

26-5542 ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

AUG -5 2026

OFFICE OF THE CLERK

ELHADJ ALPHA MAHMOUD SQUARE,
Petitioner,

v.

CITY OF AKRON, OH; OFFICER DIONTA MITCHELL, Badge #1605;
OFFICER PATRICK MOORE, Badge #1594; PORTAGE COUNTY, OH;
DEPUTY COLEMAN THOMES, Badge #149; and PORTAGE COUNTY
JAIL STAFF JOHN DOES, 1-12,
Respondents.

PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RECEIVED

AUG 21 2026

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTIONS PRESENTED

1. Whether a court of appeals may dismiss an appeal for want of prosecution under a local procedural rule when the district court has certified under 28 U.S.C. § 1915(a)(3) that the appeal is not taken in good faith, without first addressing the statutory certification and affording the appellant the procedural protections this Court mandated in *Johnson v. United States*, 352 U.S. 565 (1957).
2. Whether the 14-day reconsideration period for a clerk's dismissal order under Sixth Circuit Rule 45(c) commences upon the clerk's issuance of the order or upon the appellant's actual receipt of notice, when the district court docket reflects no formal service of the order on the appellant and the appellant never received the order from the court of appeals.
3. Whether a district court's "without prejudice" dismissal that provides a 30-day reopening window, coupled with a simultaneous appellate process that forecloses that window before the appellant can comply, violates due process by rendering the reopening provision illusory and trapping the appellant in an impossible procedural maze.

LIST OF PARTIES

All parties to the proceeding in the court whose judgment is sought to be reviewed are listed in the caption above. Petitioner is Elhadj Alpha Mahmoud Souare, proceeding pro se. Respondents are the City of Akron, Ohio; Officer Dionta Mitchell; Officer Patrick Moore; Portage County, Ohio; Deputy Coleman Thomes; and Portage County Jail Staff John Does 1-12.

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OPINIONS BELOW

The opinion and order of the United States District Court for the Northern District of Ohio is reported at Docket Entry No. 4, *Souare v. City of Akron*, No. 5:26-cv-00154-BYP (N.D. Ohio Apr. 1, 2026), and is reproduced in the Appendix at App. 1. The judgment entry is reported at Docket Entry No. 5, *id.* (Apr. 1, 2026), reproduced in the Appendix at App. 2.

The order of the United States Court of Appeals for the Sixth Circuit is an unreported clerk's order entered pursuant to Sixth Circuit Rule 45(a), Case No. 26-3327 (6th Cir. June 5, 2026), reproduced in the Appendix at App. 3.

JURISDICTION

The judgment of the court of appeals was entered on June 5, 2026. No petition for rehearing was filed. On August 4, 2026, Petitioner filed a timely motion for an extension of time to file this petition. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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

2. 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."

3. Fed. R. App. P. 24(a)(3) provides, in pertinent part:

"A party who was permitted to proceed in forma pauperis in the district-court action ... may proceed on appeal in forma pauperis without further authorization, unless ... the district court—before or after the notice of appeal is filed—certifies that the appeal is not taken in good faith."

4. Fed. R. App. P. 24(a) (5) provides:

"A party may file a motion to proceed on appeal in forma pauperis in the court of appeals within 30 days after service of the notice prescribed in Rule 24(a) (4)."

5. Sixth Circuit Rule 45(a) (4) provides:

"The clerk may prepare, sign, and enter orders or otherwise dispose of the following matters without submission to the court or a judge ... (4) Orders for dismissal for want of prosecution."

6. Sixth Circuit Rule 45(b) provides:

"A clerk's order must show that it was authorized under 6 Cir. R. 45(a)."

7. Sixth Circuit Rule 45(c) provides:

"A party adversely affected by a clerk's order may move for reconsideration by a judge or judges. The motion must be filed within 14 days of service of notice of entry of the order."

STATEMENT OF THE CASE

A. The District Court Proceedings

On January 21, 2026, Petitioner Elhadj Alpha Mahmoud Souare, proceeding pro se, filed a complaint in the United States District Court for the Northern District of Ohio alleging violations of 42 U.S.C. § 1983 against the City of Akron, individual police officers, Portage County, a deputy, and Portage County Jail staff. App. 4. Petitioner simultaneously filed a Motion to Proceed In Forma Pauperis and a Motion to Note Widespread Conditions. App. 5-6.

On April 1, 2026, the district court entered a Memorandum of Opinion and Order denying Petitioner's IFP application and dismissing the action "without prejudice." App. 1. Critically, the court certified-twice-that "an appeal from this decision could not be taken in good faith" pursuant to 28 U.S.C. § 1915(a) (3). Id. The court stated that Petitioner could reopen the case within 30 days by paying the full \$405 filing fee and filing a contemporaneous motion to reopen. Id. The court further warned: "The Court will not accept any document for filing in the present case, including a motion to reopen or a motion for reconsideration, unless the filing fee is first paid in its entirety." Id.

On the same day, the district court entered a Judgment Entry again dismissing the action "without prejudice" and again certifying under § 1915(a) (3) that an appeal "could not be taken in good faith." App. 2. The court mailed copies of both orders to Petitioner on April 1, 2026. App. 7.

B. The Appeal and the Sixth Circuit's Dismissal

On April 15, 2026, Petitioner filed a Notice of Appeal to the Sixth Circuit. App. 7. The notice of appeal did not include payment of the filing fee. Id.

On June 5, 2026, the Sixth Circuit Clerk entered an order dismissing the appeal "for want of prosecution" under Rule 45(a). App. 3. The order stated only that "The proper fee was not paid by May 15, 2026." Id. The order made no mention of the district court's § 1915(a)(3) certification. Id. The order was signed by the Clerk, Kelly L. Stephens, and stated it was "ENTERED PURSUANT TO RULE 45(a), RULES OF THE SIXTH CIRCUIT." Id.

C. The Docket Shows No Formal Service of the Sixth Circuit's Order

The district court docket reflects that the Sixth Circuit's dismissal order was received and entered as Docket Entry No. 7 on June 5, 2026. App. 7. However, unlike Docket Entries Nos. 4 and 5—which explicitly state that copies were "mailed to Plaintiff"—Docket Entry No. 7 contains no notation that the district court served or mailed a copy of the Sixth Circuit's order to Petitioner. App. 7. Petitioner never received the Sixth Circuit's dismissal order from the district court or the Sixth Circuit Clerk's office.

REASONS FOR GRANTING THE WRIT

This case presents three distinct but interrelated questions of exceptional importance to indigent litigants and the proper administration of the in forma pauperis statute. The Sixth Circuit's dismissal order is riddled with procedural defects that, taken together, stripped Petitioner of any meaningful opportunity to pursue his appeal. This Court should grant the writ to resolve the conflicts and due-process violations described below.

I. THE SIXTH CIRCUIT'S RULE 45(a) DISMISSAL DIRECTLY CONFLICTS WITH JOHNSON V. UNITED STATES AND THE STATUTORY FRAMEWORK OF 28 U.S.C. § 1915(a)(3)

A. The Statutory Framework

When a district court certifies under 28 U.S.C. § 1915(a)(3) that an appeal is "not taken in good faith," the appellant is barred from proceeding in forma pauperis. Fed. R. App. P. 24(a)(3). The appellant then has two options: (1) pay the full filing fee, or (2) file a motion in the court of appeals within 30 days after service of the district court's certification, challenging the certification and seeking IFP status. Fed. R. App. P. 24(a)(5).

This Court's decision in *Johnson v. United States*, 352 U.S. 565 (1957), establishes the floor for procedural protections in this context. There, the Court held that although a district court's § 1915 certification "carries great weight ... it cannot be conclusive." 352 U.S. at 566. The Court of Appeals has a "duty ... to set such a certification aside" upon a

proper showing, and must afford the appellant "the aid of counsel" (unless pro se) and "adequate means of making manifest the basis of his claim that the trial court's certification was unwarranted." Id.

B. The Sixth Circuit Never Addressed the § 1915(a)(3) Certification

Here, the district court certified—twice—that Petitioner's appeal was not taken in good faith. App. 1-2. Under Johnson, the Sixth Circuit was required to address that certification before dismissing the appeal. It did not. Instead, the Sixth Circuit Clerk entered a one-sentence order dismissing the appeal "for want of prosecution" because "The proper fee was not paid by May 15, 2026." App. 3.

This dismissal creates a direct conflict with Johnson. The Sixth Circuit treated Petitioner's appeal as if it were a routine failure to pay a fee in a non-IFP case. But this was not a routine case. The district court had statutorily barred Petitioner from proceeding IFP. Under § 1915(a)(3) and FRAP 24(a)(5), Petitioner had 30 days from service of the district court's certification to challenge it in the Sixth Circuit. The Sixth Circuit never gave Petitioner that opportunity. It never ruled on the certification. It never assigned counsel. It never provided the "adequate means" Johnson requires. It simply dismissed the appeal under a local procedural rule as if the § 1915(a)(3) certification did not exist.

C. The Circuit Split

The circuits are divided on how to treat a § 1915(a)(3) certification when an appellant seeks to proceed IFP. The Fifth Circuit reviews "bad faith" determinations de novo. *Baugh v. Taylor*, 117 F.3d 197, 201 n.18 (5th Cir. 1997). This Court's decision in *Cruz v. Hauck*, 404 U.S. 59, 62 (1971) (Douglas, J., concurring), suggested that de novo review was the standard before the PLRA amendments. But the Sixth Circuit, in *McGore v. Wigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997), held that there is "no review" of a district court's denial of leave to proceed IFP for prisoners.

This split is directly implicated here. If the Sixth Circuit had applied Johnson and afforded Petitioner the procedural protections the statute and this Court require, the outcome might have been different. Instead, the Sixth Circuit bypassed the statutory framework entirely and relied on a local rule to dismiss an appeal that was subject to a mandatory statutory certification.

D. The Sixth Circuit's Approach Undermines the Statutory Scheme

The Sixth Circuit's order effectively nullifies § 1915(a)(3) by allowing a clerk to dismiss an appeal for non-payment without ever addressing whether the appellant was entitled to proceed IFP in the first place. If a district court's § 1915(a)(3) certification is meaningless—if a court of appeals can ignore it and dismiss under a local rule—then the certification becomes an empty formality. That cannot be what Congress intended when it enacted § 1915(a)(3).

This Court should grant certiorari to resolve this conflict and to reaffirm that Johnson's procedural protections are mandatory, not optional.

II. THE SIXTH CIRCUIT'S FAILURE TO PROVIDE ADEQUATE NOTICE OF THE CLERK'S ORDER DEPRIVED PETITIONER OF THE 14-DAY RECONSIDERATION WINDOW UNDER RULE 45(c)

A. The Rule 45(c) Framework

Sixth Circuit Rule 45(c) provides: "A party adversely affected by a clerk's order may move for reconsideration by a judge or judges. The motion must be filed within 14 days of service of notice of entry of the order." 6th Cir. R. 45(c). This 14-day window is the only mechanism available to challenge a clerk's dismissal order before it becomes final.

B. The District Court Docket Shows No Service

The district court docket reflects that the Sixth Circuit's dismissal order was received on June 5, 2026, and entered as Docket Entry No. 7. App. 7. But unlike Docket Entries Nos. 4 and 5—which explicitly state that copies were "mailed to Plaintiff"—Docket Entry No. 7 contains no notation that the district court served or mailed a copy to Petitioner. App. 7.

Petitioner never received the Sixth Circuit's dismissal order from the district court or from the Sixth Circuit Clerk's office. Petitioner only learned of the dismissal through independent means. This is not a case of a party ignoring a notice. This is a case where the record itself demonstrates that no notice was given.

C. When Does the 14-Day Clock Start?

The Sixth Circuit's rule says the motion must be filed "within 14 days of service of notice of entry of the order." 6th Cir. R. 45(c). The rule does not say "14 days from the date the clerk signs the order." It says "14 days of service of notice." When a party never receives notice, the 14-day clock cannot reasonably be said to have started.

This issue has never been squarely addressed by this Court, but the principle is fundamental: a time limit for challenging an adverse order cannot begin to run before the party knows the order exists. To hold otherwise would allow a clerk's dismissal to become irrevocable through no fault of the appellant—precisely what happened here.

D. The Due Process Implications

Due process requires notice and an opportunity to be heard. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950). When a clerk enters a dismissal order under Rule 45(a) and the record shows no service of that order on the appellant, the appellant cannot be expected to move for reconsideration within 14 days. The Sixth Circuit's dismissal order, entered without meaningful notice and without any opportunity to challenge it, violates the most basic principles of procedural fairness.

III. THE DISTRICT COURT'S "WITHOUT PREJUDICE" DISMISSAL AND THE SIMULTANEOUS APPELLATE PROCESS CREATED AN IMPOSSIBLE PROCEDURAL MAZE THAT VIOLATES DUE PROCESS

A. The District Court's Conditional Dismissal

The district court dismissed Petitioner's case "without prejudice" and gave him 30 days from April 1, 2026 (until approximately May 1, 2026) to reopen by paying the \$405 filing fee and filing a contemporaneous motion. App. 1. At the same time, the court warned that it would accept "no document for filing ... unless the filing fee is first paid in its entirety." Id.

B. The Appellate Process Foreclosed the Reopening Window

While the district court's 30-day reopening window was running, Petitioner filed a Notice of Appeal on April 15, 2026. App. 7. The Sixth Circuit then gave Petitioner until May 15, 2026—two weeks after the district court's reopening window had closed—to pay the appellate filing fee. App. 3. When Petitioner could not pay by May 15, the Sixth Circuit dismissed the appeal on June 5, 2026. App. 3.

By that point, the district court's 30-day reopening window had been closed for over a month. The "without prejudice" dismissal had become a final, unreviewable dismissal—not because Petitioner failed to act, but because the parallel appellate timeline made compliance impossible.

C. The Due Process Violation

A procedural mechanism that is technically available but practically unreachable is no mechanism at all. The district court told Petitioner he could reopen his case, but the simultaneous appeal process—and the Sixth Circuit's fee deadline—made that promise illusory. This Court has long held that due process requires more than the mere existence of a remedy; it requires a meaningful opportunity to avail oneself of that remedy. See *Parrish v. Commissioner*, 604 U.S. ____ (2025) (rejecting rigid formalism in favor of substance over technicality in appellate procedure).

Here, Petitioner was trapped in a procedural maze: the district court said "pay \$405 and reopen within 30 days," but the Sixth Circuit said "pay the appellate fee by May 15." Petitioner, proceeding pro se and indigent, could not satisfy both conditions simultaneously. The district court's "without prejudice" dismissal, coupled with the Sixth Circuit's dismissal, operated as a de facto "with prejudice" dismissal—depriving Petitioner of his day in court without any meaningful opportunity to cure the deficiency.

D. The Need for This Court's Intervention

This case exemplifies why this Court's review is urgently needed. Indigent pro se litigants are particularly vulnerable to procedural traps that experienced counsel would navigate with ease. The combination of (1) a district court's conditional dismissal, (2) a statutory IFP bar, (3) a court of appeals' local procedural dismissal, and (4) a lack of notice,

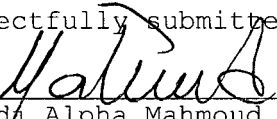
created a perfect storm that denied Petitioner any fair opportunity to pursue his claims.

This Court should grant the writ to clarify that lower courts cannot erect procedural barriers so labyrinthine that they effectively nullify a litigant's right to access the courts.

CONCLUSION

For the foregoing reasons, Petitioner respectfully prays that this Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,


Elhadj Alpha Mahmoud Souare
P.O. Box 7024
Akron, Ohio 44306
234-303-9210
PRO SE

Date: August 4, 2026

CERTIFICATE OF SERVICE

I, Elhadj Alpha Mahmoud Souare, hereby certify that on this 4th day of August, 2026, I served the foregoing Petition for a Writ of Certiorari and all accompanying documents upon each party required to be served, as follows:

BY FIRST-CLASS MAIL, POSTAGE PREPAID, addressed to:

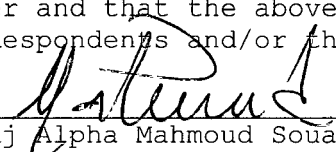
1. City of Akron, Ohio
c/o Office of the Law Director
166 South High Street
Akron, Ohio 44308
2. Officer Dionta Mitchell, Badge #1605
c/o Akron Police Department
217 South High Street
Akron, Ohio 44308
3. Officer Patrick Moore, Badge #1594
c/o Akron Police Department
217 South High Street
Akron, Ohio 44308
4. Portage County, Ohio
c/o Portage County Prosecutor's Office

203 West Main Street
Ravenna, Ohio 44266

5. Deputy Coleman Thomes, Badge #149
c/o Portage County Sheriff's Office
8240 Infirmary Road
Ravenna, Ohio 44266
6. Portage County Jail Staff John Does, 1-12
c/o Portage County Sheriff's Office
8240 Infirmary Road
Ravenna, Ohio 44266

[If any Respondent was represented by counsel of record in the United States Court of Appeals for the Sixth Circuit, service was also made upon such counsel at the address listed on the appellate docket.]

I further certify that I am not currently represented by counsel in this matter and that the above addresses represent the last known addresses of the Respondents and/or their counsel of record.



Elhadj Alpha Mahmoud Souare
P.O. Box 7024
Akron, Ohio 44306
234-303-9210
PRO SE

Date: August 4, 2026

APPENDIX

- App. 1 Memorandum of Opinion and Order, Souare v. City of Akron,
No. 5:26-cv-00154-BYP (N.D. Ohio Apr. 1, 2026) (Docket Entry No. 4)
- App. 2 Judgment Entry, Souare v. City of Akron,
No. 5:26-cv-00154-BYP (N.D. Ohio Apr. 1, 2026) (Docket Entry No. 5)
- App. 3 Order, Souare v. City of Akron, et al.,
No. 26-3327 (6th Cir. June 5, 2026) (USCA Clerk's Order)
- App. 4 Civil Docket Cover Sheet, Souare v. City of Akron,
No. 5:26-cv-00154-BYP (N.D. Ohio Jan. 21, 2026)
- App. 5 Motion to Proceed In Forma Pauperis (Docket Entry No. 2)
- App. 6 Motion to Note Widespread Conditions (Docket Entry No. 3)
- App. 7 Docket Entries Nos. 1-7, Souare v. City of Akron,
No. 5:26-cv-00154-BYP (N.D. Ohio)