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No. 25-980

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 THE REHEARING OF DENIAL OF A WRIT OF CERTIORARI

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Petitioner files this matter pro se

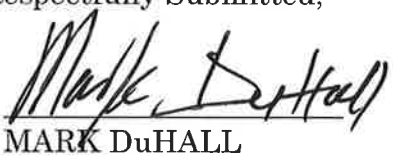
RULE 44.2 GOOD FAITH CERTIFICATION REGARDING PETITION FOR REHEARING OF DENIAL OF PETITION FOR WRIT OF CERTIORARI

Case No. 25-980
Case Name: *Mark DuHall v. Michael Samuels et.al.*
Title: Petition for Rehearing

Pursuant to Supreme Court Rule 44.2, Mark DuHall Petitioner, hereby certifies that the foregoing Petition for Rehearing is limited to other substantial grounds not previously presented, and is restricted to the grounds specified in this rule, and is presented in good faith and not for delay.

DATED this 28th day of May 2026.

Respectfully Submitted,



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PETITION FOR REHEARING OF DENIAL OF PETITION FOR WRIT OF CERTIORARI

Petitioner Mark DuHall respectfully submits this Petition for Rehearing of the Denial of Petition for Writ of Certiorari.

QUESTION PRESENTED FOR REVIEW

The question presented for review is whether the Colorado Court of Appeals may dismiss an appeal under a court-made rule, C.A.R. 4(a), when C.A.R. 30(l)(1) provides relief for the late filing of e-filed documents due to technical difficulties affecting either the filer or the E-system provider.

A. CONSTITUTIONAL DEPRIVATION

DuHall has been deprived of due process and equal protection of the laws by the Denver District Court, the Colorado Court of Appeals, and the Colorado Supreme Court.

"...No ...State [shall] 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.

The Fourteenth Amendment constrains the government from depriving DuHall of his property interests without due process. *Whiteside v. Smith,* 67 P.3d 1240 (2003). A fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Whiteside, ibid.*

B. SUMMARY OF DuHALL'S CASE

While stopped at a red light, DuHall was suddenly and violently rear-ended by Samuels, who was employed by HP. DuHall sustained severe injuries, and his vehicle was damaged. Samuels admitted liability (*Appendix B* at 4a). DuHall testified to his injuries and damages, and expert testimony corroborated his claims. DuHall has undergone numerous surgeries as a result of the collision.

Judgment was entered in favor of Samuels despite the admission of liability (*Appendix A* at 1a). DuHall filed a motion for judgment notwithstanding the verdict, which the court denied (*Appendix B* at 3a – 5a).

Due to technical difficulties, DuHall's e-filed notice of appeal was received by the E-system provider 2 minutes after midnight on September 22, 2016, the day it was due.

The notice was accepted. DuHall filed his designation of record on October 6, 2016. 53 days later, on November 15, 2016, Samuels and HP raised the issue of the notice being untimely. (Petition at pp. 8, 8,9.)

The Colorado Court of Appeals dismissed the appeal for lack of jurisdiction (Appendix C at 6a, 7a). DuHall filed a motion to recall the Court's mandate, which the Court denied (Appendix D at 8a).

DuHall *moved* for an extension of time to file a petition for a writ of certiorari due to shoulder surgery, within the period when he should have filed his petition with the Colorado Supreme Court. The motion was denied, and the case was dismissed (Appendix E at 9a).

DuHall's Petition for a writ of certiorari before this Supreme Court was denied on May 18, 2026. DuHall now petitions for a rehearing on substantial grounds not previously presented.

C. ARGUMENTS FOR REHEARING.

1. The United States Supreme Court has Jurisdiction to review this Appeal.

This Court has jurisdiction to review this case under 28 U.S.C. § 1257(a) because the Colorado Supreme Court's Order is a final order (Appendix E at 9a).

28 U.S.C. § 1257(a) provides that "Final judgments or decrees rendered by the highest court of a State in which a decision could be had may be reviewed by the Supreme Court by writ of certiorari ..."

The Order of the Supreme Court of Colorado is final. The Court ordered, "This case is DISMISSED" (Appendix E at 9a).

A final order is one that disposes of the entire case. *Final Order,* BLACK'S LAW DICTIONARY 1130 (8th Ed. 2004).

In their response before this Court, Samuels and HP argued that the Colorado Supreme Court did not issue any order on "the merits" (Opposition Brief p. 6) and that the Colorado Court of Appeals' decision "is not a final judgment of the highest court of a State in which a decision could be had" (Opposition Brief p. 6). They cite *Banks v. California,* 395 U.S. 708, 708. *Banks* does not apply. In *Banks,* the Petitioner did not ask the Supreme Court of California to review the judgment entered by the Court of Appeals before filing a petition with the Supreme Court. In this case, DuHall filed a motion before the Court of Appeals to recall the mandate, which was denied (*Appendix D* 8a). And his request for extension of time before the Colorado Supreme Court pursuant to C.A.R. 49 was dismissed. (Appendix E at 9a).

Hammerstein v. Super. Ct. of Cal., 341 U.S. 491, also cited, does not apply. In that case, the Petitioner failed to appeal the Superior Court's default judgment to the California Supreme Court before seeking review in the United States Supreme Court.

Also, in *Sandquist v. California,* 419 U.S. 1066 (1974), the parties did not exhaust avenues for further state review. In this case, DuHall exhausted every avenue in the state of Colorado for his appeal to be heard on the merits. *Kuhns v. California,* 419 U.S. 1066 (1974), is likewise inapplicable. The Supreme Court of Colorado's decision was final.

Samuels and HP argued that this Court lacks jurisdiction under 28 U.S.C. § 1257 because DuHall

did not file a timely petition for the writ of certiorari and because his motion for an extension of time was denied. The Supreme Court has jurisdiction because the Colorado Supreme Court denied the motion for an extension and dismissed the appeal (*Appendix* E at 9a).

When the Court of Appeals dismissed his appeal as untimely with prejudice (*Appendix* C at 6a, 7a), DuHall sought the recall of the Court of Appeals' mandate.

C.A.R. 41(e) provides,

" The court of appeals may recall its mandate, and the supreme court may recall any appellate mandate as it deems appropriate. Upon recall of a mandate, re-issuance of the mandate may be stayed pursuant to subsection (c) of this rule." C.A.R. 41(e).

The Colorado Appellate Rules are replete with time constraints, but the rule governing recall of the mandate contains no time bar for seeking recall. The Court of Appeals gave no reason (Appendix D at 8a). The timing of the mandate was never in question.

Samuels and HP also argue that DuHall waited 17 days before filing for an extension (Opposition Brief pp. 5, 6). The Colorado Appellate Rules allow an extension of time to file a Petition for the writ of certiorari.

"After appearance is made and a docket fee paid, the supreme court for good cause shown may upon motion extend the time prescribed by these rules for filing a

petition for writ of certiorari or may permit the petition to be filed after the expiration of such time..." C.A.R. 56.

The court rules allow for an extension of time to file documents when unforeseen circumstances arise. This is procedural due process.

2. The Court of Appeals should have allowed the filing of the e-filed notice after it had accepted the filing, and Samuels and HP waited for 53 days before moving to dismiss the filing.

The notice was e-filed three minutes late due to technical difficulties and was accepted. Samuels and HP forfeited their ability to raise the issue of the notice 53 days after it was accepted because the notice rule is a court-made rule, not a jurisdictional one. *Hamer v. Neighborhood Housing Services of Chicago,* 583 U.S. 17 (2017). This decision conflicts with *Hamer*, and it should be set aside.

C.A.R. 30(l) applies when a party is unable to complete the filing. DuHall completed and submitted the filing, and the court accepted it. 53 days later, Samuels and HP filed their opposition to the notice.

C.A.R. 30(l) permits late filing when there is a technical error, including "technical problems experienced by the filer." The court did not reject the filing.

The standard for relief in the event of technical difficulties is "satisfactory proof" when filing "was not completed...". DuHall relied on the rule and filed his notice, which the court accepted. DuHall is entitled to equal protection of the laws of the State of Colorado.

Samuels and HP failed to move to dismiss the e-filed notice of appeal in a timely manner. They raised the issue 53 days after the Court accepted the filing. This constitutes forfeiture. The Court did not raise the notice issue *sua sponte*. It accepted the filing. In *Eberhart v. U.S.,* 546 U.S. 12 (2005), the Supreme Court held that the government forfeited the untimeliness defense for failing to raise it until after the district court reached the merits. Because the notice rule is a claim-processing rule, Samuels and HP forfeited their ability to raise the issue 53 days after the notice was accepted. Due Process, required the filing to be accepted and the appeal heard on its merits.

There was no prejudice of any kind to Samuels and HP, and the case should have been heard on its merits. In *Swan v. Zwahlen,* 280 P.2d 439, the Colorado Supreme Court ruled that a lack of adherence to formalities that does not result in prejudice should not interfere with the determination of issues on the merits.

The case of *Farm Deals, LLLP v. State,* 300 P.3d 921 (2012), cited in the opposition brief, is inapplicable. It was an interlocutory appeal, and the petition was filed in the trial court rather than the

court of appeals. DuHall's filing was complete despite technical difficulties and was accepted by the Court. The Court did not order the filing rejected. Having admitted the filing, the Court ought not to have rejected it when an opposing party raised the issue 53 days later. This is not equal protection of the law guaranteed by the Fourteenth Amendment.

Samuels and HP argue that there was no showing of "excusable neglect" (Opposition Brief pp. 9, 10). The standard for admitting an e-filed document is "satisfactory proof," not "excusable neglect." They cite *Bosworth Data Services, Inc. v. Gloss,* 587 P.2d 1201. *Bosworth,* a 1978 decision, does not address electronic filing or the provisions of C.A.R. 30(l). In determining whether neglect is excusable, the number of days a filing is late is one factor *(Bosworth,* at 1203). Here, the filing was 3 minutes late and was accepted by the court. The circumstances, the actual filing, and the time elapsed were all factors the Court should have considered in accepting the already e-filed notice.

Furthermore, the Court's rule itself allows a party that has shown excusable neglect to file within 35 days from the expiration of the original date, before or after the time has expired. C.A.R. 4(a).

C.A.R. 2 provides for suspending these rules upon a showing of good cause. The notice that was already filed should have been accepted pursuant to C.A.R. 30(l). It was a constitutional deprivation for the court to reject the notice after it had been accepted

and was permissible due to technical difficulties with e-filing.

In *Hamer,* the Supreme Court asked whether equitable considerations may warrant an exception to Rule 4(a)(5)(C). *ibid* at 28. This question is particularly relevant where a 3-minute delay resulted from transmitting a document through an E-System provider, particularly when it provides relief by considering such difficulties and the equities involved. In *Concelman v. Ray,* 36 Colo. App. 181 at 182 (1975), Coyte, J., in his dissent, stated that "The majority opinion is too stringent and prevents our making a decision on the merits, contrary to the spirit of the Colorado rules of civil procedure." *Concelman, ibid.,* at 182.

The Court of Appeals ought to have admitted the electronically filed notice of appeal and heard the case on its merits.

3. The trial court denied DuHall due process of law when it misapplied Colorado law, and the Court of Appeals should have considered and heard the appeal on its merits.

The trial court misapplied Colorado law in its jury instruction and in its denial of DuHall's Motion for Judgment notwithstanding the Verdict (*Appendix B* at 3a – 5a), thereby violating due process and equal protection of the law.

First, Samuels admitted liability. The trial court misconstrued CJI 2:4 (Appendix B at 3a – 5a). The instruction provides that once the defendant admits legal liability, judgment should be entered for the plaintiff (DuHall), not the defendant (Samuels), who admitted liability. What would be left to be decided is the nature and extent of the injury (and there are injuries) and the amount of damages, if any (and there are damages). Further, CJI 2:4 is supported by *Foster v. Phillips,* 6 P.3d 791 (Colo. App. 1999), which holds that where the defendant admitted duty and breach of that duty, it was appropriate to instruct the jury that Samuels was liable as a matter of law for the damages suffered by DuHall. The court did not instruct the jurors in accordance with Colorado law. It is unjust and unlawful for DuHall to suffer injuries, damages, and successive surgeries from a rear-end collision, yet the result is $0 in damages, as if nothing had happened.
Evidence was proferred at trial for both damages to DuHall's vehicle from the rear end collision and injuries to him for which he has had to undergo numerous surgeries.

Second, a rear-end collision, as in this case, creates a presumption of negligence. CJI 11:12 provides, "When a driver of a motor vehicle hits another vehicle in the rear, the law presumes [and you must find] that the driver was negligent." *Iacino v. Brown,* 217 P.2d 266 (1950). Plaintiff is entitled to a directed verdict on the issue of negligence. *Dilts v. Baker,* 427 P.2d 882 (1967).

The trial court failed to instruct the jurors in accordance with Colorado law. DuHall suffered injuries, damages, and successive surgeries from a rear-end collision, yet the result was a judgment for the defendants.

Third, the trial judge cites *Kwik* Way Stores, Inc. v. Caldwell, 745 P.2d 672, 678 (Colo. 1987). The court was mistaken. *Kwik* does not apply because it *involved* a default judgment. In this case, There was an admission, and the evidence of injuries and damages was uncontroverted. Furthermore, as the Supreme Court ruled in *Kwik,* the trial court did not allow the defendants to fully participate in the hearing. In this case, Samuels was present throughout the trial after admitting liability.

The Trial Judge failed to provide the jurors with adequate instruction in accordance with Colorado law, and his ruling on the Motion for Judgment Notwithstanding the Verdict is not based on a correct interpretation of Colorado law.

DuHall was denied due process and equal protection of the law when the Colorado Court of Appeals rejected the e-filed notice of appeal, despite C.A.R. 30(l)(1), which provides relief in the event of technical difficulties with e-filing.

CONCLUSION

This case is a good one for deciding whether the Colorado Courts' decision in *Concelman conflicts* with this court's decision in *Hamer.*

DuHall has been denied equal protection of the law by the Denver District Court, the Colorado Court of Appeals, and the Colorado Supreme Court. The Petitioner respectfully requests that this Honorable Court grant his Petition for Rehearing of this Court's denial of a Writ of Certiorari.

Respectfully submitted May 28, 2026

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No. 25-980

In The Supreme Court of the United States

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CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I hereby certify that this Petition for Rehearing of Denial of a Writ of certiorari contains 2978 words, excluding the parts of the reply that are exempted by Supreme Court Rule 33.1(d).

I declare under the penalty of perjury that the foregoing is true and correct.

Executed this day, 28th day of May 2026.

Mark DuHall

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CERTIFICATE OF SERVICE

It is hereby certified that all parties required to be served have been served with copies of this **PETITION FOR THE REHEARING OF THE DENIAL OF THE WRIT OF CERTIORARI** by FedEx this 28th day of May,2026

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