, 88 F.3d 181 (2d Cir. 1996); *Newlin v. Helman*, 123 F.3d 429 (7th Cir. 1997); *Henderson v. Norris*, 129 F.3d 481 (8th Cir. 1997). The D.C. Circuit

criticized this automatic-fee approach, noting that it creates "either administrative difficulty or an incentive for the prisoners to continue to pursue their appeals." The Sixth Circuit's dismissal of Petitioner's appeal for want of prosecution -- without any ability-to-pay determination -- aligns with the punitive approach rejected by the D.C. Circuit and deepens this acknowledged split.

Moreover, the Sixth Circuit's dismissal was particularly harsh given that Petitioner is pro se. Pro se litigants are entitled to have their pleadings construed liberally. See *Haines v. Kerner*, 404 U.S. 519, 520

(1972) (per curiam). The Sixth Circuit's refusal to consider Petitioner's indigency -- or even to hold an ability-to-pay hearing -- before extinguishing his appeal reflects a formalism that this Court has repeatedly rejected in the pro se context.

The question is of immense practical importance. Thousands of indigent pro se litigants file appeals each year. If a court of appeals may dismiss those appeals automatically for nonpayment of fees, without any inquiry into ability to pay, the right to appeal becomes illusory for the poor. This Court should grant certiorari to resolve this issue and reaffirm that indigency cannot be the sole ground for denying access to the appellate courts.

II. The District Court's Conclusory Certification Under 28 U.S.C. § 1915(a)(3) Deprived the Sixth Circuit of Meaningful Review and Conflicts With the Standard Applied by Other Circuits

The district court certified under 28 U.S.C. § 1915(a)(3) that Petitioner's appeal "could not be taken in good faith." App. A at A-4. This certification consisted of a single conclusory sentence. The court provided no written reasons, no analysis of the merits, and no explanation for why the appeal was frivolous.

Federal Rule of Appellate Procedure 24(a)(3)(A) expressly requires that when a district court certifies that an appeal is not taken in good faith, the court "must state in writing the reasons for the certification." The district court failed to comply with this mandatory rule. A single sentence -- "an appeal from this decision could not be taken in good faith" -- is not a statement of reasons. It is a conclusion.

The circuits are divided on the standard of review applicable to a § 1915(a)(3) certification. Some circuits apply de novo review, treating the certification as a legal determination subject to independent appellate scrutiny. Other circuits apply an abuse-of-discretion standard, giving deference to the district court's judgment. The Sixth Circuit has not clearly resolved this question, and its opaque review of the district court's conclusory certification here illustrates why clarity is needed.

This split is part of a broader pattern. The circuits are also divided on whether courts have authority to impose partial filing fees on indigent litigants under § 1915. The Fifth Circuit has held that courts lack authority to impose partial filing fees on habeas and IFP petitioners. See *Garza v. Thaler*, 585 F.3d 888 (5th Cir. 2009). By contrast, the Sixth Circuit has held that courts have "ample discretion" to impose partial filing fees. See *Samarripa v. United States*, 917 F.3d 515 (6th Cir. 2019). The Third, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits, as a matter of practice, do not impose partial filing fees on indigent petitioners.

This acknowledged circuit split -- which was the basis of a prior cert petition from the Sixth Circuit -- demonstrates that the Sixth Circuit's approach to § 1915 fee barriers is an outlier that this Court should address.

This Court has never squarely addressed the standard of review for § 1915(a)(3) certifications. The issue is important because a district court's certification operates as a near-total bar to appellate review for indigent litigants. If the certification is conclusory and unreviewable, the right to proceed in forma pauperis on appeal is meaningless. This Court should grant certiorari to hold that (1) a district court must provide specific written reasons for a § 1915(a)(3) certification, as FRAP 24(a)(3)(A) requires, and (2) appellate review of such certifications must be de novo because they implicate the fundamental right of access to courts.

III. The District Court and Sixth Circuit Created an Impermissible Procedural Trap That Denied Petitioner Access to Any Federal Court

This case presents a unique and egregious procedural trap. The district court invited Petitioner to reopen his case by paying \$405 and filing a motion to reopen. App. A at A-4. Simultaneously, the district court certified that any appeal would not be taken in good faith. *Id.* The Sixth Circuit then demanded \$605 for the appeal and dismissed the appeal when Petitioner could not pay. App. C at C-1.

These directives are mutually exclusive. A litigant cannot simultaneously reopen a case in the district court and prosecute an appeal in the court of appeals. The filing of a notice of appeal divests the district court of jurisdiction. See *Griggs v. Provident Consumer Discount Corp.*, 459 U.S. 56, 58 (1982) (per curiam). Conversely, a motion to reopen in the district court would abandon the appeal. Petitioner was thus forced to choose between two paths -- reopen or appeal -- each gated by a filing fee he could not pay, and one of which (appeal) had already been pre-certified as frivolous.

No federal court has addressed whether a district court may simultaneously condition reopening on payment of a fee and certify that an appeal is not in good faith, when the two paths are mutually exclusive and the litigant is indigent. The question is important because it implicates the most basic principle of due process: that a litigant must have a meaningful opportunity to be heard in some forum. When a court constructs a trap that closes every door, due process is violated.

The district court's reasoning was also internally inconsistent. The court found that Petitioner had paid over \$3,600 in filing fees in nine prior cases, and therefore concluded that he could pay the fee here. App. A at

A-2, A-4. But the court's own order cited *Foster v. Cuyahoga Dep't of Health & Human Servs.*, 21 F. App'x 239, 240 (6th Cir. 2001), for the proposition that "pauper status does not require absolute destitution." App. A at A-2. Under *Foster*, the test is whether the litigant cannot pay the fee "and continue to provide for the necessities of life." *Id.* Prior payment of fees in unrelated cases does not establish current ability to pay, particularly where -- as here -- the litigant's financial circumstances have changed or where the cumulative burden of multiple fees has exhausted his resources.

The Sixth Circuit compounded the error by dismissing the appeal without addressing the trap created below. The court never considered whether the district court's simultaneous reopen invitation and good-faith certification deprived Petitioner of any avenue of relief. The court never considered whether dismissing the appeal for want of prosecution -- based solely on inability to pay -- was consistent with due process when the district court had already blocked the alternative path.

This case is an ideal vehicle for resolving these issues. The facts are undisputed. The procedural history is clean. The questions presented were expressly decided by both courts below. And the issues are of systemic importance to indigent litigants throughout the federal courts.

RELIEF REQUESTED

For the reasons stated above, Petitioner respectfully requests that this Court:

1. GRANT the petition for a writ of certiorari;
2. VACATE the judgment of the United States Court of Appeals for the Sixth Circuit entered on August 3, 2026, dismissing Petitioner's appeal for want of prosecution in Case No. 26-3063;
3. VACATE the order of the United States District Court for the Northern District of Ohio entered on January 14, 2026, denying Petitioner's application to proceed in forma pauperis and dismissing Petitioner's complaint in Case No. 5:25-cv-02673-SL;
4. REMAND this case to the United States District Court for the Northern District of Ohio with instructions to:
 - a. ACCEPT Petitioner's application to proceed in forma pauperis and permit Petitioner to litigate without prepayment of the \$405 filing fee;
 - b. PROCEED to adjudicate the merits of Petitioner's complaint for de novo review of the denial of his naturalization application under 8 U.S.C. § 1421(c);
 - c. STAY any further proceedings in the Sixth Circuit pending

the district court's merits adjudication; and

5. AWARD such other and further relief as this Court may deem just and proper.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted. This Court should vacate both the district court's January 14, 2026 order and the Sixth Circuit's August 3, 2026 judgment, and remand this case to the district court with instructions to accept Petitioner's application to proceed in forma pauperis and proceed to adjudicate the merits of Petitioner's naturalization challenge under 8 U.S.C. § 1421(c).

Respectfully submitted,


Elhadj Alpha Mahmoud Souare
P.O. Box 7024
Akron, OH 44306
PRO SE

Date:

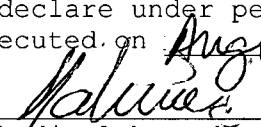
August 5, 2026

CERTIFICATE OF SERVICE

I, Elhadj Alpha Mahmoud Souare, hereby certify that on _____, 2026, I served a true and correct copy of the foregoing Petition for a Writ of Certiorari, together with the accompanying Appendix, upon the following counsel for Respondents by first-class mail, postage prepaid:

Solicitor General of the United States
U.S. Department of Justice
Room 5614
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

I declare under penalty of perjury that the foregoing is true and correct.
Executed on August 5, 2026.


Elhadj Alpha Mahmoud Souare
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