

Original

IN THE SUPREME COURT OF THE UNITED STATES

No. 24-6275

On Petition for Rehearing of a Denial of a Petition for Writ of Certiorari

**JOHNNY L. HAMILTON,  
Petitioner,**

v.

**STATE OF GEORGIA,  
Respondent.**

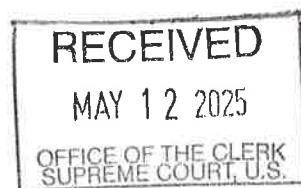
**PETITION FOR REHEARING**

Pursuant to Supreme Court Rule 44.2, Petitioner Johnny L. Hamilton respectfully petitions for rehearing of the Court's denial of certiorari in this matter. In support, Petitioner shows that the Court has overlooked substantial or controlling grounds not previously presented which, if considered, may reasonably alter the outcome of the decision.

**GROUND FOR REHEARING**

In light of the Court's recent ruling in *Noem v. Abrego Garcia*, 604 U.S. \_\_\_ (2025) (No. 24A949), which addressed procedural due process and the role of government discretion in family integrity matters, Petitioner respectfully submits that similar controlling questions are presented here. Unlike *Abrego Garcia*, where intervention was granted to prevent constitutional harm, Hamilton was denied procedural safeguards altogether—specifically, DFCS involvement and

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constitutionally sound plea protections—despite a complete absence of criminal intent or harm. This Court should grant rehearing to resolve these constitutional deficiencies.

**1. Failure to Apply the Constitutionally Required Mens Rea Standard of Conscious Disregard**

Hamilton’s conduct—briefly leaving his 3-year-old twins in a running vehicle with air conditioning during the height of the COVID-19 pandemic—was protective, not reckless. The element of **conscious disregard**, required under Georgia’s reckless conduct statute (O.C.G.A. § 16-5-60), was not satisfied or meaningfully considered. This **mens rea** standard is constitutionally mandated under both federal due process and state law, and its omission renders the conviction invalid. This Court has not previously addressed this precise application in Hamilton’s context and should now do so in light of the facts presented.

**2. Unconstitutional Use of Dashcam Audio as the Sole Incriminating Evidence**

The audio used against Hamilton was recorded via police body microphone during custodial interrogation, without Miranda warnings. Although a motion to suppress was partially granted, the statement was improperly retained and used as the **only direct evidence** supporting conviction. This

violates both the **Fifth Amendment** and **OCGA § 24-4-403**, which excludes evidence when its prejudicial impact outweighs any probative value. This issue constitutes a substantial ground previously under-emphasized, involving a recurring constitutional problem in criminal prosecutions.

### **3. Due Process Violation from DFCS's Failure to Investigate or Intervene**

In 2022, Georgia enacted the **Parents' Bill of Rights**, codified in **House Bill 1178**, which affirms the fundamental right of parents to direct the upbringing, education, and care of their minor children. This law prohibits government infringement on parental rights unless it serves a compelling state interest and is narrowly tailored. The failure of DFCS to notify or involve Hamilton, or offer any counseling services, directly conflicts with the protections established under this statute. This legislative development further highlights the constitutional deficiency in Hamilton's case. Under **O.C.G.A. § 19-7-5**, Georgia DFCS had a statutory duty to investigate alleged child neglect and provide services or interventions where appropriate. DFCS failed to contact Hamilton altogether, denying him any non-criminal pathway or protective assessment before prosecution. This omission represents a systemic **procedural due process violation** of the **Fourteenth Amendment**, previously unraised in this Court and of controlling importance to families similarly situated. Petitioner further

asserts that his trial counsel rendered constitutionally ineffective assistance by failing to request, obtain, or review the DFCS report during pretrial proceedings. This failure denied Hamilton potentially exculpatory information and undermined his ability to argue for diversion, counseling, or dismissal prior to pleading guilty—thus compounding the due process deprivation.

#### **4. Judicial Division in the Georgia Supreme Court**

Petitioner notes that the **Chief Justice of the Georgia Supreme Court dissented** in Case No. S24C0824. The presence of judicial disagreement at the state’s highest court on a constitutional question supports the necessity of this Court’s review under **Rule 10(a)** and strengthens the grounds for reconsideration.

## **PRAYER FOR RELIEF**

**WHEREFORE**, Petitioner respectfully requests that this Court:

1. **GRANT** this petition for rehearing;
2. **VACATE** its prior denial of certiorari;
3. **GRANT** certiorari to review the constitutional questions raised herein.

Respectfully submitted,

**Johnny L. Hamilton**  
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Dated: May 5<sup>th</sup>, 2025

## **CERTIFICATE PURSUANT TO RULE 44.2**

I hereby certify that this Petition for Rehearing is presented in good faith and is based on intervening circumstances of a substantial or controlling effect, or on other substantial grounds not previously presented.

Johnny L. Hamilton

**Johnny L. Hamilton**  
Pro Se Petitioner