

In the  
Supreme Court of the United States

---

LINDA MATARESE, PERSONAL REPRESENTATIVE OF  
THE ESTATE OF HILDA DULD BAUMAN,

*Petitioner,*

v.

VIRGINIA HOSPITAL CENTER ARLINGTON HEALTH  
SYSTEM, d/b/a VIRGINIA HOSPITAL CENTER ET AL.,

*Respondents.*

---

**On Petition for a Writ of Certiorari to the  
Supreme Court of Virginia**

---

---

**PETITION FOR REHEARING**

---

---

PAUL STRAUSS  
*COUNSEL OF RECORD*  
LAUREN LANZON  
*ASSOCIATE COUNSEL*  
LAW OFFICES OF PAUL STRAUSS & ASSOC., P.C.  
1020 16TH STREET, NW, 5TH FLOOR  
WASHINGTON, DC 20036  
(202) 220-3100  
STRAUSS@PAULSTRAUSSLAW.COM

**TABLE OF CONTENTS**

	Page
TABLE OF AUTHORITIES .....	iv
PETITION FOR REHEARING .....	1
BACKGROUND .....	1
ARGUMENT .....	3
I. THE SUPREME COURT’S DECISION IN <i>CRUZ</i> IS AN INTERVENING CIRCUMSTANCE, WARRANTING A REHEARING IN THIS CASE BECAUSE, HERE, THE VIRGINIA SUPREME COURT DID NOT FOLLOW ITS FIRMLY ESTABLISHED STATE PROCEDURAL LAW .....	3
A. The Virginia Supreme Court’s Decision to Uphold the Trial Court’s Decision to Grant Defendant’s Motion to Strike Prior to Petitioner Resting Her Case-in- Chief Constituted a Novel, Unforeseeable, and Unsupported Interpretation of Virginia’s Motion to Strike Rules and Resulted in the Dismissal of Petitioner’s Case with Prejudice. ....	4
B. The Virginia Supreme Court Decision to Interpret Its Procedural Laws in a Novel and Unforeseeable Way Directly Implicates <i>Cruz</i> .....	6
II. PETITIONER’S ATTORNEYS RAISED VIOLATIONS OF HER FEDERAL DUE PROCESS RIGHTS AT THE TRIAL COURT LEVEL, WHICH CONSTITUTES OTHER SUBSTANTIAL GROUNDS NOT PREVIOUSLY PRESENTED.....	7

**TABLE OF CONTENTS – Continued**

	Page
III. PETITIONER RAISED VIOLATIONS OF HER FEDERAL DUE PROCESS RIGHTS AT THE VIRGINIA SUPREME COURT.....	8
CONCLUSION.....	10
RULE 44.2 CERTIFICATE OF COUNSEL.....	11

**TABLE OF CONTENTS – Continued**

Page

**REHEARING APPENDIX  
TABLE OF CONTENTS****OPINIONS AND ORDERS**

Order of the Virginia Supreme Court (June 29, 2022) .....	1a
Final Order of the Arlington County Circuit Court (August 25, 2021) .....	3a

**OTHER DOCUMENTS**

Plaintiff's Matarese Memorandum in Support of Motion to Withdraw as Counsel and in Opposition to Award of Sanctions (August 17, 2021) .....	9a
Matarese Amended and Restated Petition for Appeal in the Virginia Supreme Court (May 12, 2022) .....	25a
Matarese Petition for Rehearing in the Virginia Supreme Court (July 13, 2022) .....	62a

**TABLE OF AUTHORITIES**

	Page
<b>CASES</b>	
<i>Bouie v. City of Columbia</i> , 378 U.S. 347, 84 S. Ct. 1697, 12 L. Ed. 2d 894 (1964) .....	3
<i>Coleman v. Thompson</i> , 501 U.S. 722 (1991) .....	3
<i>Cruz v. Arizona</i> , 598 U.S. ____ (2023); 2023 U.S. LEXIS 945 (Feb. 22, 2023) .....	1, 2, 3, 6
<i>Durham v. National Pool Equipment Co.</i> , 205 Va. 441, 138 S.E.2d 55 (1964) .....	4, 5, 7
<i>Etherton v. Doe</i> , 268 Va. 209, 597 S.E.2d 87 (2004) .....	5
<i>Goldberg v. Kelly</i> , 397 U.S. 254 (1970) .....	8
<i>Lee v. Kemna</i> , 534 U.S. 362 (2002) .....	3
<i>Lynch v. Arizona</i> , 578 U.S. 613 (2016) .....	6
<i>Virginia Electric Company v. Mitchell</i> , 159 Va. 855, 164 S.E. 424 (1932) .....	4
<b>CONSTITUTIONAL PROVISIONS</b>	
U.S. Const. amend. XIV .....	2, 6, 7

**TABLE OF AUTHORITIES – Continued**

Page

**STATUTES**

42 U.S.C. § 3602(h) .....	8
42 U.S.C. § 12101.....	7
42 U.S.C. § 12102(1) .....	2, 5, 7, 8
Va. Code § 8.01-276 .....	4

**JUDICIAL RULES**

Sup. Ct. R. 44 .....	1
----------------------	---

**OTHER AUTHORITIES**

Hideki Tonori, and Yoshiharu Aizawa, <i>Multiple Chemical Sensitivity and</i> <i>Idiopathic Environmental Intolerance</i> , ENVIRON. HEALTH PREV. MED., vol. 7 (Jan. 2003) .....	2
Sinclair & Middleditch, Jr., 1 VIRGINIA CIVIL PROCEDURE (7th Ed. LexisNexis Matthew Bender (2021)) .....	5



## **PETITION FOR REHEARING**

Pursuant to S. Ct. Rule 44, Linda Matarese, Petitioner in this case (hereafter “Petitioner” or “Matarese”), respectfully petitions for rehearing of the U.S. Supreme Court’s Order denying certiorari in this case, dated February 27, 2023. Grounds for a Petition for Rehearing are limited to intervening circumstances of a substantial or controlling effect, or to other substantial grounds not previously presented.

Before this Petition was filed, the Supreme Court of the United States of America decided *Cruz v. Arizona*, 598 U.S. \_\_ (2023); 2023 U.S. LEXIS 945 (Feb. 22, 2023) which holds that an unjustified state court decision constitutes adequate grounds for the United States Supreme Court to review a federal question – namely, whether the Petitioner’s Due Process rights have been violated. In light of this intervening circumstance, the Court should consider the question of whether Petitioner’s Due Process rights have been violated.



## **BACKGROUND**

Petitioner Linda Matarese is a legally disabled, elderly individual who represented the estate of her deceased mother in a wrongful death suit. Prior to start of trial, the jury was informed that all parties might come and go from the courtroom as they pleased without permission throughout the six-day trial. On day four of trial, and before Petitioner could rest her

case-in-chief, she was overcome with an unexpected attack of Multiple Chemical Sensitivity,<sup>1</sup> one of her many registered disabilities, and had to be physically carried from the courtroom by six deputies. As a result of Petitioner's disability, the Judge granted the Defendant's Motion to Strike the Evidence and dismissed Petitioner's case with prejudice instead of appropriately responding to Petitioner's disability. Upon appeal, the Supreme Court of Virginia found no reversable error; a clear violation of the Petitioner's Due Process rights under the 14th Amendment of the United States Constitution and the Americans with Disabilities Act. The Virginia Supreme Court violated its own legal precedent by not reversing the trial court's decision when it granted the Defendant's Motion to Strike the Evidence in the middle of Petitioner presenting its case-in-chief and before Petitioner rested its case.

Petitioner filed a Petition for Writ of Certiorari on January 3, 2023. The Supreme Court decided *Cruz v. Arizona* on February 22, 2023. Petitioner's Writ was denied on February 27, 2023.

---

<sup>1</sup> Multiple Chemical Sensitivity is sometimes referenced by the medical community and idiopathic environmental intolerance. It renders environments unsafe and extremely harmful for individuals such as Petitioner, causing intense amounts of pain as well as other symptoms such as rapid heart rate, chest pain, sweating, shortness of breath, fatigue, dizziness, nausea, choking, trembling, numbness, coughing, hoarseness. Hideki Tonori, and Yoshiharu Aizawa, *Multiple Chemical Sensitivity and Idiopathic Environmental Intolerance*, ENVIRON. HEALTH PREV. MED., vol. 7, 264-72 (Jan. 2003).



## ARGUMENT

### I. THE SUPREME COURT'S DECISION IN *CRUZ* IS AN INTERVENING CIRCUMSTANCE, WARRANTING A REHEARING IN THIS CASE BECAUSE, HERE, THE VIRGINIA SUPREME COURT DID NOT FOLLOW ITS FIRMLY ESTABLISHED STATE PROCEDURAL LAW.

Justice Sotomayor delivered the opinion of the Court in *Cruz*. Prior to *Cruz*, she stated, the Supreme Court maintained a rule that “an unforeseeable and unsupported state-court decision on a question of state procedure does not constitute an adequate ground to preclude this Court’s review of a federal question.” *Cruz v. Arizona*, 2023 U.S. LEXIS 945, \*14 (Feb. 22, 2023) (quoting *Bouie v. City of Columbia*, 378 U.S. 347, 354, 84 S. Ct. 1697, 12 L. Ed. 2d 894 (1964)). This is a long-standing Supreme Court principle. Normally, “firmly established and regularly followed” state procedural laws adequately foreclose federal review of state court decisions. *See Lee v. Kemna*, 534 U.S. 362, 375 (2002); *see also Coleman v. Thompson*, 501 U.S. 722 (1991).

However, the Supreme Court’s decision in *Cruz* is an intervening circumstance, warranting a rehearing in this case because, here, the Virginia Supreme Court did not follow its firmly established state procedural law. In *Cruz*, the Supreme Court held that the Court should review the federal question when a state court judgment rests on a novel and unforeseeable interpretation of a state-court procedural rule, or an inadequate procedural ground for its decision. Here, the failure

of the Virginia Supreme Court to overrule the trial court, and the trial court's grant of the motion to strike, are novel and unforeseeable interpretations of the state court's procedural rules explained in *Durham v. National Pool Equipment Co.*, 205 Va. 441, 138 S.E.2d 55 (1964) that resulted in the violation of Petitioner's Due Process rights.

**A. The Virginia Supreme Court's Decision to Uphold the Trial Court's Decision to Grant Defendant's Motion to Strike Prior to Petitioner Resting Her Case-in-Chief Constituted a Novel, Unforeseeable, and Unsupported Interpretation of Virginia's Motion to Strike Rules and Resulted in the Dismissal of Petitioner's Case with Prejudice.**

Motions to strike "shall be made within the time prescribed by Rules of the Supreme Court." See Va. Code § 8.01-276. In *Durham v. National Pool Equipment Co.*, the Supreme Court of Virginia held that a "motion to strike was premature" prior to the plaintiff's decision to rest his case and therefore "constituted a reversible error." See *Durham* at 448. Virginia state precedent is particularly strong on this point; "If the [motion to strike], in the opinion of this court, is erroneously sustained by the trial judge, such ruling necessitates a new trial and probably another hearing before this court, with additional expense and long-delayed final judgment." *Virginia Electric Company v. Mitchell*, 159 Va. 855, 860, 164 S.E. 424 (1932). As such, it is a long-standing state precedent that "a motion to strike the plaintiff's evidence should be granted only when it plainly appears that the court would be compelled to set aside any verdict found for

the plaintiff as being without evidence to support it.” *Etherton v. Doe*, 268 Va. 209, 212, 597 S.E.2d 87 (2004). The motion to strike the evidence “should never be made prior to the conclusion of a party’s evidence.” *Sinclair & Middleditch, Jr.*, 1 VIRGINIA CIVIL PROCEDURE § 13.8 (7th Ed. LexisNexis Matthew Bender (2021)) (citing *Durham v. National Pool Equipment Co.*, 205 Va. 441, 138 S.E.2d 55 (1964))

In Petitioner’s case, the trial court violated long-standing Virginia state precedent in *Durham* when it granted Defendant’s motion to strike and dismissed Petitioner’s case with prejudice prior to the conclusion of Petitioner’s evidence. Petitioner was not afforded the opportunity to testify, nor were key Plaintiff’s witness afforded the opportunity to testify. Therefore, the same as the Plaintiff in *Durham*, Petitioner had not rested her case in the trial court. *Durham* holds that the trial court “cannot say, as a matter of law, that [Plaintiff] . . . had no case” prior to Plaintiff resting its case-in-chief because of the possibility of additional evidence. *Durham*. at 448. Therefore, the Supreme Court of Virginia held that “the sustaining of the motion to strike was premature and constituted reversible error.” *Id.* Motions to strike cannot be granted prior to plaintiff resting its case-in-chief.

The Supreme Court of Virginia’s decision to uphold and sustain the trial court’s error constituted a novel, unforeseeable, and unsupported form of interpreting state procedural rules. This decision not only directly implicated Petitioner’s Due Process rights and her rights under the Americans with Disabilities Act of 1990, but the Virginia Supreme Court violated its own precedent in an entirely unforeseeable manner. The trial court and Virginia Supreme Court’s unsupported

decisions directly resulted in the failure to protect Petitioner’s Due Process Rights.

**B. The Virginia Supreme Court Decision to Interpret Its Procedural Laws in a Novel and Unforeseeable Way Directly Implicates *Cruz*.**

*Cruz* indicated that when state courts interpret procedural rules in “entirely new” ways that operate in conflict with prior precedential decisions, it constitutes an exceptional scenario such that it could warrant the review by the Supreme Court. *Cruz* at 9. There, the Supreme Court of Arizona failed to recognize that *Lynch v. Arizona*, 578 U.S. 613 (*per curiam*) changed state procedural law because it did not consider state precedent when making that determination. *Id.* at 10.

Here, the same principle applies—the Virginia Supreme Court did not attend to its own precedent when deciding that Petitioner’s case had no reversible error. Instead, the Virginia Supreme Court acted directly contrary to its own precedent and its own procedural rules. Just like in *Cruz*, this brand-new interpretation of the motion to strike, namely that a judge can strike a Plaintiff’s entire case before Plaintiff rests, is so novel and unforeseeable that it entirely departs from previously established Virginia procedural rules and case law that has been in place for over 80 years. As a consequence of the Virginia Supreme Court’s disregard for its procedural rules and case law, Petitioner’s Due Process rights were egregiously violated, and she was left unable to access a fair and neutral tribunal.

Petitioner’s equal protection of the laws guaranteed by the 14th Amendment of the United States

Constitution was violated by the Virginia trial court and Virginia Supreme Court. “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.” *See* Amdt. 14.

Here, Petitioner’s 14th Amendment Due Process rights were violated when the Virginia trial court and the Virginia Supreme Court failed to implement its own procedural laws from *Durham* that resulted in Petitioner’s case being dismissed with prejudice.

Furthermore, the Americans with Disabilities Act requires that “reasonable” measures be taken to promote the inclusion of disabled persons into our society and to ensure they have access to public institutions, such as the courts. *See* 42 U.S.C. § 12101. Here, the Virginia Supreme Court’s failure to implement its own procedural laws led to Petitioner being denied access to the courts in violation of Title II of the Americans with Disabilities Act.

## **II. PETITIONER’S ATTORNEYS RAISED VIOLATIONS OF HER FEDERAL DUE PROCESS RIGHTS AT THE TRIAL COURT LEVEL, WHICH CONSTITUTES OTHER SUBSTANTIAL GROUNDS NOT PREVIOUSLY PRESENTED.**

On August 20, 2021, the Court conducted a post-trial hearing. In preparation thereof, Petitioner’s counsel filed a Memorandum in Support of Motion to Withdraw as Counsel and in Opposition to Award of Sanctions on August 17, 2021. This Memorandum raised federal Due Process claims for the first time,

arguing “this case was not dismissed due to any deficiency in the merits. . . . The plaintiff had not rested her case.” *See* Reh.App.16a. In sum, the Memorandum argued, “the effect of the ruling [granting defendants’ Motion to Strike Plaintiff’s case with prejudice] was to impose a draconic and unprecedented sanction without affording the plaintiff fundamental due process rights.” *Id.*

At the same hearing, Petitioner hand wrote objections on the final order to be preserved in the record. Namely, Petitioner recorded the fact that “[d]ismissal of Plaintiff’s case was not based upon the merits and violated Plaintiff’s due process rights” *See* Reh.App.6a. Furthermore, the objections state that Petitioner “suffers from legitimate handicaps/disabilities under Fair Housing Act, 42 U.S.C. § 3602(h) and ADA, 42 U.S.C. § 12102(1).” *Id.* As such, the trial court “refused to grant [Plaintiff’s Attorney’s] Request for Reasonable Accommodations/Modifications to allow Matarese to testify in her Mother’s case.” *Id.* The fundamental requirement for due process of law is the opportunity to be heard. *Goldberg v. Kelly*, 397 U.S. 254 (1970).

### **III. PETITIONER RAISED VIOLATIONS OF HER FEDERAL DUE PROCESS RIGHTS AT THE VIRGINIA SUPREME COURT.**

Further, the issues on appeal were preserved in Petitioner’s Amended and Restated Petition for Appeal to the Virginia Supreme Court which was filed on May 12, 2022. Despite this, the Virginia Supreme Court did not consider Petitioner’s due process rights in its refusal to overturn the trial court’s motion to strike and subsequent dismissal of the case with prejudice. The Virginia Court order stated that “upon review of the record in this case and consideration of

the argument submitted in support of and in opposition to the granting of an appeal, the Court is of the opinion there is no reversible error in the [July 15, 2021] judgment.” *See* Reh.App.2a. Petitioner immediately moved for a rehearing, directly addressing the Virginia Supreme Court’s failure to address the violations of her due process rights; “The June 29, 2022 Order of the Court is a short form order, brief and summary in nature that does not give reasonable knowledge to the Petitioner, Matarese, of the rationale for the Court’s opinion that there is no reversible error in the judgment complained of, which is a violation of procedural due process.” *See* Reh.App.64a. The Supreme Court of Virginia issued a single line order in response, denying Petitioner’s Petition for Rehearing on October 4, 2022.



## CONCLUSION

This Court should grant the Petition for Rehearing, and grant certiorari in this case to determine the constitutionality of the Virginia Supreme Court's decision to not overturn the trial court's decision to strike Petitioner's evidence prior to Petitioner resting her case-in-chief.

Respectfully submitted,

PAUL STRAUSS  
*COUNSEL OF RECORD*  
LAUREN LANZON  
*ASSOCIATE COUNSEL*  
LAW OFFICES OF PAUL STRAUSS & ASSOC., P.C.  
1020 16TH STREET, NW, 5TH FLOOR  
WASHINGTON, DC 20036  
(202) 220-3100  
[STRAUSS@PAULSTRAUSSLAW.COM](mailto:STRAUSS@PAULSTRAUSSLAW.COM)

*COUNSEL FOR PETITIONER*

MARCH 24, 2023

**RULE 44.2 CERTIFICATE OF COUNSEL**

Pursuant to Rule 44.2, Counsel certifies that the Petition is restricted to the grounds specified in the Rule with substantial grounds not previously presented. Counsel certifies that this Petition is presented in good faith and not for delay.

Respectfully submitted,

PAUL STRAUSS

*COUNSEL OF RECORD*

LAW OFFICES OF PAUL STRAUSS & ASSOC., P.C.  
1020 16TH STREET, NW, 5TH FLOOR  
WASHINGTON, DC 20036  
(202) 220-3100  
STRAUSS@PAULSTRAUSSLAW.COM

*COUNSEL FOR PETITIONER*

MARCH 24, 2023