

No. _____

20-5847 ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

ELHADJ ALPHA MAHMOUD SQUARE,

Petitioner,

v.

OHIO DEPARTMENT OF DEVELOPMENTAL DISABILITIES; CHARLES NORMAN, in his individual and official capacities; JENNIFER SAXON, in her individual capacity; ROBERT CAPALDI, in his individual capacity; and LAURA POUNDSTONE, in her individual capacity,

Respondents.

On Petition for a Writ of Certiorari Before Judgment to the United States Court of Appeals for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI BEFORE JUDGMENT

Elhadj Alpha Mahmoud Square

P.O. Box 7024

Akron, Ohio 44306

Telephone: (234) 303-9210

Email: fulaniservicesllc@outlook.com

Petitioner, Pro Se

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QUESTIONS PRESENTED

1. Whether an administrative agency violates the Procedural Due Process Clause of the Fourteenth Amendment by revoking a sole proprietor's state-issued professional license without a hearing, where the agency categorically prohibits the sole owner of a single-member LLC from appearing pro se and the owner cannot afford retained counsel.
2. Whether a federal district court errs under Federal Rule of Civil Procedure 12(b)(6) when it dismisses a 42 U.S.C. § 1983 due process claim by mischaracterizing a final, executed agency revocation order in the record as merely a non-actionable "attempt" to revoke, and where the circuits are divided on whether unopposed motions to dismiss may be granted as conceded.
3. Whether a district court may dismiss a § 1983 constitutional challenge to final state agency action for failure to exhaust state administrative or judicial remedies, in conflict with *Patsy v. Board of Regents*, 457 U.S. 496 (1982), and this Court's decision in *Williams v. Reed*, 604 U.S. ____ (2025).

LIST OF PARTIES AND CORPORATE DISCLOSURE

Parties to the Proceeding:

Petitioner: Elhadj Alpha Mahmoud Souare, proceeding pro se.

Respondents: Ohio Department of Developmental Disabilities; Charles Norman (Director, individual and official capacities); Jennifer Saxon (individual capacity); Robert Capaldi (individual capacity); and Laura Poundstone (individual capacity).

Corporate Disclosure Statement:

Pursuant to Supreme Court Rule 29.6, Petitioner is an individual person. Fulani Services LLC is a single-member limited liability company wholly owned by Petitioner. No publicly held company owns 10% or more of its stock.

Directly Related Proceedings:

- United States District Court for the Northern District of Ohio: Souare v. Ohio Department of Developmental Disabilities, et al., No. 5:25-cv-00694-JRA (Memorandum Opinion and Order entered Nov. 10, 2025; Judgment entered Nov. 10, 2025).
- United States Court of Appeals for the Sixth Circuit: Souare v. Ohio Department of Developmental Disabilities, et al., No. 26-3573 (Notice of Appeal filed June 25, 2026; appeal held in abeyance pending post-judgment motions).
- Supreme Court of the United States — prior protective petition filed August 24, 2026; returned by Clerk September 2, 2026, with instructions to refile under Rule 11.

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Cohen v. Bd. of Trs. of Univ. of D.C., 819 F.3d 476 (D.C. Cir. 2016)

Erickson v. Pardus, 551 U.S. 89 (2007)

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Giummo v. Olsen, 701 Fed. App'x 922 (11th Cir. 2017)

Goldberg v. Kelly, 397 U.S. 254 (1970)

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Heck v. Humphrey, 512 U.S. 477 (1994)

In re Evans, 801 F.2d 703 (5th Cir. 1986)

In re Jacobs, 44 F.3d 84 (2d Cir. 1994)

In re Kramer, 282 F.3d 721 (9th Cir. 2002)

In re Williams, 398 F.3d 116 (1st Cir. 2005)

Issa v. Comp USA, 354 F.3d 1174 (10th Cir. 2003)

Marcure v. Lynn, 992 F.3d 625 (7th Cir. 2021)

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

McCall v. Pataki, 232 F.3d 321 (2d Cir. 2000)

Patsy v. Board of Regents of Florida, 457 U.S. 496 (1982)

Pomerleau v. W. Springfield Pub. Schs., 362 F.3d 143 (1st Cir. 2004)

Ramsey v. Signal Delivery Serv., Inc., 631 F.2d 1210 (5th Cir. 1980)

Rowland v. California Men's Colony, 506 U.S. 194 (1993)

Stackhouse v. Mazurkiewicz, 951 F.2d 29 (3d Cir. 1991)

Williams v. Reed, 604 U.S. ____ (2025)

Constitutional Provisions and Statutes:

U.S. Const. amend. V

U.S. Const. amend. XIV, § 1

28 U.S.C. § 1254(1)

28 U.S.C. § 1331

42 U.S.C. § 1983

Ohio Rev. Code § 119.09

Rules:

Sup. Ct. R. 11

Sup. Ct. R. 14

Sup. Ct. R. 33.2

Fed. R. Civ. P. 12(b)(6)

Fed. R. App. P. 4(a)(4)(A)

OPINIONS BELOW

The opinion of the United States District Court for the Northern District of Ohio is unreported but available at Docket Entry 64 in Case No. 5:25-cv-00694-JRA (App. 1). The judgment of the district court is reported at Docket Entry 65 (App. 25). The pending appeal in the United States Court of Appeals for the Sixth Circuit is docketed as Case No. 26-3573 (App. 44).

JURISDICTION

The district court entered final judgment on November 10, 2025. Petitioner filed timely post-judgment motions under Federal Rules of Civil Procedure 59(e) and 60(b), which tolled the time for filing a notice of appeal under Federal Rule of Appellate Procedure 4(a)(4)(A). Petitioner filed a Notice of Appeal to the Sixth Circuit on June 25, 2026. The Sixth Circuit appeal is currently held in abeyance pending the district court's disposition of the post-judgment motions.

This petition is filed under this Court's Rule 11. This Court has jurisdiction under 28 U.S.C. § 1254(1) and Supreme Court Rule 11.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides in relevant part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens

of the United States; nor shall any State 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."

42 U.S.C. § 1983 provides in relevant part: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State... subjects, or causes to be subjected, any citizen of the United States... to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured..."

STATEMENT OF THE CASE

A. Factual Background

Petitioner Elhadj Alpha Mahmoud Souare is the sole member, Director of Operations, and sole owner of Fulani Services LLC, an Ohio provider of developmental-disability care services certified by the Ohio Department of Developmental Disabilities ("DODD"). Prior to the agency actions at issue, Fulani Services LLC operated with an unblemished compliance record, generating approximately \$84,000 per month in gross revenue and providing direct services to vulnerable individuals across Stark and Summit counties.

In late 2024, following unverified complaints from a former employee, DODD initiated special compliance reviews. Following these reviews, DODD requested Plans of Correction (POCs). Petitioner submitted detailed POCs, which were formally approved by DODD on December 3, 2024 (App. 27).

B. The Administrative Record and Erroneous Citations

Despite the approved POCs, DODD initiated license revocation proceedings based on citations that the administrative record demonstrates were factually impossible:

1. The Non-Existent Service Citation: DODD cited Petitioner for failing to submit an annual Major Unusual Incident (MUI) report for Stark County for calendar year 2023. During an administrative meeting on November 21, 2024, Petitioner informed agency officials that Fulani Services LLC had zero clients in Stark County in 2023. Agency official Jennifer Saxon acknowledged this fact on the record (App. 32). Nevertheless, DODD sustained the citation and used it as a primary predicate for license revocation.
2. The Address Discrepancy: DODD cited Petitioner for maintaining an incorrect corporate address in its Provider Services Management (PSM) system — an address generated and maintained by DODD itself. When agency reviewers attempted to verify compliance, they

traveled to the incorrect address on file, logged a failure to verify, and falsely claimed Petitioner had failed to respond (App. 27).

3. The "Did Not Submit Documents" Contradiction: The Hearing Officer's Report contains internally contradictory findings. Finding #37 claims "Provider acknowledged what documents needed to be provided to DODD to comply, but did not submit said documents." Finding #38 admits "A Plan of Correction was submitted by Provider, he was unable to complete a verification review." Finding #39 is a verbatim duplicate of #37. The record shows extensive submissions: initial POCs, multiple revised POCs, and final approvals on 12/3/2024 for both Stark and Summit counties (R-5, pp. 153, 159; R-43, Exs. 6, 7, 8).

4. The "No Response" Claim vs. Actual Email Responses: The Notice of Proposed Revocation (1/31/25) states Petitioner had "not responded" and that "multiple calls to the provider were not returned." But Souare emailed Saxon on 1/24/25 and 2/5/25 responding to the verification issue and offering specific dates and locations to meet (R-5, pp. 149–150, 155). DODD's own email records prove Souare responded; DODD's findings claim he did not.

C. The Administrative Exclusion and Revocation

Petitioner timely requested an administrative hearing pursuant to Ohio Revised Code Chapter 119. On May 20, 2025, the Hearing Examiner issued an order requiring that because Fulani Services LLC was structured as a limited liability company, it must be represented by an attorney licensed in Ohio (App. 11).

Petitioner, as an indigent individual sole owner, could not afford private retained counsel. On August 18, 2025, the day before the scheduled hearing, Hearing Officer Philip King left a voicemail message for Petitioner stating that because no attorney had entered an appearance for the LLC, Petitioner would not be permitted to present evidence, call witnesses, or testify on his own behalf, but could only participate if called as a witness by the state (App. 46).

On August 19, 2025, the hearing proceeded ex parte. On October 28, 2025, DODD issued a Final Adjudication Order revoking Petitioner's certification and provider agreement based solely on the uncontradicted state evidence (App. 27).

D. District Court Proceedings

Petitioner filed an action under 42 U.S.C. § 1983 in the United States District Court for the Northern District of Ohio, alleging procedural due process and equal protection violations against DODD and individual officials. On October 29, 2025, Petitioner submitted the final revocation order into the record (App. 27).

On November 10, 2025, the district court granted Respondents' motions to dismiss under Rule 12(b)(6). In its opinion, the district court held that "the only 'deprivation' [Petitioner] appears to

allege is an 'attempt to revoke or suspend [his] license.' An attempt to revoke is not a deprivation of rights." (App. 5). The court dismissed all federal claims and certified that any appeal would not be taken in good faith under 28 U.S.C. § 1915(a)(3).

Petitioner filed post-judgment motions under Rules 59(e) and 60(b), which remain pending. The appeal to the Sixth Circuit is held in abeyance pending the district court's resolution of those motions.

REASONS FOR GRANTING THE PETITION

I. This Case Presents Issues of Imperative Public Importance Justifying Certiorari Before Judgment Under Rule 11

Under Supreme Court Rule 11, a writ of certiorari before judgment is granted where a case presents issues of "imperative public importance" that require immediate resolution by this Court. This case satisfies that stringent standard.

First, the ongoing deprivation is immediate and irreparable. Petitioner's license was revoked without a hearing, destroying an \$84,000-per-month business that provided essential developmental-disability services. Every day the revocation stands, vulnerable individuals lose services and Petitioner loses his livelihood. The harm cannot be remedied by a post-deprivation award of damages; the business is destroyed, the clients have been dispersed, and the reputation damage is permanent. See *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970).

Second, the legal questions are structural, not case-specific. The district court's "phantom attempt" doctrine — holding that a final revocation order is merely an "attempt" — creates a mechanism by which any district court can nullify any licensee's due process claim simply by characterizing final agency action as an "attempt." If allowed to stand, this doctrine will insulate every state licensing agency from federal due process review.

Third, the LLC attorney-bar rule affects millions of small business owners nationwide. There are approximately 26 million single-member LLCs in the United States. If agencies may categorically exclude sole owners from self-representing in administrative hearings by imposing a corporate-counsel requirement, then every one of those owners faces the same Hobson's choice Petitioner faced: hire counsel you cannot afford, or forfeit your livelihood without a hearing.

Fourth, the circuit conflicts are live and deepening. As detailed below, the circuits are divided on at least three distinct questions of federal law presented here. Allowing the Sixth Circuit to

render an advisory decision in a case held in abeyance for routine post-judgment motions would waste judicial resources and delay resolution of conflicts this Court should settle now.

II. Question 1: Categorically Barring Sole Owners of Single-Member LLCs from Self-Representation Violates Procedural Due Process

A state-issued professional license or operational certificate constitutes a constitutionally protected property interest under the Fourteenth Amendment. *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972). Before a state may deprive an individual of such an interest, procedural due process requires notice and a meaningful opportunity to be heard. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985).

While courts routinely enforce the rule that artificial entities must appear through licensed counsel, see *Rowland v. California Men's Colony*, 506 U.S. 194, 201-02 (1993), applying this rule rigidly to administrative license revocations involving single-member LLCs creates a direct conflict with procedural due process. Where an individual's personal livelihood and sole asset are destroyed, conditioning the right to be heard on the retention of counsel — when the owner is indigent — violates the fundamental guarantee of *Mathews v. Eldridge*, 424 U.S. 319 (1976).

The circuits are divided on whether an individual's due process rights are extinguished simply because they operate through an LLC. Some circuits treat the individual as the real party in interest; others treat the LLC as a purely artificial entity with no *Faretta* rights. See *Faretta v. California*, 422 U.S. 806 (1975). This affects millions of small business owners. If an agency can revoke their livelihood by forcing them to hire counsel they cannot afford, the administrative hearing becomes a sham. See *Boddie v. Connecticut*, 401 U.S. 371 (1971) (access to courts cannot be conditioned on ability to pay).

III. Question 2: The District Court Committed Structural Error by Mischaracterizing Final Action as an "Attempt"

Under Rule 12(b)(6), a court must accept all well-pled factual allegations as true and draw all reasonable inferences in favor of the non-moving party. The administrative record before the district court contained the October 28, 2025 Final Adjudication Order revoking Petitioner's certification (App. 27). That order was filed on October 29, 2025 (R-57), and supplemented on November 3, 2025 (R-59) — both before the court issued its November 10, 2025 dismissal.

By ruling that the complaint merely alleged an "attempt to revoke," the district court committed a threshold factual error that bypassed the merits of Petitioner's constitutional claims. This is not a close call on the law: under *Roth*, a property interest in a professional license triggers due process protections; under *Loudermill*, revocation is a deprivation requiring pre-deprivation

notice and opportunity to be heard. The court never reached these questions because it stopped at a false factual premise.

This case creates a dangerous precedent: if a district court can nullify a due process claim by pretending a final agency action is merely an "attempt," then no licensee will ever have a cognizable due process claim so long as a court uses the word "attempt."

The circuits are also divided on whether district courts must independently analyze unopposed Rule 12(b)(6) motions. In *Marcure v. Lynn*, 992 F.3d 625 (7th Cir. 2021), the Seventh Circuit joined six sister circuits in holding that "Rule 12(b)(6) prevents courts from granting unopposed motions solely because there is no response." See *McCall v. Pataki*, 232 F.3d 321 (2d Cir. 2000); *Stackhouse v. Mazurkiewicz*, 951 F.2d 29 (3d Cir. 1991); *Ramsey v. Signal Delivery Serv.*, 631 F.2d 1210 (5th Cir. 1980); *Carver v. Bunch*, 946 F.2d 451 (6th Cir. 1991); *Issa v. Comp USA*, 354 F.3d 1174 (10th Cir. 2003); *Giummo v. Olsen*, 701 Fed. App'x 922 (11th Cir. 2017).

But the First Circuit applies the opposite rule. In *Pomerleau v. W. Springfield Pub. Schs.*, 362 F.3d 143, 145 (1st Cir. 2004), the First Circuit held that district courts' obligation to examine the merits "could nevertheless be overridden by local rules," empowering courts to grant motions to dismiss as unopposed solely for lack of reply. The D.C. Circuit has taken a "middle approach," permitting courts to grant unopposed 12(b)(6) motions without prejudice only. *Cohen v. Bd. of Trs. of Univ. of D.C.*, 819 F.3d 476, 480 (D.C. Cir. 2016).

This creates a two-tier system: counseled plaintiffs receive plenary review; pro se plaintiffs in the First and D.C. Circuits receive summary disposition. This Court should grant certiorari to clarify that district courts may not dismiss constitutional claims by ignoring undisputed facts in the record.

IV. Question 3: The Dismissal Conflicts with Established Non-Exhaustion Precedent Under § 1983

This Court established in *Patsy v. Board of Regents*, 457 U.S. 496, 516 (1982), that exhaustion of state administrative remedies is not a prerequisite to bringing an action under 42 U.S.C. § 1983. The district court's dismissal effectively imposed an exhaustion requirement, holding that Petitioner could not seek federal relief while administrative or state-court post-deprivation channels remained available. This holding directly conflicts with *Patsy*.

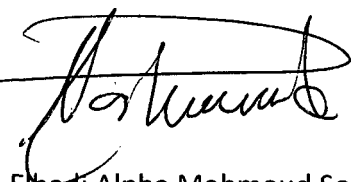
The circuit split is real and current. This Court recently decided *Williams v. Reed*, 604 U.S. ____ (2025), reversing the Alabama Supreme Court for requiring exhaustion of state administrative remedies before bringing § 1983 claims in state court. In *Williams*, the Court held that "where a state court's application of a state exhaustion requirement in effect immunizes state officials from § 1983 claims challenging delays in the administrative process, state courts may not deny those claims on failure-to-exhaust grounds." The Court's 5–4 decision demonstrates that exhaustion questions remain hotly contested and urgently require this Court's clarification.

If federal courts can nullify § 1983 by requiring plaintiffs to run a state-court gauntlet first, the statute becomes a dead letter for administrative deprivations. This Court should grant certiorari to reaffirm that § 1983 contains no exhaustion requirement.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant the Petition for a Writ of Certiorari Before Judgment.

Respectfully submitted,



Elhadj Alpha Mahmoud Souare

P.O. Box 7024

Akron, Ohio 44306

Telephone: (234) 303-9210

Email: fulaniservicesllc@outlook.com

Petitioner, Pro Se

September 7, 2026

CERTIFICATE OF COMPLIANCE

I hereby certify that this Petition for a Writ of Certiorari Before Judgment complies with the page limitations of Supreme Court Rule 33.2 because it contains the exact number of pages, excluding the parts exempted by Rule 14.1(f).

I further certify that all text is double-spaced and presented in 14-point Times New Roman typeface on 8½ × 11-inch paper.

Respectfully submitted,