

No. 25-980

ORIGINAL

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IN THE
Supreme Court of the United States

MARK DuHALL

Petitioner,

v.

MICHAEL SAMUELS
HEWLETT-PACKARD COMPANY

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
COLORADO SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

The question presented for review is whether the Colorado Courts of Appeals may dismiss an appeal pursuant to a court-made rule, C.A.R. 4(a), because the e-filed notice of appeal was filed at 12:02 am the day after the notice was due.

The Courts of Appeal denied a motion to recall the mandate, and the Colorado Supreme Court denied a motion for an extension of time to file a petition out of time and dismissed the appeal on September 10, 2025.

LIST OF PARTIES TO THE PROCEEDING

Petitioner is Mark DuHall and was the plaintiff-appellant at the Colorado Court of Appeals and Colorado Supreme Court.

Respondents are Michael S. Samuels and Hewlett-Packard Company, and were the defendants-appellees at the Colorado Court of Appeals and Colorado Supreme Court.

**LIST OF ALL RELATED PROCEEDINGS
WITHIN THE MEANING OF RULE 14.1(b)(iii)**

1. *DuHall v. Michael Samuels and Hewlett-Packard Company*. 2014 CV 3215, Denver District Court
Order entered July 18, 2016

2. *DuHall v. Michael Samuels and Hewlett-Packard Company*, 2014 CV 32151, Denver District Court
Order Denying Plaintiff's Motion for Judgment
Notwithstanding the Verdict entered on August 3,
2016

3. *DuHall v. Michael Samuels and Hewlett-Packard Company*, 2016 CA 1600, Colorado Court of Appeals,
Order of dismissal of appeal entered on December 8,
2016

4. *DuHall v. Michael Samuels and Hewlett-Packard Company*, 2016 CA 1600, Colorado Court of Appeals.
Judgment denying recall of mandate entered on July
11, 2025

5. *DuHall v. Michael Samuels and Hewlett-Packard Company* 2025 SC 547, Colorado Supreme Court,
Judgment of dismissal entered on September 10,
2025.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Mark DuHall respectfully submits this petition for a writ of certiorari.

OPINIONS BELOW

The Order of Judgment of the Denver District Court in *DuHall v. Samuels*, No 14CV32151, 2016 WL 6916315 (Colo. Dist. Ct., City and Cnty of Denv. July 18, 2016) (unpublished order). (Appendix A at 1a.)

The Order denying Plaintiff's motion for Judgment Notwithstanding Verdict in *DuHall v. Samuels*, No 14CV32151, District Court, City and Cnty of Denver July 18, 2016) (unpublished order). (Appendix B at 3a.)

The Order of Dismissal, Colorado Court of Appeals in *DuHall v. Samuels and Hewlett-Packard Company*, 2016 CA 1600 (unpublished order) (Appendix C at 6a.)

The Order of the Court, Colorado Court of Appeals in *DuHall v. Samuels and Hewlett-Packard Company*, 2016 CA 1600 (unpublished order) (Appendix D at 8a.)

The Order of the Colorado Supreme Court in *DuHall v. Samuels and Hewlett-Packard Company*, 2025 SC 547. (unpublished order) (Appendix E at 9a.)

STATEMENT OF THE BASIS OF THE JURISDICTION

The Colorado Supreme Court issued an order denying the Petitioner's motion for an extension of time to file a Petition for a writ of certiorari. It dismissed the case on September 10, 2025. (Appendix at 9a) The court's jurisdiction is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

The privileges and immunities clause in clause 1, section 2 of article IV of the United States Constitution states that: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." U.S. Const. art. IV, § 2, cl. 1,

The First Amendment to the United States Constitution provides, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. amend. I

The Fifth Amendment to the United States Constitution provides, "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be

subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." U.S. Const., amend. V

Section 1 of the Fourteenth Amendment to the United States Constitution states that: "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." U.S. Const. amend. XIV. §.1

STATEMENT OF THE CASE

The petitioner, DuHall, was negligently rear-ended by the first defendant, Samuels, who was driving a vehicle issued to him by the second defendant, Hewlett-Packard, while in the course of his employment. DuHall suffered injuries to his head, shoulders, knee, and spine, including a traumatic brain injury from the collision. The injuries required surgeries on his shoulder, knee, and spine, with more surgeries planned. The parties filed motions for summary judgment in the Denver District Court, Denver, Colorado. The trial court dismissed the claims against the second defendant but did not address the liability of the first defendant raised in the motion.

The first defendant admitted liability during the jury trial. The applicant's expert witness also testified that the collision caused by the first defendant was the reason for the Plaintiff's injuries. The jury instruction stated that based on the evidence at trial, the defendant admits he struck the applicant's vehicle from behind and admits legal liability for any injuries and damages caused by the accident. After the trial, the jury rendered its verdict. Judgment was entered in favor of the defendants. (See Appendix A at 1a) DuHall moved for judgment notwithstanding the verdict, but the trial court denied the motion. (See Appendix B at 3a).

DuHall e-filed his Notice of Appeal at 12:02am on September 22, 2016, three minutes after the

deadline due to technical difficulties with the e-filing system and the E-System provider. On October 6, 2016, DuHall filed his Designation of Record on Appeal. On November 14, 2016, the Defendants filed a Motion to dismiss the appeal based on late filing of the Notice of Appeal. On November 17, 2016, the Court of Appeal issued an Order to show cause. On December 1, 2016, DuHall responded to the Show Cause Order. The Defendants replied on December 7, 2016. On December 8, 2016, the Court of Appeal entered an order dismissing the appeal with prejudice. (*See Appendix C at 6a*). The mandate was issued in the appeal on February 2, 2017.

DuHall due to the rear-end collision had been hospitalized for numerous surgeries. On June 16, 2025, DuHall filed a motion to recall the mandate. The defendants filed a motion for an extension of time to respond to the applicant's motion to recall the mandate on June 23, 2025. The court of appeals granted the extension. Thereafter, the defendant filed his response to the motion to recall the mandate on July 3, 2025. On July 11, the court of appeals issued an order denying the motion to recall the mandate. (*See Appendix D at 8a*). On July 24, 2025, DuHall underwent shoulder surgery on his left shoulder. On September 9, 2025, DuHall requested an extension of time from the Colorado Supreme Court to file a petition for the writ of certiorari. The next day, the Colorado Supreme Court denied the request and dismissed the appeal. (*See Appendix E at 9a*.)

The question sought to be reviewed was raised before the Court of Appeals when DuHall responded to the show cause order. The Federal question to be

reviewed was raised in DuHall's motion for a recall of the mandate of the Colorado Courts of Appeals, and in DuHall's motion for extension of time in which to file a petition for writ of certiorari before the Colorado Supreme Court.

The Colorado Courts of Appeals, in its order of dismissal, determined that there was no satisfactory proof of technical problems as required under C.A.R. 30(l)(1) and also that DuHall did not show excusable neglect as required under C.A.R. 4(a) for an extension of time for filing the notice of appeal. *See* Court of Appeals Order of Dismissal. (*See* Appendix C at 6a). The Colorado Court of Appeals did not address the federal questions raised in the motion to recall the court's mandate in its Order of Court. Similarly, the Colorado Supreme Court did not address the federal question in its Order of Court dismissing the appeal.

These issues were, however, raised before the Colorado Courts of Appeals and the Colorado Supreme Court, and this Court has jurisdiction to review the judgment on a writ of certiorari.

REASONS FOR GRANTING THE PETITION

DuHall's right of access to the courts is grounded in the Privileges and Immunities Clause, the First Amendment Petition Clause, and the Fourteenth Amendment's Equal Protection and Due Process Clauses. Constitutional right of access to the courts is grounded in the Privileges and Immunities Clause, the First Amendment Petition Clause, the Fifth Amendment Due Process Clause, and the Fourteenth

Amendment Equal Protection and Due Process Clauses. *Limone v. U.S. F. Supp.* 2d 18 (2004)

The right of individuals to pursue legal redress for claims having a reasonable basis in law or fact is protected by the First Amendment right to petition and the Fourteenth Amendment right to substantive due process. *Snyder v. Nolen*, 380 F.3d, 279 (2004)

Filing a lawsuit carries important constitutional protections, including the First Amendment right to petition the government for redress of grievances and the right of access to the courts. *Hoerber For and on Behalf of the N.L.R.B. v. Local 30, United...* 939 F.2d 118 (1991).

A. Colorado Court of Appeals Decision regarding the denial of DuHall's notice of appeal, and subsequent dismissal of his appeal, conflicts with the decision of the Supreme Court of the United States.

The Order of Dismissal entered by the Colorado Court of Appeals was wrong because it had determined that, based on a court-made rule, C.A.R. 4(a), DuHall's e-filed notice of Appeal, filed 12:02 on September 22, 2016, removed jurisdiction from the court to hear the appeal. See *Concelman v. Ray*, 538 P.2d 1343 (1975).

The Colorado Court of Appeals dismissed the appeal based on its interpretation of C.A.R. 4(a), determining that the notice of appeal e-filed at 12:02 AM on September 22, 2016, deprived the court of jurisdiction. This reasoning of the Colorado courts

conflicts with *Hamer v. Neighborhood Housing Services of Chicago*, 583 U.S. 17 (2017), which recognizes that such time limits are not jurisdictional but mandatory claim-processing rules subject to forfeiture unless properly raised by the appellee.

1. Time to file a notice of appeal, C.A.R.4(a) is a court-made rule, not jurisdictional it is instead a mandatory claim-processing rule subject to forfeiture if not properly raised by the appellee.

The time to file a notice of appeal is contained in a court-made rule C.A.R. 4(a), and therefore subject to forfeiture if not properly raised by the appellee. In this case, the notice registered in the electronic e-filing system, recorded that the notice was e-filed at 12:02 am, September 22, 2016.

The defendant-appellees did not raise the issue of the late filing; once the notice was filed, it became an afterthought. The Court of Appeals incorrectly held that the court rule was jurisdictional and therefore mandatory and thus excluded its jurisdiction. This decision conflicts with *Hamer (ibid)*, which considered a similarly worded court-made rule, Federal Rule of Appellate Procedure 4(a), and held that it is a mandatory claim-processing rule subject to forfeiture if not properly raised by the appellee.¹

The court accepted DuHall's filing of his notice of appeal of September 22, 2016 at 12:02 am. The appellees took no action regarding the appeal. DuHall

¹ The Colorado rules of appellate procedure are modeled in part on the F.R.A.P. 4 See Comment [2] 2016 C.A.R. 41.

filed his designation of the record on October 6, 2016. Thereafter on November 14, 2016, appellees raised the issue of the late filing, 53 days after the notice of appeal was accepted. The Court of Appeals should have denied the defendant-appellees motion and allowed the appeal and the filing as timely.

The United States Supreme Court held in *Hamer, ibid.*, The time limit for an extension of time to file a notice of appeal, in a case in which the appellant received timely notice of the judgment or the order appealed from, is a mandatory claim-processing rule that is subject to waiver or forfeiture because the time limit arises from a court rule, in contrast to a non-waivable and non-forfeitable jurisdictional requirement arising from a statute abrogating.

This decision was followed by *Deloatch v. Sessoms-Deloatch*, 229 A.3d 486 (D.C. 2020), which considered a similar rule of appellate procedure, D.C. App. R. 4. It held that “a time limit prescribed only in a court-made rule is not jurisdictional; it is instead a mandatory claim-processing rule subject to forfeiture if not properly raised by the appellee” 489, 490. The reasoning is that only the legislature can alter a court’s basic jurisdiction.

The court should have considered the circumstances of the untimely filing, because it has the authority to do so, and should have done so. In *United States v. Mitchell*, 518 F.3d 740, 751 (10th Cir. 2008) declined to dismiss sua sponte an appeal that was filed one day late. DuHall’s appeal was e-filed 2 minutes after midnight. The decision of the 10th

Circuit should have given the Colorado Courts of Appeals guidance.

Colorado case law conflicts with the decision in *Hamer*. In *Concelman v. Ray*, 36 Colo. App. 181 (1975) the Colorado Court of Appeals held that timely filing of a notice of appeal under C.A.R. 4(a) is mandatory and jurisdictional.

DuHall raised this argument before the Colorado Court of Appeals in his motion to recall the mandate; however, the Court of Appeals disagreed and denied the motion to recall its mandate.

The court of appeals incorrectly held that it lacked jurisdiction under a court-made rule. The decision of the court of appeals denies DuHall the right of appeal and is constitutionally impermissible.

The Colorado Court of Appeal dismissed DuHall's appeal because it wrongfully decided that a court-made rule is jurisdictional.

2. *Concelman*, which misinforms the Colorado Courts should be overruled.

The Colorado Court of Appeals decision in *Concelman* conflicts with the decision in *Hamer* and should be declared unconstitutional and overruled because it undermines the court's understanding of an appellate rule of procedure, which is harmful to DuHall and other litigants. It hinders access to the court system and thus violates the United States Constitution under the Fourteenth Amendment.

DuHall was rear ended in his automobile, he suffered grave damages and injuries of which he has had several surgeries since the time of the collision. The defendant-appellee admitted liability at the trial. The jurors ruled that no damages should be paid by the defendants. The trial court denied a motion of judgment notwithstanding the verdict. DuHall takes the only recourse available to him – an appeal on the merits. The Colorado Court of Appeals by this wrong decision denies DuHall access to the courts.

The Colorado Court of Appeals denied DuHall's e-filed notice of appeal as untimely, which led to the dismissal of his appeal, and the court's refusal to recall the mandate resulted in the Colorado Supreme Court also dismissing his appeal. DuHall respectfully urges the Supreme Court to reverse the decisions of the Colorado Courts and to hear his appeal on its merits.

B. Denial of due process and equal protection of the law for DuHall when the Colorado Court of Appeals rejected the e-filed notice of appeal, despite the provision of C.A.R. 30(l)(1) that allows for relief in case of technical difficulties.

The Colorado Courts of Appeals failed to follow rules explicitly permitting the filing of documents *nunc pro tunc* when the filer experienced "other technical problems" with either the filer or the E-System provider. C.A.R. 30(l)(1). This violates the Fourteenth Amendment of the United States Constitution, which states, "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.'

DuHall has a property interest in the money damages he should receive as compensation for being rear-ended by Samuels, the defendant-appellee in the trial court, who admitted liability for the collision. The State of Colorado, through the courts, has denied him both due process of law and the equal protection of the laws in this case, by a rule that allows the acceptance of e-filed documents despite technical difficulties.

C.A.R. 30(l)(1) provides that

(1) Upon satisfactory proof that E-Filing or E-Service of a document was not completed because of: (a) an error in the transmission of the document to the E-System Provider which was unknown to the sending party; (b) a failure of the E-System Provider to process the E-filing when received, or (c) **other technical problems experienced by the filer or E-System provider, the court may enter an order permitting the document to be filed nunc pro tunc to the date it was first attempted to be sent electronically.** [Emphasis supplied]

The court denied the filing of the notice of appeal because it was not completed by 11:59pm on September 21, 2016, the deadline. DuHall experienced technical difficulties with the e-filing system and was only able to complete the filing at 12:02 a.m. on September 22, 2016. This rule applies

to DuHall's e-filed notice. Despite the technical issues, DuHall e-filed the document using the e-system.

The Court, in its order of dismissal, determined that DuHall did not provide (1) satisfactory proof of technical problems and (2) shown excusable neglect as required under C.A.R. 4(a). See Order of Dismissal (Appendix C at 6a). The Court was mistaken.

1. DuHall didn't just try to e-file; he did.

The rule considers the very extreme situation where a party, due to "technical difficulties," was unable to file, provided there was an initial attempt to do so. In this case, DuHall actually submitted the notice after his attempts failed to go through before midnight on September 21, 2016.

2. The timestamp of 12:02 on September 22, 2016, indicates that DuHall attempted to file before midnight on September 21, 2016.

The timestamp on the received document, 12:02, strongly indicates that there were attempts to e-file the notice before midnight. The rule anticipates that there could be numerous "technical difficulties" with either the filer or the E-System and allows for additional time. The Court should take judicial notice that a document received by the E-System and marked 12:02am was likely in preparation, and the filing process probably began well before 12:00 a.m. the day before.

Assuming the court rejected DuHall's reasons for the late filing, the fact that it was two minutes past midnight is enough for the Court of Appeals to infer

that the filing process began well before 12:00 a.m. the previous night.

The Court also concluded that DuHall had not demonstrated excusable neglect under C.A.R. First, the timestamp of 12:02 itself indicates excusable neglect; filing documents takes time, especially when submitting a new document in a new case. If neglect occurred, it was excusable given the mere 2-minute delay past the hour—not 30 minutes or an hour. Second, the rule states that the court “may enter an order permitting the document to be filed *nunc pro tunc*,”

The Court failed to provide DuHall with due process and equal protection in applying this rule. The Fourteenth Amendment constrains the government from depriving people of their property interests without due process. *Whiteside v. Smith*, 67 P.3d 1240 (2003). Dismissing the appeal despite this rule's provisions was a very drastic choice. The Court should have permitted the notice as the rule requires, due to the “technical difficulties” DuHall faced, and allowed DuHall to brief the appeal on its merits. See *U.S. v. Mitchell*, 518 F.3d 740, 751 (2008), where the United States Court of Appeals of the Tenth Circuit held that a delay of a day in filing a notice of appeal did not indicate any waste of judicial resources and therefore allowed the appeal to proceed to its merits. DuHall's filing was three minutes late and based on C.A.R. (l)(1) the Court should have permitted the filing *nunc pro tunc*. The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Whiteside. (ibid.)* U.S. Const. amend. XIV. Dismissing the appeal without a

hearing on the merits in the circumstances is unconstitutional.

3. The Court failed to give DuHall the benefit of due process and equal protection embedded in the e-filing rule when litigants encounter procedural obstacles rather than substantive issues in navigating technology.

DuHall is entitled to rely on the provisions and benefit of a current rule, C.A.R. 30(l)(1), in his appeal process. This rule was established for modern methods of filing documents in court, such as e-filing. E-filing is now required in most jurisdictions. Like other electronic matters of this era, e-filing presents numerous technical challenges. The rule consolidates these issues and assumes that, once an attempt has been made, the party should be permitted to file the document *nunc pro tunc*, as if it had been electronically filed on the attempted date. If it was a paper filing, it would be simply handed to the clerk through a window before 5:00pm on close of business or mailed in the post office in reliance on the 3-day mailing rule. But this is different – a litigant or his counsel may face challenges with a filing system as it often happens in all the jurisdictions of the United States. This rule recognizes that the difficulty may lie with the e-filer or the E-filing system; in either case, it provides for matters to continue despite time lost due to these difficulties. The rule provides in essence that parties should not be punished because of technical difficulties with the E-filing system. The Court failed to afford DuHall the due process and equal protection of this rule.

4. The Court did not need a separate motion filed for excusable neglect to accept the filing when C.A.R.30(l)(1) provides the authority and the "excusable neglect" is evident in the time stamp and the rule.

Rule C.A.R. 30(l)(1) states that the "...court may enter an order permitting the document to be filed nunc pro tunc..." This rule authorizes the court to approve the filing on its own once an attempt has been made. The court does not require a separate motion. Such a motion would be redundant, inefficient, otiose, and would defeat the purpose of the rule and court process efficiency.

The time stamp itself, 12:02, is sufficient to show excusable neglect. The excusable neglect is palpable in the filing itself and the stamp. Requiring DuHall to file a separate motion under C.A.R. 4(a) for an extension of time is not required and not mandated – hence the rule in C.A.R. 30(l)(1). The document was already filed into the system – this is exactly what the rule was intended to do, and to provide efficiency in the court process.

5. More evidence of technical difficulties was presented to the Colorado Court of Appeals in a Motion to recall the mandate, but the Court did not consider the evidence when dismissing the appeal.

DuHall also argued in this motion to recall the mandate before the court that in an email sent to DuHall, *Re: Court of Appeals case 16CA1600...* Ticket 11493 dated Wednesday, June 7, 2017: Cathy Daly of the Colorado Courts indicated that the e-filer of the

notice of appeal (DuHall's counsel) had tried to upload the notice around 1:00pm on 9/21/16. He was unable to do so, and the filer did try to e-file on 9/21/16 at 11:51pm but experienced technical difficulties during the upload. DuHall's argument was rejected by the Colorado Courts of Appeals and the Colorado Supreme Court.

In summary, the Court of Appeals' refusal to accept DuHall's notice of appeal and the subsequent dismissal of the case was a violation of due process and equal protection under the law. This court should order the reinstatement of the appeal and ensure it is heard on its merits because of the constitutional violations DuHall has identified.

CONCLUSION

The Petitioner respectfully requests that the Petition for the Writ of Certiorari be granted.

Respectfully submitted December 9, 2025.



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APPENDIX