No. _____

IN THE
Supreme Court of the United States

KEVIN BELTON,
Petitioner,

v.

CLIFFORD OSBORNE; DEBORAH OLSEN,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeal for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

M. F. "RICK" FAYARD, JR.
LAW OFFICE OF RICK FAYARD
2630 Old Minden Road
Bossier City, Louisiana 71112
(318) 742-9090
fayardlaw@gmail.com

Counsel for Petitioner

LEGAL PRINTERS LLC • Washington, DC • 202-747-2400 • legalprinters.com

QUESTIONS PRESENTED

1. Can the actions and/or inactions of an attorney be so deleterious to a litigant as to be considered as "extraordinary circumstances" as to deprive him of his due process rights as prescribed under the Fifth Amendment to the United States Constitution?

2. Can an attorney's constructive abandonment of his client, his failure to communicate with his client, the existential threat of litigation filed against him, the numerous errors and omissions committed by the attorney, and the attorney's actual abandonment by his move from Ruston, Louisiana to Bend, Oregon be sufficient to establish "extraordinary circumstances" beyond his control?

3. Should the courts below reasonably charge Belton with the acts and omissions of an attorney who has effectively abandoned him?

4. Should Belton be faulted for failing to act on his own behalf when he lacks reason to believe his attorney of record, in fact, is not representing him?

5. Is personal service of the summons and complaint an essential element of due process of law under the Fifth Amendment?

6. Where the same parties had initiated litigation in a Louisiana state court over the same issues and, in a case of "forum shopping," Complainants-Respondents refiled the litigation in federal court, should the federal district court exercise its option of "abstention" to allow the matter to be completed in the state court system?

7. Where both a federal statute (*Fair Housing Act, 42 U.S.C. §3601, et seq.*) and its Louisiana equivalent (*Louisiana Equal Housing Opportunity Act, L.R.S. 51:2601, et seq.*) provide "exemptions" from the jurisdiction of the statute for certain small property owners, is a judgment against an "exempt" person for violating a statute from which he is "exempt" from violation a valid judgment?

8. Where a person is served a notice of execution of a federal court judgment for $90,000, and that person is unaware of any lawsuit because he has never been served with any summons or complaint, has never been served with any notices of hearings including notices of default, discovery requests, and motions for summary judgment, has never received any type of hearing in the federal court until he moved for a pro se hearing upon receipt of the notice of execution, entitled to his rights of due process of law as provided under the 5th Amendment to the Constitution of the United States?

PARTIES TO THE PROCEEDING

Complainants-Respondents:

- Clifford Osborne, III
- Deborah Olsen (dec'd)

Defendant-Petitioner:

- Kevin Belton

CORPORATE DISCLOSURE STATEMENT

There are no corporations involved in this litigation.

RELATED PROCEEDINGS

Jackson Parish Justice of the Peace Court:

Kevin Belton v. Clifford Osbornes
#2018-10

Clifford Osborne, Jr. v. Kelvin Belton
#2018-07A

United States District Court for the Western District of Louisiana:

Clifford Osborne, III; Deborah Olsen v. Kevin Belton
#3:20-cv-00208

United States Fifth Circuit Court of Appeal:

Clifford Osborne, III; Deborah Olsen v. Kevin Belton
#23-30829

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES:

Constitutional Provisions, Federal Statutes, and Rules:

State Statutes:

Miscellaneous:

OPINIONS BELOW

The court of appeal's denial of the *Petition for Rehearing En Banc*, App.076a-077a, is reported at 2025 U.S. App. LEXIS 10187. The court of appeal's opinion, App.01a-16a, is reported at 131 F.4th 262. The court of appeal's dismissal for want of prosecution is reported at 223 U.S. App. LEXIS 34227. The district court's denial of the *F.R.C.P. Rule 60 motion*, App.019a-036a, is reported at 2023 U.S. District LEXIS 218875. The district court's granting of summary judgment to Complainants-Respondents, App.037a-058a, is reported at 2022 U.S. Dist. LEXIS 138455.

JURISDICTION

The United States Fifth Circuit Court of Appeal entered its opinion below on March 10, 2025, and denied a *Petition for Rehearing En Banc* on April 28, 2025, making this *Petition for Writ of Certiorari* due on July 28, 2025. Accordingly, Defendant-Petitioner timely files this petition and invokes this Court's jurisdiction under *28 U.S.C.S.§1254(1).*

STATUTORY PROVISIONS INVOLVED

Due Process Clause of the Fifth Amendment to the United States Constitution

42 U.S.C.S.§3603(b)(1)

L.R.S. §51:2604

La. C.C.P. article 2002

INTRODUCTION

This *Petition for Writ of Certiorari* will, in all likelihood, be determined upon a measure of the facts of this case against the various precedent Supreme Court interpretations of the term "extraordinary circumstances." Several definitions include the following:

> Factors of time, place, etc., which are not usually associated with a particular thing or event; out of the ordinary factors. Blacks-law.en.academic.com.

This lawsuit in federal court, with all of its deadlines and pressures administered after the suit was filed, including Governor Edwards's proclamation number 137JBE2020 ("stay at home") continued extension of the Governor's original proclamation delivered to the State on March 11, 2020, which, according to his testimony, also provided great anxiety to a young, inexperienced attorney (P. Heath Hattaway) in regard to his inability to maintain personnel and assistance to handle his law practice.

Kevin Belton ("Belton"), Defendant-Petitioner herein, is a resident of Jonesboro, Louisiana, who received a letter in the mail in the latter part of 2019 from the Louisiana Fair Housing Action Center ("LaFHAC") (formerly known as the Greater New Orleans Fair Housing Action Center) in New Orleans. The point of the letter was that Belton had wrongfully discriminated against a disabled person, Clifford

Osborne, III ("Osborne"), by evicting him from a rental home for violating specific provisions of the rental agreement. Belton consulted with an attorney he knew in Ruston, Louisiana, P. Heath Hattaway ("Hattaway"), who assured him that he would contact the attorneys from the LaFHAC, respond to the letter on his behalf, and attempt to settle the matter. That is the first and, most likely, the last time that Belton discussed this matter with Hattaway.

Neither Hattaway nor Belton was aware that a *Complaint* had been filed against Belton on February 17, 2020, in the United States District Court for the Western District of Louisiana in Monroe, Louisiana, as evidenced by an email from Hattaway to the LaFHAC in April 2020, where Hattaway informed the LaFHAC that Belton "**wanted** to retain him." Belton never knew about a complaint because he was never served with summons or complaint, was never informed by Hattaway that the *Complaint* had been filed, or that Hattaway had waived service without authority on Belton's behalf **without Belton's knowledge or consent**, and that Hattaway had failed to answer the *Complaint*. While it is correct that Belton consulted with Hattaway and paid him to respond to a letter from the LaFHAC in late 2019 to attempt a pre-litigation settlement, **Belton never retained Hattaway for the actual litigation of any lawsuit in the federal court system.** Belton never signed a contract with Hattaway, and he never authorized Hattaway to do anything on his behalf, except to **send a letter to negotiate a pre-litigation settlement.**

> One may be an agent for some business purposes and not others so that **the fact that one may be an agent for one purpose does not make him or her an agent for every purpose**. *Daimler AG v. Bauman*, 571 U.S. 117, 135, 134 S. Ct. 746 (2014); *2A C. J. S., Agency §43*, p. 367.

Belton was never informed that a default judgment had been entered against him due to Hattaway's failure to response to a complaint that **Belton never knew had been filed against him.** In November 2020, Hattaway would close his law office in Ruston, Louisiana, and move to Bend, Oregon, without informing Belton of the lawsuit or Hattaway's move to Oregon, and without formally withdrawing from Belton's case.

The Complainants-Respondents attempted to serve discovery requests, including *Requests for Admission of Facts*, to Belton through "his counsel" (Hattaway) by an illegal email on January 24, 2022, of which Belton had no knowledge because Hattaway never informed him of his new location in Bend, Oregon. Belton never knew that Hattaway's tardy responses to the *Requests for Admission of Facts* were "deemed admitted" against him by the district court because Hattaway never informed him, and Belton was never served with anything.

Belton never knew that the wrongfully "deemed admitted" *Requests for Admission of Facts* were the substantial evidence used by the

Complainants-Respondents to support the *Motion for Summary Judgment* against him, also which he never knew about, which resulted in a monetary judgment against him for approximately $90,000, also of which he had no knowledge until he was personally served for the first time on the *Writ of Execution of Judgment*, of which the Complainants-Respondents and the LaFHAC had **finally** requested personal service on Belton.

STATEMENT AS TO PERSONAL JURISDICTION

Belton has argued in his *Rule 60 Motion* to the federal district court, in his *Rule 59 Motion* to the federal district court, in his original brief to the United States Fifth Circuit Court of Appeal ("Fifth Circuit"), as well as in his *Motion for Rehearing En Banc* and brief to the Fifth Circuit that the Complainants-Respondents, in their original *Complaint*, failed to establish both jurisdiction as to subject matter and jurisdiction as to the person, failed to request service of process on the Defendant-Petitioner, **failed to provide the clerk** of the federal district court a **completed form for the service** of summons along with a certified copy of the *Complaint*, **requesting personal service be made on the Defendant-Petitioner (Belton) at his home address** in Jonesboro, Louisiana.

Ninety-one days later, the Complainants-Respondents filed a waiver of service directed to Belton but signed by Hattaway without authority from Belton (his client), and no contract was entered into between the two, a fact **clearly** recognized by the

district court. App.070a; App.074a. The record will show that there was never any request for service or actual service of any document, including the original *Complaint*, waiver to Belton, or any verification of any pleading signed by Belton. There is no signature by Belton to be found in the district court's record until Belton's pro se *Motion for a Hearing* in November 2022. There is no Marshal's return indicating any service of Belton until the *Writ of Execution* was served on Belton on February 2, 2023. Accordingly, there is no personal jurisdiction by the federal district court over the Defendant-Petitioner, Kevin Belton, nor has there ever been.

> In the absence of service of process (or a waiver of service **by the defendant**), a court ordinarily may not exercise power over a party the complaint names as a defendant....One becomes a party officially, and is required to take action in that capacity, **only** upon service of a summons or other authority – asserting measure stating the time within which the party served must appear and defend. *Murphy Bros. v. Michetti Pipe Stringing*, 526 U.S. 344, 350, 119 S.Ct. 1322 (1999).

STATEMENT AS TO SUBJECT MATTER JURISDICTION

The decision of the Fifth Circuit uses as a reference a decision of the United States Second Circuit Court of Appeal ("Second Circuit"), *United States v. Space Hunters, Inc.*, 429 F.3d 416 (2d Cir. 2005), which decision converted the obligation of establishing jurisdiction in the federal court from the Complainants-Respondents to the Defendant-Petitioner. In other words, rather than calling an "**exemption**" an "**exemption**," they call the "**exemption**" an "**affirmative defense**" and compel an "**exempted**" property owner to come to trial anyway, and be forced to prove and to introduce the written "**exemption**" in the written statute through an "**affirmative defense**" by citing to the same court the "**exemption**" provided in the *Fair Housing Act*. There was no "**affirmative defense**" asserted for the "**exemption**" in *Reinhardt v. Hopps*, 590 Fed. Appx. 755 (214 U.S. App. 10th Cir. 2014). In *Rosales v. Indus. Sales & Servs., L.L.C.*, 2025 U.S. App. LEXIS 8486 (U.S. App. 5th Cir. 2025), the Fifth Circuit **did** recognize a specific congressional "**exemption**" from jurisdiction, despite "coverage" under the *Fair Labor Standards Act*. The purpose of the classification "**exemptions**" in the first place is to prevent a federal court from ignoring specific legislative intent to eliminate certain minor cases from coverage under the Act. This exercise by the Second Circuit, and now the Fifth Circuit, is an example of judicial overreach, creating a course of action that supersedes legislation when the Legislative and Executive Branches have indicated that there is none. An "**EXEMPTION**"

means out of the reach of a federal court, meaning the **federal district court did not have subject matter jurisdiction over this matter.**

> In both statutory and constitutional cases, our watchword is caution... we expressed doubt about our own authority to recognize any causes of action not expressly created by Congress... 'If the statute does not itself so provide, a private cause of action will not be created through judicial mandate.' *Hernandez v. Mesa*, 589 U.S. 93, 140 S. Ct. 735 (2020).

REASONS FOR GRANTING THE PETITION

A. Opposing Counsel filed a Bar Complaint with the Louisiana Office of Disciplinary Counsel due to Hattaway's Absence in the Litigation

Almost simultaneous to the court's ruling on a *Motion to Enforce Judgment* filed by LaFHAC in New Orleans, Sarah Watson ("Watson"), the legal director for the LaFHAC, filed a bar complaint with the Louisiana Office of Disciplinary Counsel ("ODC") against Hattaway, who the court recognized as the attorney representing Belton in this matter. Usually, complaints to the ODC are a private matter until disciplinary action is taken. Still, we can safely assume that Watson's frustration was expressed in her letter to the ODC discussing her inability to communicate with Hattaway, his tardiness in responding to pleadings, his seeming absence in Oregon from the litigation, and the questionable

excuses he made, deferring responsibility to his mental health situation.

> At every turn, Mr. Hattaway has deliberately and continuously failed to meet the standards of our profession. He has failed to meet nearly every deadline, failed to be available to communicate with counsel, failed to update his contact information, and failed to withdraw from a case here in Louisiana when he clearly intends to practice only in Oregon from here out. Additionally, from his own admission he has engaged in serious neglect of his own client. ... [H]is conduct has delayed relief for our client and continues to impede our ability to resolve this case. App.107a.

B. Hattaway's Explanations for Substandard Conduct

On July 21, 2021, Hattaway wrote the following to the court concerning his ongoing mental problems:

> Furthermore, during the course and scope of the pandemic, undersigned counsel was diagnosed with 'Institutional Betrayal Trauma' manifesting symptoms of high anxiety, post-traumatic stress disorder, and other symptoms which prohibited and made difficult his ability to practice law at a

> level normal attorneys are able to do so. These symptoms began manifesting in late 2019 and were treated beginning in June 2020. These symptoms severely inhibited the undersigned's ability to practice law through December of 2020.
>
> The trauma was diagnosed and treated through voluntary means utilizing the services and referrals of the Louisiana Attorney Office of Disciplinary Counsel, the Louisiana Judges and Lawyers Program, and several mental health professionals. No sanctions were issued.
>
> Additionally, the undersigned counsel closed the brick and mortar law firm located in Ruston, Louisiana and relocated to Bend, Oregon in November of 2020.

C. Federal District Judge Improperly Ordered Service on Hattaway, an Unenrolled Attorney

Hattaway was responding to a service that was ordered made by the district judge on the Complainants-Respondents' *Motion for Default Judgment*, which is recorded in the record as follows:

> Although P. Heath Hattaway **has not enrolled as counsel** in this matter, the record indicates that he signed a waiver of service on behalf of Defendant [Doc.

> No. 8], and, additionally, the exhibits to Plaintiffs' Motion for Default Judgment [Doc. No. 13] indicate that Mr. Hattaway has communicated with Plaintiffs' counsel on behalf of Defendant. **Accordingly, out of an abundance of caution**,
>
> **IT IS ORDERED that the Clerk of Court serve P. Heath Hattaway** with the Motion for Default Judgment [Doc. No. 13] as well as the Notice of Motion Setting [Doc. No. 14]. App.074a.

In his response to the judge's order of service, Hattaway advised the court that while he was residing in Louisiana, he was not fit to serve in the capacity of Belton's attorney. App.070a.

D. First Instance of Any Service Made on Belton

The first instance of Belton actually appearing in the record at any point was on December 1, 2022, when he filed a pro se motion with the federal district court, requesting a hearing. It is at this point that Belton advises to the court that Hattaway has abandoned him:

> Change in legal counsel – The former attorney, Paul Heath Hattaway, moved out-of-state during the course of the year **and has since been non-responsive to any correspondence regarding**

> **this case**, including his withdrawal. Therefore, I will be proceeding pro se.

E. Report of the Louisiana Disciplinary Board

We have been unable to obtain a copy of the original complaint filed with the ODC by the LaFHAC, however we have added as Appendices: Hearing Committee Report #1 of the Louisiana Attorney Disciplinary Board, dated October 15, 2024, #24-DB-003, *In re: Paul H. Hattaway*, App.079a-095a, and the *Opinion* of the Louisiana Supreme Court, dated April 8, 2025, #2024-B-1405, *In re: Paul H. Hattaway*, Attorney Disciplinary Proceedings, App.096a-125a, both of which contain excerpts of the bar complaint filed by the LaFHAC.

F. Findings of Fact by the Louisiana Supreme Court

On Page 3 of the Louisiana Supreme Court's decision is the following:

> In September 2022, the court issued a ruling which granted in part and denied in part the motion to enforce. The court also ordered Mr. Belton to pay plaintiffs $89,991.80 in total damages, consisting of $29,991.80 in attorney's fees, $50,000.00 in compensatory damages, and $10,000.00 in punitive damages. **Respondent did not appeal from, or otherwise seek reconsideration of, that judgment. He also failed to**

advise Mr. Belton of these negative decisions.

In December 2022, Mr. Belton filed a pro se motion for a hearing in the litigation. As a basis for the request, **Mr. Belton advised the court that respondent had moved out of state and had been non-responsive to correspondence regarding the case.** Mr. Belton subsequently retained new counsel who filed a motion for relief from summary judgment, but the court denied the motion.

In his response to the disciplinary complaint, respondent stated: '**I admit I should have contacted my client when I became aware of the negative information surrounding this matter. I accept responsibility for this failure on my part.**' Respondent also suggested that he suffers from one or more mental conditions which **materially impaired his ability to represent Mr. Belton** in the litigation:

> Beginning in the fall of 2019, I began to experience panic attacks, loss of confidence in myself (including my judgment), and other symptoms of extreme anxiety as it related to my work in

> Louisiana... I reached out the [sic] JLAP for assistance. Then [Covid] lockdown occurred, and I was confined to my residence, without staff, and surrounded by everyone's problems. I was unable to open the mail, answer calls, or text messages due to extreme anxiety.
>
> * * *
>
> In December of 2020, I moved to Bend, Oregon. I took time away from the practice of law to recover....

During his sworn statement, respondent testified that he 'had diminished capacity,' 'was a disabled attorney that wasn't capable of providing answers to anyone,' and was 'not in a place to handle' the representation of Mr. Belton. App.083a; App.108a.

Further stated in the opinion of the Louisiana Supreme Court is the following:

> In January 2024, the ODC filed formal charges against respondent, alleging that his conduct as set forth above violated Rules 1.1(a) (failure to provide competent representation to a client), 1.3 (failure to act with reasonable

> diligence and promptness in representing a client), 1.4 (**failure to communicate with a client**), 1.16(a) (**failure to withdraw from the representation of a client**), 1.16(d) (obligations upon termination of the representation), 3.2 (**failure to make reasonable efforts to expedite litigation**), 5.5(a)(e)(3) (**engaging in the unauthorized practice of law**), 8.4(a) (violation of the Rules of Professional Conduct), 8.4(c) (**engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation**), and 8.4(d) (engaging in conduct prejudicial to the administration of justice) of the Rules of Professional Conduct. App.083a.

G. Disciplinary Committee Mitigation Hearing

The hearing committee conducted the hearing on mitigation with Hattaway and found as follows:

> The committee determined that **respondent violated duties owed to his client**, the legal system, and the legal profession. The committee noted that respondent has stipulated that **he acted negligently** with respect to his violation of Rule 5.5 but acted negligently in part and knowingly in part with respect to all remaining rule violations. **His conduct caused**

> **actual harm as his neglect of Mr. Belton's legal matter resulted in an $89,991.80 judgment being issued against his client...**
>
> The parties stipulated to aggravating and mitigating factors. The stipulated aggravating factors are a pattern of misconduct and multiple offenses. The stipulated mitigating factors are the absence of a prior disciplinary record, personal or emotional problems, full and free disclosure to the disciplinary board and a cooperative attitude towards the proceedings, inexperience in the practice of law (admitted 2016), and remorse. App.092a.

H. "Extraordinary Circumstances" – United States Supreme Court Precedent Jurisprudence

Due to Hattaway's mental instability, as reflected in his statements to the lower court and in his disciplinary hearing, as well as in the opinion of the Louisiana Supreme Court, many crucial issues—including a lack of response, missed deadlines, and other actions or inactions—failed his client, Belton, in defending this serious case. Those many errors and omissions by Hattaway, the finding of the Louisiana Supreme Court that Hattaway was "engaging in the unauthorized practice of law" and "engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation" coupled with his ultimate

abandonment of this case and his client, should satisfy the "exceptional/extraordinary circumstances" threshold requirement for relief under *F.R.C.P. Rule 60.*

In another similar case involving egregious conduct by an attorney, this Court employed *F.R.C.P. Rule 60(b)* to vacate a judgment involving "**exceptional circumstances**":

> We reverse, however, on the basis that the Motion to Vacate should have been granted under Rule 60(b)(6). The conduct of Krehel indicates **neglect so gross that it is inexcusable**. The reasons advanced for his failure to file opposing documents in a timely fashion are unacceptable.
>
> In making this determination we are aware that Rule 60(b)(6), which permits the vacating of a judgment 'for any other reason justifying relief,' provides an extraordinary remedy and may be invoked only upon a showing of **exceptional circumstances**. *Ackermann v. United States*, 340 U.S. 193, 202, 95 L. Ed. 207, 71 S. Ct. 209 (1950); *Vecchione v. Wohlgemuth*, 558 F.2d 150, 159 (3d Cir. 1977). *Boughner v. Secretary of Health, Education & Welfare*, 572 F.2d 976, 978.

The very nature of '**extraordinary circumstances**' of course, makes it impossible to anticipate and define every situation that might create a sufficient threat of such great, immediate, and irreparable injury as to warrant intervention in state criminal proceedings.

But whatever else is required, **such circumstances must be 'extraordinary'** in the sense of creating an extraordinarily pressing need for immediate federal equitable relief, not merely in the sense of presenting a highly unusual factual situation. *Kugler v. Helfant*, 421 U.S. 117, 95 S. Ct. 1524, 1531, 447 L.Ed. 2d 15 (1975).

Such '**extraordinary circumstances**' are not limited to those that satisfy the Eleventh Circuit's test. Courts must often 'exercise [their] equity powers... on a case-by-case basis,' *Baggett v. Bullitt*, 377 U.S. 360, 375, 84 S. Ct. 1316, 12 L. Ed. 2d 377 (1964), demonstrating 'flexibility' and avoiding 'mechanical rules,' *Holmberg v. Armbrecht*, 327 U.S. 392, 396, 66 S. Ct. 582, 90 L. Ed. 743 (1946), in order to 'relieve hardships... aris[ing] from a hard and fast adherence' to more absolute legal rules, *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 248, 64 S. Ct. 997, 88 L. Ed.

1250 (1944), Dec. Comm'r Pat. 675. The Court's cases recognize that equity courts can and do draw upon decisions made in other similar cases for guidance, exercising judgment in light of precedent, but with awareness of the fact that **specific circumstances, often hard to predict**, could **warrant special treatment in an appropriate case**. *Coleman v. Thompson*, 501 U.S. 722, 753, 111 S. Ct. 2546, 115 L. Ed. 2d 640 (1991), distinguished. No pre-existing rule of law or precedent demands the Eleventh Circuit's rule. That rule is difficult to reconcile with more general equitable principles in that it fails to recognize that, at least sometimes, **an attorney's unprofessional conduct can be so egregious as to create an extraordinary circumstance** warranting equitable tolling, as several other federal courts have specifically held. Although equitable tolling is not warranted for 'a garden variety claim of excusable neglect,' *Irwin, supra,* at 96, 111 S. Ct. 453, 112 L. Ed. 2d 435 (1990), **this case presents far more serious instances of attorney misconduct than that**. Pp. 649-652, 177 L. Ed. 2d, at 145-147... *Holland v. Florida*, 560 U.S. 631, 632-633, 130 S. Ct. 2549 (2010).

A markedly different situation is presented, however, **when an attorney abandons his client without notice**, and thereby occasions the default. Having severed the principal-agent relationship, **an attorney no longer acts, or fails to act, as the client's representative**. See 1 Restatement (Third) of Law Governing Lawyers §31, Comment 1[ ](1998) ('Withdrawal, whether proper or improper, terminates the lawyer's authority to act for the client.'). **His acts or omissions therefore 'cannot fairly be attributed to [the client].'** *Coleman,* 501 U. S., at 753, 111 S. Ct. 2546, 115 L. Ed. 2d 640. See, *e.g., Jamison v. Lockhart,* 975 F.2d 1377, 1380 (CA8 1992) (attorney conduct may provide cause to excuse a state procedural default where, as a result of a conflict of interest, the attorney 'ceased to be [petitioner's] agent'); *Porter v. State,* 339 Ark. 15, 16-19, 2 S. W. 3d 73, 74-76 (1999) (finding 'good cause' for petitioner's failure to file a timely habeas petition where the petitioner's attorney terminated his representation without notifying petitioner and without taking 'any formal steps to withdraw as the attorney of record')... The *Holland* petitioner, however, urged that attorney negligence was not the gravamen of his complaint. Rather, he asserted that his

lawyer had detached himself from any trust relationship with his client: '**[My lawyer] has abandoned me,**' the petitioner complained to the court. [*Holland v. Florida,*] 560 U. S., at 637, 130 S. Ct. 2549, 177 L. Ed. 2d 130, 138 (brackets and internal quotation marks omitted); see *Nara v. Frank,* 264 F.3d 310, 320 (CA3 2001) (ordering a hearing on whether a client's effective abandonment by his lawyer merited tolling of the one-year deadline for filing a federal habeas petition).

In a concurring opinion in *Holland,* **Justice Alito homed in on the essential difference between a claim of attorney error, however egregious, and a claim that an attorney had essentially abandoned his client**. 560 U. S., at 659, 130 S. Ct. 2549, 177 L. Ed. 2d 130, 151-152. Holland's plea fit the latter category: He alleged **abandonment 'evidenced by counsel's near-total failure to communicate with petitioner or to respond to petitioner's many inquiries and requests over a period of several years.**' *Ibid.*; see *id.,* at 636-637, 652, 130 S. Ct. 2549, 177 L. Ed. 2d 130, 138 (majority opinion). If true, Justice Alito explained, '**petitioner's allegations would suffice to establish extraordinary**

> **circumstances beyond his control[:] Common sense dictates that a litigant cannot be held constructively responsible for the conduct of an attorney who is not operating as his agent in any meaningful sense of that word.**' *Id.*, at 659, 130 S. Ct. 2549, 177 L. Ed. 2d 130, 152.
>
> We agree that, under agency principles, **a client cannot be charged with the acts or omissions of an attorney who has abandoned him. Nor can a client be faulted for failing to act on his own behalf when he lacks reason to believe his attorneys of record, in fact, are not representing him.** We therefore inquire whether Maples has shown that his attorneys of record abandoned him, thereby supplying the '**extraordinary circumstances beyond his control**,' *ibid.*, necessary to lift the state procedural bar to his federal petition... *Maples v. Thomas*, 565 U.S. 266, 281-283, 132 S. Ct. 912 (2012).

I. The District Court erred by finding a lack of "extraordinary circumstances" warranting relief under F.R.C.P. RULE 60(b)

In an ironic situation, the mental instability of a Louisiana lawyer, coupled with professional and

federal court inexperience, in a worldwide pandemic, has caused tremendous damage and injury to his client. Because of the extreme errors committed here by Hattaway, the size of the judgment against Belton will exhaust Belton's income for at least two years, resulting in unexpected hardship for himself and his family. In this case, Belton, through his subsequent counsel, did avail himself of "the escape hatch provided by Rule 60(b)." *Link v. Wabash Railroad Co.*, 370 U.S. 626, 82 S. Ct. 1386 (1962).

> A rule 60(b)(4) motion allows a party to receive relief from a final judgment, order, or proceeding if the underlying judgment is void. Gittes asserts that the default judgment is void and he is entitled to rule 60(b)(4) relief because he was never properly served. *Goetz v. Synthesys Techs., Inc.*, 415 F.3d 481, 483 (5th Cir. 2005).
>
> Distinguishing the cases cited by Gittes on the narrow grounds argued by Plaintiffs **would ignore our duty to look at the totality of the circumstances** to see whether service was reasonably calculated to give notice. As in each of the cases cited by Gittes, the instant Plaintiff class failed to take the simple step of taking a single attempt at service to a known in-state location before resorting to nail-and-mail service. *Id.* at 486.

> The requirement that jurisdiction be established as a threshold matter 'springs from the nature and limits of the judicial power of the United States' and is 'inflexible and without exception.' *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94-95, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998) (quoting *Mansfield, C. & L. M. R. Co. v. Swan*, 111 U.S. 379, 4 S. Ct. 510, 511 (1884)).
>
> [W]ithout jurisdiction the court cannot proceed at all in any cause. *Steel Co., supra,* at 94; *Ex parte McCardle*, 74 U.S. 506, 7 Wall. 506, 514, 19 L.Ed. 264 (1869); *Ruhrgas Ag v. Marathon Oil Co.*, 526 U.S. 574, 577, 119 S.Ct. 1563, 143 L.Ed.2d 760 (1999);
>
> It is a federal court's **obligation** to assure itself of the existence of subject matter jurisdiction even if no party presses the question. *BIW Deceived v. Local S6, Indus. Union of Marine & Shipbuilding Workers*, 132 F.3d 824 (1st Cir. 1997).

CONCLUSION

The *United States v. Space Hunters, Inc.* case (*supra*) used by the Fifth Circuit as authority for this case is inapplicable and nonbinding, as it dealt with the "Mrs. Murphy" exemption, which applies only to single buildings where both the renter(s) and landlord

reside. The puzzling decision made by the three-judge panel **admits** that Belton owned less than four rental houses, none of which had any connection to federal assistance, and was, thus, strictly and specifically "exempted" by Congress and the President from application under the *Fair Housing Act* (*42 U.S.C.S.§3601, et seq.*). That means, in short, that Belton is excluded from the coverage of the *Act*. The three-judge panel overlooked that because Belton—or his "counsel" (Hattaway) who was a resident of Oregon by this time—failed to claim the "exemption" in an affirmative defense that he would have claimed in his answer if he had ever received service of summons and the complaint, thus receiving notice and an opportunity to be heard, thus receiving his constitutional right under the due process clause of the *Fifth Amendment to the United States Constitution.*

This entire proceeding has been marred by errors of fact and law, and was perpetuated by the failure of the Complainants-Respondents' counsel and the lower court to fulfill their first duty before allowing the matter to proceed. On its own initiative, the federal district court should ensure that **all** parties are legally involved and invested in this lawsuit, and make sure that the **defendant has been truly notified personally** so that this matter may proceed with confidence and with the support of the court record that the personal jurisdiction over Kevin Belton is secured, and that a court has the power and authority to proceed within the jurisdictional parameters of the *Fair Housing Act* (*42 U.S.C.S.§3601, et seq*). Belton was specifically exempt

from prosecution or adherence to the standards outlined in laws enacted by both Congress and the President of the United States. Belton has never been served with any process. Nevertheless, the appellate court and the district court still find it reasonable to prosecute him under a law from which he has been explicitly exempted. (See *L.R.S. §51:2604(A)(B)* and *42 U.S.C.S.§3603*). The lower courts are essentially ruling that the coverage parameters set out by the legislative and executive branches of government do not concern the judiciary, who believes, to the contrary, that the statute should cover everybody and, therefore, if this party—who did not receive notice—did not proceed to file an answer with "affirmative defenses," then a judgment will be rendered against him in absentia.

Overall, Belton's case was doomed from the moment he received the letter from the LaFHAC in late 2019. Hattaway, the attorney chosen by Belton to respond to the letter, acknowledged his "high anxiety, post-traumatic stress disorder" had begun to manifest itself and "severely inhibited" his practice of law in "late 2019." (App.070a, App.080a, App.082a, App.100a). The undersigned examined the court record in 2023 and, other than one statement to the federal district judge by Hattaway in a *Motion to Set Aside Default Judgment* on July 21, 2021, the impression Hattaway compelled to his reviewers was that he must be overburdened with work and have little to no support staff. Or he was inexperienced with trial work and unfamiliar with the *Federal Rules of Civil Procedure*.

When the Louisiana Supreme Court published its *Opinion*, we were caught by surprise and learned many new facts about his mental challenges, which answered our questions. App.078a-095a.

We also obtained the report published by the hearing committee, which was released on October 15, 2024. App.097a-125a. Those two documents, coupled with our personal contacts with Hattaway, resolved a quandary. During the entire representation of Belton, 2019-2022, a normally capable attorney was being challenged by severe and deep-seated internal insecurities, as well as post-traumatic stress disorder. Sympathetic as we may be for Hattaway's emotional instabilities, the true victim here is Kevin Belton, Hattaway's "client," who now has to suffer from the results of Hattaway's mental instability.

These are highly unusual and extreme circumstances that resulted in an unfair outcome for an innocent party. Pursuant to the due process clause of the *Fifth Amendment to the United States Constitution*, through the *F.R.C.P. Rule 60(b)* filing by Belton at the Fifth Circuit, this situation merits the equitable jurisdiction of the United States Supreme Court to employ this case to be classified as one of "extraordinary circumstances," meriting reversal of the decisions of the Fifth Circuit.

Date: August 7, 2025 Respectfully Submitted,

M. F. "Rick" Fayard, Jr., LBR# 05488
LAW OFFICE OF RICK FAYARD
2630 Old Minden Road
Bossier City, Louisiana 71112
318-742-9090
fayardlaw@gmail.com

Counsel for Kevin Belton