

No. 25-980

---

---

**In The Supreme Court of the United States**

---

MARK DUHALL,

*Petitioner,*

v.

MICHAEL SAMUELS AND HEWLETT-PACKARD COMPANY,

*Respondents.*

---

*On Petition for Writ of Certiorari  
to the Colorado Supreme Court*

---

**BRIEF FOR RESPONDENTS IN OPPOSITION**

---

MICHAEL R. MCCURDY

*Counsel of Record*

LEE KATHERINE GOLDSTEIN

Fairfield & Woods P.C.

1801 California St.,

Suite 2600

Denver, CO 80202-2645

(303) 830-2400

mmccurdy@fwlaw.com

*Counsel for Respondents*

**QUESTION PRESENTED (REFRAMED)**

The question presented for review is whether the Colorado Court of Appeals may dismiss an appeal pursuant to C.A.R. 4(a), where the notice of appeal was filed after the notice was due and the court of appeals determined the appellant failed to show the late filing resulted from technical problems or excusable neglect.

**PARTIES TO THE PROCEEDING**

Petitioner is Mark DuHall, an individual. Respondents are Michael Samuels, an individual, and Hewlett Packard Enterprise Company (HPE), as successor to Hewlett-Packard Company's liability/interests in this proceeding.

## **CORPORATE DISCLOSURE STATEMENT**

Hewlett-Packard Company (stock ticker HPQ), publicly traded on the NYSE. During the pendency of this case, Hewlett-Packard Company split into two companies: (1) HP Inc. (stock ticker HPQ), publicly traded on the NYSE, and (2) successor company Hewlett Packard Enterprise Company (stock ticker HPE) publicly traded on the NYSE.

HPE does not have a parent company. There are no individual holders of more than 10% of the corporate stock of HPE.

**TABLE OF CONTENTS**

QUESTION PRESENTED (REFRAMED)..... i

PARTIES TO THE PROCEEDING..... ii

TABLE OF CONTENTS ..... iv

TABLE OF AUTHORITIES ..... v

OPPOSITION TO PETITION FOR A WRIT OF  
CERTIORARI..... 1

STATEMENT OF THE CASE..... 1

    A. Factual Background .....1

        1. Mr. DuHall’s 2016 late-filed Notice of Appeal ...1

        2. The Motion to Recall the Mandate filed eight  
        years later.....3

    B. Procedural Background.....4

REASONS FOR DENYING THE PETITION..... 4

    I. This Court lacks jurisdiction to review this case...4

    II. This case is a poor vehicle to decide the question  
    presented. ....6

CONCLUSION ..... 11

## TABLE OF AUTHORITIES

### Cases

<i>Banks v. California</i> , 395 U.S. 708 (1969) .....	6
<i>Bosworth Data Servs., Inc. v. Gloss</i> , 587 P.2d 1201 (Colo. App. 1978).....	9
<i>Eberhart v. United States</i> , 546 U.S. 12 (2005) .....	7
<i>Farm Deals, LLLP v. Colorado</i> , 300 P.3d 921 (Colo. App. 2012).....	10
<i>Hamer v. Neighborhood Hous. Servs. of Chicago</i> , 583 U.S. 17 (2017) .....	7
<i>Hammerstein v. Super. Ct. of Cal.</i> , 341 U.S. 491 (1951) .....	6
<i>Kuhns v. California</i> , 419 U.S. 1066 (1974) .....	6
<i>Sandquist v. California</i> , 419 U.S. 1066 (1974) .....	6

### Statutes

28 U.S.C. § 1257 .....	4, 5
------------------------	------

### Rules

C.A.R. 4(a) .....	3
-------------------	---

C.A.R. 4(a)(4).....	9
C.A.R. 30(l)(1).....	9
C.A.R. 30(l)(1)(c).....	2, 3
C.A.R. 52(b)(1).....	5

## **OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI**

Respondents, Mr. Samuels and HPE, respectfully submit that the petition for writ of certiorari to review the order of the Colorado Court of Appeals, the substance of which was not reviewed by the Colorado Supreme Court, should be denied.

### **STATEMENT OF THE CASE**

#### **A. Factual Background**

This case arises from an automobile accident that happened over a decade ago. Mr. DuHall tried his case to a jury and lost. Mr. DuHall then failed to file his notice of appeal on time. Eight years later, he filed a motion to recall the mandate. After that motion was denied, Mr. DuHall failed to perfect an appeal to the Colorado Supreme Court.

##### **1. Mr. DuHall's 2016 late-filed Notice of Appeal**

On July 18, 2016, the state trial court entered judgment on the jury's verdict in favor of Mr. Samuels and against Mr. DuHall. Hewlett-Packard Company was dismissed before trial on summary judgment. Mr. DuHall filed a Motion for Judgment notwithstanding Verdict, which was denied August 3, 2016. Mr. DuHall's Notice of Appeal was therefore due on September 21, 2016. His Notice of Appeal was

electronically filed late, at 12:02 AM on September 22, 2016.

Mr. Samuels and Hewlett-Packard Company filed a motion on November 14, 2016, setting out the evidence that Mr. DuHall's filing was untimely, and asking the court of appeals to dismiss the appeal as a result. The Colorado Court of Appeals issued an Order to Show Cause why the case should not be dismissed on November 17, 2016. Represented by counsel, Mr. DuHall filed a Response to the Order to Show Cause, conceding that the notice was filed on September 22, 2016, at 12:02 AM. Mr. DuHall's response asked the Court to deem the Notice to be filed nunc pro tunc to September 21, 2016, pursuant to C.A.R. 30(l)(1)(c) (Relief in the Event of Technical Difficulties), and asserted that the e-filing was not completed on time because the filer had technical difficulties uploading the notice onto the court's website.

Counsel for Mr. Samuels and Hewlett-Packard Company filed a reply to Mr. DuHall's response to order to show cause pointing out that Mr. DuHall failed to provide any details about the technical difficulties he allegedly encountered on the night of September 21, 2016, or how they resulted in the late filing. Mr. Samuels and Hewlett-Packard Company also asserted that the failure could not be attributed to excusable neglect because Mr. DuHall had not shown extraordinary circumstances or even provided any explanation as to why counsel waited until the last minute on the very day the notice was due to file his Notice of Appeal.

On December 8, 2016, the Colorado Court of Appeals issued an Order of Dismissal determining that “[Mr. DuHall] has not provided satisfactory proof of technical problems as required under C.A.R. 30(l)(1)(c) to permit this Court to accept the notice of appeal as filed on September 21.” The Court of Appeals further determined that “[Mr. DuHall] has not shown excusable neglect as required under C.A.R. 4(a) for an extension of time for filing the notice of appeal.” The Colorado Court of Appeals ordered the appeal dismissed with prejudice for lack of jurisdiction for failure to file a timely notice of appeal.

Mr. DuHall did not request reconsideration, and the Mandate issued on February 2, 2017.

**2. The Motion to Recall the Mandate filed eight years later.**

On June 16, 2025, Mr. DuHall acting pro se, filed a motion to recall the mandate. In it, he claimed that the deadline to file the notice of appeal is not jurisdictional and that Mr. Samuels and Hewlett-Packard Company’s failure to immediately file a motion to dismiss waived the defect in jurisdiction. Mr. DuHall also attached new evidence to his motion regarding his attorney’s alleged technical difficulties filing the notice on the date it was due. However, that new evidence was an email from 2017 which showed that the e-filing system was only down that day for 12 minutes between 3:25 p.m. and 3:37 p.m., that an attempt was made to e-file on 9/21/16 at 23:51:56 p.m., and that that the e-filing was completed at 7:57:39 a.m. on 9/22/16, the day after the notice of

appeal was due. That email did not show excusable neglect or that technical difficulties prevented the timely filing. Even if Mr. DuHall's attorney had technical difficulties e-filing the notice at 1:00 p.m. as stated by Mr. DuHall in his motion, that alone did not explain why he waited several hours until 11:51 p.m., just minutes before the deadline, to try to e-file the document again.

## **B. Procedural Background**

The procedural history is reviewed at length above. Most recently, the Colorado Court of Appeals entered an order in 2025 denying Mr. DuHall's Motion to Recall the Mandate. After the deadline for filing a petition for certiorari with the Colorado Supreme Court had passed, Mr. DuHall filed a motion for extension of time to file a petition out of time. The Colorado Supreme Court denied the motion and dismissed the case on September 10, 2025. (App. E).

## **REASONS FOR DENYING THE PETITION**

### **I. This Court lacks jurisdiction to review this case.**

This Court lacks jurisdiction to review this case under 28 U.S.C. § 1257 because the Colorado Supreme Court did not review, or issue, a final judgment on the merits of Mr. DuHall's argument.

Mr. DuHall seeks this Court's review of an order issued by the Colorado Court of Appeals dismissing his appeal based on his untimely filing of

a notice of appeal. The order was entered in 2016, and the mandate from the Colorado Court of Appeals issued in February of 2017. Almost a decade later, in 2025, Mr. DuHall filed a motion to recall the Colorado Court of Appeals' mandate asking the Court to reconsider its 2016 ruling based on a decision that was issued by this Court in 2017. After briefing by the parties, the court of appeals denied Mr. DuHall's motion. (App. C).

This Court lacks jurisdiction to review the Colorado Court of Appeals' decision. Mr. DuHall invokes this Court's jurisdiction under 28 U.S.C. § 1257, which provides for certiorari review of "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had[.]" *Id.* Following the Colorado Court of Appeals' denial of Mr. DuHall's motion to recall the mandate, Mr. DuHall did not file a timely petition for writ of certiorari in the Colorado Supreme Court. Instead, seventeen days after the deadline, Mr. DuHall filed a motion for an extension of time to file a petition out of time. Under the Colorado Rules of Appellate Procedure, Mr. DuHall was required to file a petition for writ of certiorari review in the Colorado Supreme Court within forty-two days after entry of the order to be reviewed. C.A.R. 52(b)(1) (" . . . a petition for writ of certiorari must be filed within 42 days after entry of the judgment on appeal if no petition for rehearing is filed.") The order of the Colorado Court of Appeals denying Mr. DuHall's Motion to Recall the Mandate was entered on July 11, 2025. (App. D). Mr. DuHall's petition was therefore due to be filed with the Colorado Supreme Court by August 22, 2025. Mr.

DuHall filed his motion for extension of time with the Colorado Supreme Court on September 9, 2025. The Colorado Supreme Court denied Mr. DuHall's motion without ruling on the merits, stating "IT IS ORDERED that said motion shall be, and the same hereby is, DENIED. This case is DISMISSED." (App. E).

The Colorado Supreme Court did not issue any order on the merits of the issue Mr. DuHall asks this Court to review. The decision of the Colorado Court of Appeals is not a final judgment rendered by the highest court of a State in which a decision could be had, and therefore this Court lacks jurisdiction to review it. *Banks v. California*, 395 U.S. 708, 708 (1969) (citing 28 U.S.C. § 1257). See also, *Hammerstein v. Super. Ct. of Cal.*, 341 U.S. 491, 492 (1951) (court lacked jurisdiction where state supreme court refused to grant certiorari based upon petitioner's procedural error); *Sandquist v. California*, 419 U.S. 1066 (1974) (petition dismissed for lack of jurisdiction where petitioners did not seek to have the appellate department certify their cases to the court of appeal); *Kuhns v. California*, 419 U.S. 1066 (1974) (same).

## **II. This case is a poor vehicle to decide the question presented.**

Even if the Court has jurisdiction, certiorari review should still be denied. This case does not warrant review because the issue presented would not determine the outcome of the case. Respondents timely moved to dismiss Mr. DuHall's appeal in the

Colorado Court of Appeals, and in deciding to dismiss the appeal, the court determined based on the facts presented that Mr. DuHall failed to show that his late filing was the result of technical problems or excusable neglect.

First, application of the framework described in this Court’s case in *Hamer v. Neighborhood Hous. Servs. of Chicago*, 583 U.S. 17, 26–27 (2017), as requested by Mr. DuHall, would not change the outcome of this case. In *Hamer*, this Court determined that Federal Rule of Appellate Procedure 4(a)(5)(C) governing extensions of time to file an appeal in federal court cases did not establish a jurisdictional deadline but was instead a mandatory claim-processing rule that may be waived or forfeited. *Hamer*, 583 U.S. at 27. As *Hamer* also pointed out, “[i]f properly invoked, mandatory claim-processing rules must be enforced[.]” 583 U.S. at 20. *See also*, *Eberhart v. United States*, 546 U.S. 12, 19 (2005) (“[C]laim-processing rules. . . assure relief to a party properly raising them, but do not compel the same result if the party forfeits them.”). In this case, Mr. DuHall’s failure to meet the mandatory filing deadline established by Rule 4 of the Colorado Rules of Appellate Procedure (“C.A.R.”) was properly invoked by Mr. Samuels and Hewlett-Packard Company who filed a motion to dismiss the appeal early in the proceeding and prior to defending the appeal on the merits. Two days later, the Colorado Court of Appeals issued an order to show cause why the appeal should not be dismissed. When Mr. DuHall’s response to that order did not present sufficient evidence to warrant excusing the late filing,

the court dismissed his appeal. Because the failure to meet the deadline was properly invoked by Respondents, dismissal of Mr. DuHall's appeal would have been warranted regardless of whether the deadline is determined to be jurisdictional or a claim-processing rule.

Second, the Colorado Court of Appeals could have granted Mr. DuHall's request to accept his late-filed notice of appeal but instead denied it, finding that Mr. DuHall did not make a showing that technical issues or excusable neglect caused the late filing.

The Colorado Rules of Appellate Procedure provide avenues for the court to accept late-filed notices of appeal. For late filings caused by technical problems with the e-filing system, the court may permit the document to be deemed filed nunc pro tunc to the date of attempted filing:

(l) Relief in the Event of Technical Difficulties.

(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.

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

In addition, the rules allow the court to extend the time for filing an appeal either before or after the deadline has passed if the failure to file on time was caused by excusable neglect:

Extension of Time to File a Notice of Appeal. Upon a showing of excusable neglect, the appellate court may extend the time to file the notice of appeal for a period not to exceed 35 days after the time prescribed by section (a). Such an extension may be granted before or after the time prescribed by section (a) expired.

C.A.R. 4(a)(4).

In this case, the Colorado Court of Appeals determined both that Mr. DuHall failed to show that technical problems caused the late filing and that Mr. DuHall's late filing was not the result of excusable neglect.

Under Colorado law, excusable neglect has been found only in cases presenting extraordinary circumstances. *Bosworth Data Servs., Inc. v. Gloss*, 587 P.2d 1201, 1203 (Colo. App. 1978). Although the number of days that a filing is late may be one factor in determining whether neglect is excusable, the critical question is the reason for the late filing. *Id.* at 1203 (finding that miscounting the days within which

to file an appeal does not constitute excusable neglect). Particularly relevant to this case, lack of familiarity with the e-filing system is not excusable neglect. *Farm Deals, LLLP v. Colorado*, 300 P.3d 921, 924-25 (Colo. App. 2012).

The scant evidence that Mr. DuHall attached to his motion to recall the mandate (8 years after-the-fact) did not show that the untimely filing was the result of technical problems or excusable neglect. Mr. DuHall claimed that the late filing was caused by technical difficulties, but the difficulty e-filing the notice at 1:00 p.m., as Mr. DuHall claimed in his motion to the court, failed to explain why he waited over ten hours until the last minute at 11:51 p.m. to try to e-file the document again. There was no evidence that the e-filing system was not operating normally at the time the Notice of Appeal was filed. The Colorado Court of Appeals considered Mr. DuHall's request and denied his motion, stating: "Upon consideration of the motion to recall the mandate, and the response, the Court DENIES the motion." (App. D).

Mr. DuHall has had his day in court. He presented his auto accident case to a jury in 2015, and the jury decided against him finding that while Mr. DuHall had injuries, damages, or losses, Mr. Samuel's negligent conduct was not the cause of those injuries, damages, or losses. Mr. DuHall had ample opportunity to appeal that decision but failed to comply with the procedural rules to perfect his appeal. In 2016, the Colorado Court of Appeals reviewed Mr. DuHall's arguments that his late-filed

notice of appeal should be accepted by the court and rejected them. Mr. DuHall then waited eight years, until 2025, to attempt to relitigate that decision by filing a motion to recall the mandate relying on a case decided by this Court in 2017 and an email sent by court staff in 2017. The Colorado Court of Appeals denied his motion to recall the mandate. Mr. DuHall then also failed to timely file a Petition for Writ of Certiorari with the Colorado Supreme Court, ultimately resulting in the dismissal of that case too. This Court should decline Mr. DuHall's procedurally flawed request to review the Colorado Court of Appeals' 2016 decision and deny certiorari.

### CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

DATED: April 10, 2026.

Respectfully submitted,

MICHAEL R. MCCURDY

*Counsel of Record*

LEE KATHERINE GOLDSTEIN

Fairfield & Woods, P.C.

1801 California Street

Suite 2600

Denver, CO 80202

(303) 830-2400

*Counsel for Respondents*