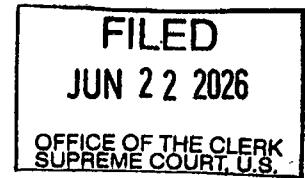


ORIGINAL

No. 25-1429



IN THE SUPREME COURT
OF THE UNITED STATES

CARLOS A. ALONSO CANO, et al.

Petitioners

v.

245 C&C, LLC, &
CFH GROUP, LLC,

Respondents

On petition for Writ of Certiorari
to the United States Court of Appeals
for the 11th Circuit, Atlanta, Georgia

PETITION FOR WRIT OF CERTIORARI

Carlos A. Alonso Cano,
Fé Morejón Fernández,
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QUESTIONS PRESENTED

Whether a district court violates the Due Process Clause of the Fifth Amendment by permitting retained counsel to withdraw post-trial without assessing the litigant's prejudice, thereby denying the assistance of counsel during critical post-trial and appellate proceedings?

Whether, in an action involving minor or incapacitated plaintiffs, a district court violates Rule 17(c)(2) by allowing counsel to withdraw post-trial without establishing safeguards to ensure the plaintiffs are continuously represented through appeal and further district court proceedings?

Whether a federal appellate court violates the Due Process Clause of the Fifth Amendment by affirming an order allowing retained counsel to withdraw post-trial, effectively denying the aggrieved person constitutionally adequate representation on appeal?

Whether an appellate court violates the Right of Access to Federal Courts by affirming an order that permits retained counsel to withdraw post-trial, leaving minor and incapacitated plaintiffs unrepresented for the entirety of the appeal?

PARTIES TO THE PROCEEDING

Petitioners: Carlos A. Alonso Cano
Fé Morejón Fernández
Jany L. Alonso Morejón

Respondents: 245 C & C, LLC and CFH Group, LLC.

In this Court's case No. 24-207. The Respondents stated in their 'Brief in Opposition' filed on (09/25/24) that they both are a Florida Limited Liability Companies, without any parent or subsidiaries, and after Petitioners' request, they stated that they have not a stock ticker symbol.

RELATED PROCEEDINGS

In the State Courts of Florida:

- *245 C & C, LLC v. Carlos Alberto Alonso Cano and Fé Morejón Fernández.* No. 2018-000236-CC-21. Judgment entered June 20, 2019.
- *245 C&C LLC v. Carlos Alberto.* No. 2019-000208-AP-01. Opinion entered Sept. 3, 2020. Judgment entered Sept. 21, 2020. (App. Div. 11th Jud. Cir. for Miami Dade County, Fla.)

In the U.S. 11th Cir. for the Southern District of Fla.

- *Carlos Alonso for Angie Alonso (Disabled) v. 245 C & C, LLC "Villas of Hialeah Apartments"* No. 18-cv- 20537-UU. Feb. 2, 2018.

- *Carlos A. Alonso Cano v. 245 C & C, LLC et al.* No. 19-cv-21045-CMA. Mar. 19, 2019.
- *Carlos A. Alonso Cano v. 245 C & C, LLC and CFH Group, LLC.* No. 19-cv-21826-JAL. May 6, 2019. Judgment entered July 20, 2023.
- *Carlos Alberto Alonso Cano*, Case No. 21-19589-LMI, (Chapter 13 Plan). U.S. Bankruptcy Court of the South. District of FL.

In the U.S. 11th Cir. Court of Appeals, Atlanta, GA.

- *Carlos Alonso Cano et al v. 245 C & C, LLC et al.* Case No.: 23-12413 & 23-13392. Opinion issued on 12/23/25.
- *Carlos Alonso Cano et al v. 245 C & C, LLC et al.* Case No.: 24-12584. Opinion issued on 08/26/25.

In the U.S. Supreme Court

- *Carlos A. Alonso Cano, et al., v. 245 C & C, LLC, et al.* Case No. 24-207. Petition (Pet.) denied on (11/04/24).
- *Carlos A. Alonso Cano, et al., v. 245 C & C, LLC, et al.* Case No. 24-385. Pet. denied on (11/18/24).
- *Carlos A. Alonso Cano, as Next Friend of His Minor Daughters v. 245 C & C, LLC, et al.* Case No. 25-793. Pet. denied on (02/23/26).

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PETITION FOR WRIT OF CERTIORARI

Appellants, Petition for Writ of Certiorari to review the order denying our Petition for Rehearing and Rehearing En Banc of the U.S. 11th Circuit Court of Appeals (Court of Appeals).

ORDERS BELLOW

The orders in (App. A & C) are reported as (Doc. 71-1 & 83-2) in the USCA11 Case No. 24-12752.

JURISDICTION

The Court of Appeals entered these orders on (12/23/25) and (03/25/26) respectively. This Petition is timely filed on (06/22/26). This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

a) 5th Amendment of the U.S. Constitution.

“The government cannot deprive any person of “life, liberty, or property”
without fair legal procedures.”

b) 14th Amendment of the U.S. Constitution. Section 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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.

c) 42 U.S.C. § 3613(b): Upon application by person alleging a discriminatory housing practice or a person against whom such a practice is alleged, the court may appoint an attorney for such person.

d) FRCP 17(c)(2): The court [must issue] an appropriate order to protect a minor or incompetent person who is unrepresented in an action.

STATEMENT OF THE CASE

Pro se litigants' pleadings are construed liberally. *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972).

A. All Plaintiffs were entitled to a Trial by Jury and to the Due Process

1. The five plaintiffs requested a trial by jury (DE 1, 5/6/19) and (DE 92, 12/02/19) and never stipulated to a non-jury trial pursuant the Fed. R. Civ. P. 39(a).
2. Petitioners Carlos and Fe are the parents of the plaintiffs Angie, Jany and Katy.
3. Petitioner Carlos is the Plenary Guardian of the Person and Property of Angie Alonso¹ (disabled).
4. Together with this petition, the Petitioners are filing a "Writ of Certiorari" for the Consolidated Appeals USCA11 Cases No. 23-12413 & 23-13392.

¹ See USCA11 Case No. 23-12413 Vol. I, App. D (Doc. 115-1, 11/04/24), (pg. 205-206). DE- means docket entry in Case No. 1:19-cv-21826-JAL & Doc.- the same in Case No. 23-12413.

**B. Petitioners' request to appoint a lawyer
and the order (DE 816) granting the
withdrawal of Mr. Dunlavy**

5. The District Court entered the Order (DE 575, 01/23/23) requiring Petitioners to retain counsel for Angie, Katy and Jany, instead of appointing one, pursuant to 42 U.S.C. § 3613(b).
6. Petitioners filed the motion to appoint counsel for Angie and Katy (DE 576, 02/06/23).
7. The lawyer, Mr. Michael Dunlavy was referred to Carlos through the program "Put Something Back" of "Dade Legal Aid of Miami." Mr. Lutfy filed his "Notice of Appearance" (DE 579, 2/09/23) and of "Supplemental Appearance," (DE 581, 2/10/23).
8. In June 2023, the Plaintiffs were forced to participate in a bench trial. The District Court entered the "Findings of Fact and Conclusions of Law" and the "Judgment" (DE 678 & 679, 7/20/23).
9. Mr. Dunlavy filed the "Joint MOTION for Additional Findings-of-Fact re 678 Findings of Fact & Conclusions of Law, 679 Judgment (DE 681, 7/21/23).
10. Mr. Dunlavy filed the "Joint MOTION for New Trial or to Reopen for Plaintiffs' Presentation of "Phase 2" Evidence for Additional Findings of Fact and Conclusions of Law (DE 695, 9/11/23).
11. Mr. Dunlavy filed "Motions to Withdraw" (DE 719, 720, 9/29/23).

12. The District Court referred the motion (DE 719) to the Magistrate Judge Hon. Lauren F. Louis (DE 724, 10/03/23).
13. The Magistrate Judge **recommended to deny** Mr. Lutfy's Motion to Withdraw (DE 727, 10/12/23).
14. Mr. Dunlavy filed "**Plaintiffs Renewed Request for Additional Findings of Fact**" by Katy A. Morejon, Angie A. Morejon (DE 736, 10/25/23).
15. Mr. Dunlavy filed "**Plaintiffs Renewed MOTION for New Trial**" for Angie A. Morejon and Katy A. Morejon (DE 737, 10/25/23).
16. Mr. Dunlavy filed OBJECTIONS to 727 (DE 739, 10/25/23).
17. Petitioners, Carlos and Fe filed their **opposition to DE 739** (DE 742, 10/27/23).
18. The District Court **Adopted the Report and Recommendation** (DE 727) and **denied** Mr. Dunlavy's motion to withdraw (DE 745, 11/07/23).
19. Mr. Dunlavy filed his **second attempt to withdraw** (DE 795, 7/08/24).
20. Respondents filed their "**RESPONSE to Motion**" re 794 Motion for Reconsideration MOTION to Withdraw as Attorney by Michael D. Dunlavy (DE 801, 7/16/24).
21. Petitioners Carlos, Fe and Jany filed (DE 802, 7/22/24) their "**JOINT MOTION for Leave to File a Response**" to Mr. Dunlavy's second attempt to withdraw (DE 795).

22. The District Court entered the Order (DE 804, 7/23/24) striking (DE 802).
23. The District Court entered the Order (DE 816, 8/16/24) granting Mr. Dunlavy second attempt to withdraw (DE 795) [without appointing a new lawyer for them, despite the mandate of the Rule 17(c)(2) and violating plaintiffs' rights to due process and the right to access to the court of appeals, pursuant 42 U.S.C. § 3613(b).
24. Petitioners filed the "Notice of Appeal" (DE 818, 8/23/24).
25. The Court of Appeals filed the "Opinion" (Doc. 71-1, 12/23/25).
26. Petitioners filed their petition for rehearing and rehearing en banc (Doc. 81, 2/19/29) which was denied by the Court of Appeals (Doc. 83-2, 3/25/26).

REASONS FOR GRANTING THE PETITION

A. The Court of Appeals departed from the accepted course of judicial proceedings by failing to ensure access to the courts and equal protection under the law to all the plaintiffs

27. Pursuant Rule 17(c), the court [must issue an appropriate order] to protect a minor or incompetent person who is unrepresented in an action. Here, a reasonable panel of judges could find that the District Court erred when granted the second attempt of Mr. Lutfy to withdraw, without appointing a new lawyer for all the plaintiffs and specifically for Angie and Katy, which effectively violated their fundamental due process rights of meaningful access to the Courts and equal protections under the law granted by the 5th and 14th Amendments of the

U.S. Constitution, and by forcing the Petitioners to proceed pro se on appeals, which [left Angie and Katy unrepresented in them] and obstructed that they also be appellants in the USCA11 Consolidated Cases No. 23-12413 and 23-13392 (**EA**), and that, the District Court caused prejudice not only to Angie and Katy, but also to all the plaintiffs with the same interests in the resolution of their lawsuits, and specifically caused prejudice to Carlos and Fe, as the parents of Angie and Katy, and to Carlos as the Plenary Guardian of the Person and Property of Angie Alonso. See Footnote (**FN 1**), emphasis added (**EA**).

28. Pursuant to 42 U.S.C. § 3613(b)(1): “upon application by a person alleging a discriminatory housing practice or a person against whom such a practice is alleged, the court may appoint an attorney for such person.

29. Here, a reasonable panel of judges could find that, the District Court erred by not keeping Mr. Dunlavy as our lawyer and/or for not appointing a new lawyer for all plaintiff when the Plaintiffs requested (DE 576); and when the plaintiffs secured Mr. Dunlavy, whom the court had not provided—it was that very same District Court that allowed him to withdraw (DE 816) in an advanced stage of the case, despite the lawyer offering no valid reasons or irreconcilable differences with respect to representation of Angie and Katy specifically, and pending various important post-trial motions involving their representation—something he could never have truthfully alleged with respect to Angie, given that Angie has suffered from severe intellectual disability since birth and has never spoken to anybody including Mr. Dunlavy (emphasis added, (**EA**)).

B. The Court of Appeals departed from the proper legal standard established in the Report and Recommendation² (DE 727)

30. In the (R & R) clearly was established that “Plaintiffs Angie, Katy, and Jany are unable to proceed pro se, and that, retaining suitable replacement counsel at this posture in the case will result in a disruption in the proceedings and prejudice to the Plaintiffs” which the District Court recognized. See (Doc. 59), (pg. 126: ln. 3-5).

31. A reasonable panel of judges could have found that the District Court committed a legal error by allowing the withdrawal of Mr. Dunlavy in that critical stage of the case, in total conflict with its own ruling when it stated:

“First, Movant does not dispute the Magistrate Judge’s determination that new counsel would need to be secured for Angie and the minor children if he were permitted to withdraw; and “As discussed, there are several pending post-trial motions and substitution of counsel would result in substantial delays and [prejudice to the parties].” (EA). See (Doc. 59, 06/04/25), (pg. 126: ln. 8-11).

32. A reasonable panel of judges could have found that the withdrawal of Mr. Dunlavy disrupted the prosecution of the case, because as the District Court recognized:

“four days after entry of final judgment, however, Movant did not file the Motion with the Court. Movant instead continued filing other motions on the Plaintiffs’ behalf. On September 11, 2023, Movant filed Plaintiffs’ Corrected Motion for New Trial (D.E. 695.) On October 25, 2023, Movant filed Plaintiffs’ Response to Defendants’ Motion for Fees and Costs. (D.E. 738.) On the same date, Movant—on behalf of Katy and Angie—filed Plaintiffs’ Renewed Request for Additional Findings of

² Report and Recommendation - (R & R).

Fact (D.E. 736) and Plaintiffs' Renewed Motion for New Trial (D.E. 737.)”

“On this record, the Court [finds] that Movant’s September 29, 2023 Motion [comes too late]. The prosecution of the lawsuit [will be disrupted], and [substantial prejudice to the parties will result] (EA), if withdrawal is permitted at this posture” (EA). See (Doc. 159), (pg. 127: ln. 3-12)

33. Any reasonable panel of judges could have found that Mr. Dunlavy was wrongly permitted to withdraw the representation of all plaintiffs in appeal and prejudiced them, since Carlos oriented Mr. Dunlavy to file the “Notice of Appeal to represent all the plaintiffs,” fee of which would be paid by Carlos, who wanted that Angie, Jany and Katy appeared as appellants too, but it was obstructed by the Order (DE 816), because when the District Court adopted the R & R (DE 745), before granting the withdrawal of Mr. Dunlavy, the District Court already stated that:

“Finally, the Court notes that Movant filed a Supplemental Notice of Permanent Appearance of Counsel (D.E. 581) on February 10, 2023. Therein, Movant agreed “to represent the plaintiffs for trial, all proceedings in the district court, [and on appeal.]” (EA). See (Doc. 59), (pg. 127: ln. 13-15).

34. The Court of Appeals overlooked that “all the analysis made in the R & R [was not done] when the District Court entered the Order (DE 816) granting Mr. Dunlavy’s second attempt to withdraw, and that, the Order (DE 816) prejudiced all the plaintiffs with the same interest and violated their due process rights by saying:³

³ See (Doc. 56), (pg. 110: ln. 11-15) (EA).

("The Court additionally finds that the prosecution of the lawsuit will not be disrupted by the withdrawal of counsel. Put simply, the district court proceeding terminated with the entry of final judgment on July 20, 2023, and the appeal is matter for the 11th Circuit.⁴ Based on the foregoing, the Court finds that withdrawal is justified and the Motion is thus due to be granted."). See (DE 816), (pg. 3: ln. 11-15)

C. The Court of Appeals departed from the accepted course of judicial proceedings because its decision is contrary to the mandate of the Rule 17(c) and conflicts with the following decisions

35. The decision for review is wrong by saying:

"Here, Appellants have standing to challenge the district court's order, which was averse to them and may be redressed by a favorable decision from this court. But there is no evidence in the record showing that the district court applied an incorrect legal standard, failed to follow appropriate procedures, or made a clearly erroneous finding of fact,"⁵ because Petitioners were forced to proceed pro se and Angie and Katy were not mentioned despite that the Court must have issued an appropriate order to protect their rights to access to de Court of Appeals as an incompetent and a child respectively, pursuant to the Rule 17(c)(2), (EA).

a. Split with the 11th Circuit

36. The decision for review conflicts with *Mekdecis v. Merrell Nat'l Lab's* 711

F.2d 1510, 1521-22 (11th Cir. 1983), in which was stated that:

"The plaintiff's next assignment of error involves the persistent efforts of their original lawyers to withdraw as counsel for the Mekdecis. During the nine-month interim between the two trials, the six attorneys of record made various attempts to abandon the case and, failing that, to obtain a continuance. Finding no compelling justification for the lawyers' requests, [the district court denied the motions] (EA). In

⁴ See the foot note (FN 3) in the Order (Doc. 816, 8/16/24), (pg. 3: ln. 11-15), saying: The minor child Plaintiffs Katy and Angie are not parties to the appeal and the post-trial motions before this court. As such, the Court need not appoint substitute counsel for them as this time."

⁵ See (Doc. 71-1, 12/23/25), (pg. 3: ln. 19-24).

addition, the court refused to grant the six-month continuance requested by another law firm, who sought to replace the recalcitrant attorneys. After denying the continuance, the court turned to a consideration of the motion to withdraw. In the letter of explanation requested earlier by the court, the attorneys basically cited differences of opinion between them and the Mekdecis over trial strategy. The Mekdecis informed the court that they did not consider the disagreements insurmountable, that they were willing to cooperate fully with the lawyers, and that they wished to continue with their original attorneys. Mrs. Mekdeci also suggested that the real dispute centered on her reluctance to acquiesce in the attorneys' preference to delay the trial until after the trial of another Bendectin case. The Court of Appeals stated that a difference of opinion, standing alone, falls far short of establishing an irreconcilable conflict. As the former Fifth Circuit Court of Appeals has recognized:

("[a] client by virtue of a contract with his attorney is not made an indentured servant, a puppet on counsel's string, nor a chair in the courtroom. Counsel should advise, analyze, argue, and recommend, but his role is not that of an imperator whose edicts must prevail over the client's desire.") *Singleton v. Foreman*, 435 F.2d 962, 970 (5th Cir. 1970).

There in *Mekdeci* like here in this case, "The record does not contain evidence of a conflict in the attorney-client relationship of such proportions as would require an ethically-mandated withdrawal of counsel."⁶ And the court in *Mekdeci* continued saying:

"Based on the plaintiffs' assurances the district court denied the motion to withdraw, admonishing all of the parties [to work together toward their common purpose]"⁷ (EA). Less than a month later, Cohen, Kokus, Tifford and Eaton renewed their motion to withdraw. They based the request on the same conclusory allegation of an "irreconcilable conflict." The Mekdecis again opposed the motion. In a brief order, the district court denied the request, observing that "[g]ood grounds have not been shown as to why it would be in the interest of justice for this Court to permit the Florida attorneys (Cohen, Kokus and Tifford) and the Washington, D.C. attorney, Allen, [sic] to abandon the plaintiffs (which

⁶ Something the Court of Appeals overlooked here, besides that in his second attempt to withdraw (DE 795), Mr. Dunlavy provided no statement about irreconcilable differences with Fe, Angie, Jany and Katy (EA).

⁷ Which the District Court failed to do in Petitioners' case.

the District Court allowed in Petitioners' case (EA) to rely upon a California attorney who has not actively participated in this case, not indicated a firm resolve to do so, and further, who is reported to have stated that he has no further interest in the case. On December 31, 1980, less than one month before the scheduled trial date, the attorneys renewed their request again. For the first time, they suggested that [they lacked sufficient funds to finance the costs of the second trial], but the Court stated ("To the contrary, D.R. 5-103(B) specifically states that "a lawyer may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses.") Hence, the attorneys' initial responsibility for trial expenses [does not amount to a mandatory ground for withdrawal] (EA).

b. Split with other Circuits

(1) *El Morro Food Distributors v. W. M. Tynan and Co.*, 223 F. Supp. 717, 718

(S.D.N.Y. 1963) in which was stated that:

"This is a motion by the law firm of Greenhill Speyer, attorneys of record for defendant, to withdraw as attorneys from further participation in this action. At this stage [the interests] (EA) of defendant and of St. Paul are parallel, [not conflicting]. [It is to the interest of each]⁸(EA) to defeat the plaintiff. The conflict will arise only if plaintiff is successful. If defendant is forced to sue St. Paul on the policy, obviously the same law firm could not represent both parties. Until that moment, however, anything that helps defendant defeat the plaintiff also helps St. Paul. Nothing appears to have occurred since November 29, 1962 which would justify St. Paul's belated change of position. Under all the circumstances, movants have not established good cause for their withdrawal at this comparatively late date. Motion denied. So ordered.

⁸ Each Plaintiff has the interest to defeat the Respondents, for that reason the Petitioners were forced to appeal pro se in the Court of Appeals and now are filing pro se a Writ of Certiorari for the USCA11 Cases No. 23-12413 and 23-13392 (EA).

(2) *SEC v. International Scanning Devices, Inc.*, 415 F. Supp. 3, 4 (W.D.N.Y. 1974)

in which was stated:

[Withdrawal should be denied] (EA) in "situations where the client's rights will be prejudiced by the delay consequent on replacing counsel. In this instance, the risk that the plaintiffs could not retain successor counsel, (as occurred here) their repeated efforts to block the withdrawal attempt, and the substantial possibility that withdrawal would disrupt the protracted proceedings constitute extraordinary circumstances warranting a denial of the motion.) (EA).

(3) *Broughten v. Voss*, 634 F.2d 880, 882-83 (5th Cir. 1981) in which was stated that:

"While engaged in the securities litigation, Broughten **fell behind in her payments to the law firm.** The firm thereupon contacted her and encouraged Broughten to pay the outstanding balance of her account. Id. at 289-91. Appellant alleges that adequate payment was not forthcoming. The firm then informed Broughten of her outstanding balance as of the date of the firm's most recent accounting, and **threatened to withdraw as her counsel in the pending lawsuit if payment was not made.** Soon thereafter, appellant **filed a motion to withdraw** as Broughten's counsel in the suit pending before the district court; the ground for the motion **was the allegation of Broughten's nonpayment.** Id. at 273-74. The Court **set a hearing** date to resolve the fee dispute and subsequently **referred the matter to a magistrate for a report and recommendation.** Id. at 340. After reviewing the magistrate's report, **the judge disapproved it and ordered that appellant was not entitled to any further fees.** That order referred to the firm as "**plaintiff's former attorneys,**" and thus we read the order **as granting the motion to withdraw.** We note that implicit in this reading is a finding that the court believed resolution of the fee dispute to be a condition precedent to withdrawal. Id. at 347. This appeal followed. **We see a distinction,** however, "between the case of **a solicitor voluntarily withdrawing from a case** and the case of a **solicitor discharged by the client.**" *The Flush*, 277 F. 25, 30 (2d Cir. 1921). In the former case, **[it is incumbent on the court to assure that the prosecution of the lawsuit before it is not disrupted by the withdrawal of counsel], (EA) and that the withdrawal of counsel is for good cause].** The district court's order is

vacated and the cause remanded for proper resolution of the motion to withdraw. VACATED AND REMANDED.

(4) *Dearinger Volkova v. Reno*, No. 98-35861. (9th Cir. 2000) in which was stated that:

"The district court directed the government to reissue the order of deportation so that Volkova has a new thirty-day period in which [to appeal] the Board of Immigration Appeals' (BIA) denial of her claim for asylum and withholding of deportation to the Ninth Circuit. To show a due process violation, an alien must prove "not merely ineffective assistance of counsel, but assistance which is so ineffective as to have impinged upon [the fundamental fairness] of the hearing in violation of the fifth amendment due process clause." See *Magallanes-Damian v. INS*, 783 F.2d 931, 933 (9th Cir.1986); see also *Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (alien must show error and substantial prejudice). In *Roe v. Flores-Ortega*, 528 U.S. 470, 120 S. Ct. 1029, 1038, 145 L.Ed.2d 985 (2000), [the Supreme Court held] that where a defendant can show that there is a reasonable probability that [he would have appealed] (EA) but for counsel's deficient failure to consult with him about an appeal, [prejudice is presumed]⁹ (EA), Although Flores-Ortega concerns a defendant's Sixth Amendment right to counsel, it sheds light on our inquiry under the Fifth Amendment right to due process.¹⁰ Like the habeas petitioner in Flores-Ortega, where an alien [is prevented from filing an appeal] (EA) in an immigration proceeding due to counsel's error, the error [deprives the alien of the appellate proceeding entirely].¹¹ (EA).

⁹ Which effectively occurred in Petitioners' case, when Mr. Dunlavy did not file the notice of appeal as Carlos requested, after the District Court denied his post-trial motions (DE 681 & 695) (EA).

¹⁰ See *Boddie et al. v. Connecticut et al.*, 401 U.S. 378 (1971).

"What the Constitution does require is "an opportunity...granted at a meaningful time and in a meaningful manner," *Armstrong v. Manzo*, 380 U. S. 545, 552 (1965) (emphasis added), "for [a] hearing appropriate to the nature of the case," *Mullane v. Central Hanover Tr. Co.*, supra, at 313. The formality and procedural requisites for the hearing can vary, depending upon the importance of the interests involved and the nature of the subsequent proceedings. (EA).

¹¹ As were deprived the Petitioners that their family members Angie and Katy with the same interests in our lawsuit under the FHA, also were appellants in the USCA 11 Cases No. No. 23-12413 and 23-13392 (EA).

And, as the Court stated in Flores-Ortega, this error [“mandates a presumption of prejudice”]¹² (EA) because ‘the adversary process itself’ has been rendered ‘presumptively unreliable.’” Id. at 1038 (quoting *United States v. Cronin*, 466 U.S. 648, 659, 104 S. Ct. 2039, 80 L.Ed.2d 657 (1984) (addressing denial of counsel during a critical stage of a judicial proceedings)) (EA). Applying the Flores-Ortega test to this case, we note that Volkova [would have timely appealed].¹³ And that court of appeals stated that:

“We conclude that prejudice should be presumed.” (EA). Volkova was entitled to have the Ninth Circuit review her petition. Had her counsel not untimely filed the appeal, it would have been reviewed by our court.”

Therefore, here the Court of appeal erred, and this petition should be granted because “all” the plaintiffs that wanted to appeal as one family were prejudiced with the withdrawal of Mr. Dunlavy (EA).

(5) In ruling on a motion to withdraw, some courts have looked at the following factors: (1) the reasons why withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. *Irwin*, 2004 U.S. Dist. LEXIS 28264, at *4; *Beard v.*

¹² All the Petitioners have the same interest of Angie and Katy to defeat the Respondents and were prejudiced because Angie and Katy were not appellants for the Consolidated appeals USCA 11 Cases No. 23-12413 and 23-13392 (EA).

¹³ Just as Angie and Katy would have appealed -had Mr. Dunlavy’s second motion also been denied, or through another attorney appointed for the two of them-pursuant to Rule 17(c) and 42 U.S.C. § 3613(b): Upon application (DE 576) by a person alleging a discriminatory housing practice or by a person against whom such a practice is alleged, the court may appoint an attorney for such person.”

Shuttermart of California, Inc., No.07CV594WQH(NLS), 2008 WL 410694, at *2 (S.D. Cal. Feb. 13, 2008); *Rubinow v. Kamara*, 920 F. Supp. 69, 71 (D.N.J. 1996).

In determining whether good cause for withdrawal exists, courts have considered (1) whether the client is cooperative or seeks to dictate litigation strategy. *Whiting v. Lacara*, 187 F.3d 317,322-23 (2nd Cir. 1999). Courts have also held that (2) the failure to pay attorney's fees may be grounds for withdrawal. See *Schueneman v. 1 Credit of America, LLC*, No. C 05 4505 MHP, 2007stWL 1969708, at *7-8 (N.D. Cal. July 6, 2007); *Statue of Liberty-Ellis Island Foundation, Inc. v. International United Industries, Inc.*, 110 F.R.D. 395, 397 (S.D.N.Y. 1986).

Here, the Court of Appeals erred by overlooking the fact that in Mr. Dunlavy's second motion (DE 795), none of the two aforementioned arguments were stated as grounds for ceasing the representation of the plaintiffs since Carlos always was cooperative with him and Mr. Dunlavy was acting pro bono; nor did Mr. Dunlavy challenge the Magistrate Judge's determination that obtaining new counsel for Angie and the minors would be necessary if he was permitted to withdraw, and that his withdrawal, would cause substantial prejudice not only to Angie and the minors, but also to Petitioners Carlos and Fe, who wanted that they were appellants too, since they also are entitled to the damage requested in Petitioners lawsuit under the FHA, and, because Carlos as the plenary guardian of the person and property of Angie and father of Jany and Katy would be

the person saving and managing any award for compensatory and punitive damages awarded to them (EA).

c. Split with Supreme Court's decisions

Parents possess a deeply rooted constitutional right to raise their children as they see fit. See *Santosky v. Kramer*, 455 U.S. 745, 753 (1982) (noting the "fundamental liberty interest of natural parents in the care, custody, and management of their child"); *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978) ("We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected."). While this right is not absolute, it "is perhaps the oldest of the fundamental liberty interests recognized by this Court." *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality op.)

See *Martin*, Catch-22, supra, at 848.

"In making legal decision about representation by a lawyer, the law presumes that parents possess the "maturity, experience, and capacity for judgment" that children lack. *Parham*, 442 U.S. at 602. It also presumes that parents act in their children's best interests when decided what lawyer represent them (EA) because of the "natural bonds of affection" between the two." While children have the right to sue and to represent themselves in court, they cannot exercise those rights in the same way adults can. Because "children usually lack the capacity to make [litigation] decision[s] * * * their interest is ordinarily represented in litigation by parents or guardians." (EA) *Smith v. Org. of Foster Fams. for Equal. & Reform*, 431 U.S. 816, 841 n.44 (1977).

The right to sue and defend in the courts implicates several constitutional provisions, making it “one of the highest and most essential privileges of citizenship.” *Chambers v. Balt. & Ohio R.R. Co.*, 207 U.S. 142, 148, (1907). Access to the courts implicates due process, equal protection, and First Amendment rights all at once. See *M.L.B. v. S.L.J.*, 519 U.S. 102, 120 (1996) (“[T]he Court’s decisions concerning access to judicial processes * * * reflect both equal protection and due process concerns.”). See *Bill Johnson’s Rests., Inc. v. NLRB*, 461 U.S. 731, 741 (1983) (noting that “the right of access to the courts is an aspect of the First Amendment right to petition the Government for redress of grievances”). Unsurprisingly, then, this Court has described the right to access the courts as a fundamental constitutional right. *Bounds v. Smith*, 430 U.S. 817, 828 (1977).

CONCLUSION

37. Wherefore, based on the foregoing this petition should be granted because it is a good vehicle to address the federal questions of national importance herein to uphold the uniformity of decisions.

Respectfully submitted on (06/22/26)

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