

Sep 22 2026

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION

County of Aiken

Elvira Perez.....Petitioner

v.

SC Court of AppealsRespondent

VERIFIED PETITION FOR WRIT OF MANDAMUS

AND

MEMORANDUM IN SUPPORT

I

(a)

INTRODUCTION

Ms Perez is prosecuting Appellate Case # 2026-001556¹. The evidence will show that the SC Court of Appeals can not legally rule against Ms Elvira Perez , a Hispanic pro se litigant. Consequently it has sua sponte placed the instant cause of action in a permanent abeyance status. Ms. Perez objects.

(b)

Rule 65(f)(1) Facts

Wherefore Petitioner Elvira Perez , hereby moves and petitions this Court for an Order, pursuant to Rule 245 of the South Carolina Rules of Appellate Procedure directing Respondent SC Court of Appeals to enter an order : (a) Granting or denying Ms Perez' Motion to proceed in forma Pauperis , (b) Granting or Denying Ms. Perez' Motion to permit her non lawyer Power of Attorney and Only child to represent her in this matter (c) Granting or Denying Ms Perez' Motion For Injunctive relief (d) explaining the factual and legal basis for sua sponte holding the case in an indefinite abeyance and (e) explaining the basis for rejecting esigned documents when Rule 614, SCACR, allows them.

(c)

¹ The instant petition is associated with an ongoing Appellate Case , to wit, Perez versus Edgefield Community Healthcare, LLC , Case # 2026-001556 in which Ms Perez seeks and order to compel the SC Court of Appeals to perform a ministerial act - it is in the nature of a rule to show cause and as such no statutory summons is required, Easier v. Maybank, Governor, , 191 S. C. 511, 5 S. E. 2d 288 (1939)

(c)

AFFIDAVIT

The undersigned on oath, being first duly sworn, hereby certifies as follows:

This affidavit is being given in connection with a Petition for a writ of mandamus. Rule 65(f)(1) requires an affidavit setting forth clearly the facts entitling the moving party to the writ.

A) The SC Court of appeals has failed or refused to grant or deny Ms. Perez'

Motion to proceed in Forma Pauperis

B) The SC Court of Appeals has failed or refused to grant or deny Ms.

Perez' Motion to permit her non lawyer son and Power of Attorney to represent her in this matter

C) The SC Court of Appeals has failed or refused to Grant or Deny Ms

Perez' Motion For Injunctive relief

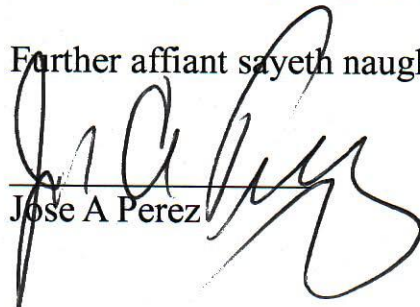
D) The SC Court of Appeals has sua sponte placed the cause of action in

an indefinite abeyance status;

E) The SC Court of Appeals has failed or refused to explain the basis for

rejecting esigned documents when Rule 614, SCACR, allows them.

Further affiant sayeth naught.

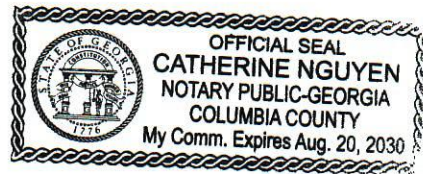

Jose A Perez

Sworn to before me this the ²²~~23~~ day of ____ September , 2026

Cari M

Notary Public for ~~South Carolina~~ Georgia

My commission expires: August 20, 2030



I

Statement of the Case

- 1- Petitioner Elvira Perez, filed a complaint for declaratory and injunctive relief in the Aiken County Court of Common Pleas by and through her son and next of Friend , Jose A. Perez. The cause of action was against her nursing home , to wit, Edgefield Post Acute for depriving her of her Constitutional and Medicare Rights².
- 2- Elvira Perez is a 97 years old Hispanic female who suffers of (a) non compos mentis secondary to dementia, (b) blindness, (c) social isolation and numerous comorbidities;

² *Health and Hospital Corporation of Marion County v. Talevski*, 599 U.S. 166 (2023) affirming *Talevski v Health and Hospital Corporation*, 6 F. 4th 713 (7th Cir-2021); *Health and Hospital Corporation v Talevski*, 137 Harv. L. Rev. 380 (2023).

- 3- On Saturday February 7th, 2026 Jose A Perez found his mother in a stuporous³ state and she could not be fed or hydrated . Defendant Edgefield Post Acute revealed that Ms. Perez had been surreptitiously placed on several anti-psychotic medicine in order to medically restrain her. Thereafter Ms Perez complained to several nursing home regulatory agencies.
- 4- Consequently , on June 17th, 2026 the defendant informed Ms Perez that thirty days therefrom it was going to **INVOLUNTARILY TRANSFER** Ms Perez out of the nursing home.
- 5- On July 9th, 2026 while residing at the Defendant's nursing home, Ms Perez was assaulted , her face pummeled and subsequent imaging at the emergency room showed several of her ribs , sternum and Left knee fractured. Edgefield Police issued Incident Report EPD260FF000249(01) by police sergeant G. A. Schultz who referred the matter to the South Carolina Attorney General. The Police Sergeant advised the Perez' that since this was the 2nd violent incident against a resident at that facility that Ms. Perez ought to be relocated.
- 6- The Aiken County Court of Common Pleas denied, inter alia, Ms Perez' Motion to Proceed in forma Pauperis and Ms Perez appealed to the SC Court of Appeals.

³ <https://www.merckmanuals.com/home/brain-spinal-cord-and-nerve-disorders/coma-and-impaired-consciousness/stupor-and-coma>

7- The SC Court of Appeals has failed or refused to rule on Ms. Perez' Motions . it is rejecting esigned documents even though Rule 614, SCACR, allows them. It has placed Ms. Perez' appeal on abeyance indefinitely , contrary to binding precedents and SC Appellate Rules⁴.

III

ARGUMENT

(a)

RIGHT TO MANDAMUS RELIEF

8- A writ of mandamus is a coercive writ that orders a public official to perform a ministerial duty⁵. A ministerial act or duty is one which a person performs because of a legal mandate which is defined with such precision as to leave nothing to the exercise of discretion⁶. Mandamus will issue only to compel a public official to perform a mandatory legal duty⁷. A writ of mandamus requiring the performance of an act must assert facts supporting the following

⁴ Landis v. North American Co. , 299 US 248, 254-255 (1936) (Orders holding a case in abeyance must show that the party requesting the same has shown the existence of extraordinary circumstances and the same must have a finite time) ; Joshua Blake Griffith v. State of South Carolina, Appellate Case No. 2026-000718 (SC Supreme Court - April 24, 2026); Accord The State v. Meagan Jackson (2) Appellate Case No. 2026-000473 (SC Court of Appeals – March 18th, 2026); See also South Carolina Appellate Court Rules 240 and 267 , the requirement to “state the grounds” means that when a court orders a case held in abeyance, it must provide a written explanation of the reason for that order. This is consistent with the court’s duty to give parties notice of the basis for any procedural order.

⁵ Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 512 S.E.2d 106 (1999).

⁶ Wilson v. Preston, 378 S.C. 354, 662 S.E.2d 583 (2008)

⁷ . Redmond v. Lexington County School Dist. No. Four, 314 S.C. 431, 445 S.E.2d 441 (1994).

elements⁸: (1) a duty to perform the act; (2) the ministerial nature of the act; (3) the petitioner's specific legal right for which discharge of the duty is necessary; and (4) a lack of any other legal remedy.

(b)

**MINISTERIAL DUTY TO PERMIT
MS PEREZ TO EXERCISE THE RIGHT TO
ACCESS STATE COURTS EFFECTIVELY AND MEANINGFULLY**

9- The right to meaningfully and effectively access the courts is basic to our system of government, and it is well established today that it is one of the fundamental rights protected by the Constitution⁹. The US Supreme Court characterized this right of access in the following terms:

10- “The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship, and must be allowed by each state to the citizens of all other states to the precise extent that it is allowed to its own citizens. Equality of treatment in this respect is not left to depend upon

⁸ HHHunt Corp. v. Town of Lexington, 389 S.C. 623,640, 699 S.E.2d 699, 707, citing Sanford, 385 S.C. at 494, 685 S.E.2d at 606 (setting forth the elements necessary to obtain a writ of mandamus).

⁹ Ryland v Shapiro, 708 F. 2d 967 (5th Cir-1983) citing *Chambers v. Baltimore & Ohio Railroad*, 207 U.S. 142 (1907).

comity between the states, but is granted and protected by the Federal Constitution.”¹⁰

11- The Right of Access is also protected by the First Amendment¹¹;

12- A third constitutional basis for the right of access to the courts is found in the due process clause¹². The right of access to the courts, is founded in the Due Process Clause and assures that no person will be denied the opportunity to present to the judiciary allegations concerning violations of fundamental constitutional rights¹³

13- A mere formal right of access to the courts does not pass constitutional muster. Courts have required that the access be “adequate, effective, and meaningful¹⁴.”. Interference with the right of access to the courts gives rise to a claim for relief under section 1983¹⁵.

¹⁰ Ibid

¹¹ Ibid citing *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 92 S.Ct. 609, 30 L.Ed.2d 642 (1972), the Supreme Court found in the first amendment a second constitutional basis for this right of access; The Fourth Circuit Court of Appeals has ruled that this right of access is encompassed by the first amendment right to petition. See *McCray v. Maryland*, 456 F.2d 1, 6 (4th Cir.1972)

¹² Ibid citing *Wolff v. McDonnell*, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974),

¹³ Ibid citing *Johnson v. Avery*, 393 U.S. 483, 89 S.Ct. 747, 21 L.Ed.2d 718 (1969)]

¹⁴ Ibid *Bounds v. Smith*, 97 S.Ct. at 1495; see also *Rudolph v. Locke*, 594 F.2d at 1078

¹⁵ . *Sigafus v. Brown*, 416 F.2d 105 (7th Cir.1969) *McCray v. Maryland*, 456 F.2d at 6 (“Of what avail is it to the individual to arm him with a panoply of constitutional rights if, when he seeks to vindicate them, the courtroom can be hermetically sealed against him by a functionary who, by refusal or neglect, impedes the filing of his papers?”);

- 14- The US Supreme Court has held that a parent-child relationship easily satisfies the close relationship requirement for next friend standing¹⁶.
- 15- The US Supreme Court has also ruled that litigants may assert the rights of a third party – where as here, he has a close relationship with that third party¹⁷, and the third party has obstacles preventing her from suing on her own behalf¹⁸.
- 16- The US Supreme Court has emphasized that “in keeping with the ancient tradition of the [next friend]doctrine”, that one necessary condition for “next friend” standing in federal court is a showing by the proposed “next friend” (prochein ami at common law) that the real party in interest is unable to litigate her own cause due to mental incapacity, lack of access to court, or other similar disability¹⁹.

¹⁶ Sessions v. Morales-Santana, 582 U.S. 47, 57 (2017).

¹⁷ The US Supreme Court has held that a parent-child relationship easily satisfies the close relationship requirement for next friend standing, Sessions v. Morales-Santana, 582 U.S. 47, 57 (2017).

¹⁸ Powers v. Ohio, 499 U.S. 400, 410-11, 111 S. Ct. 1364, 113 L. Ed. 2d 411 (1991) Singleton v. Wulff, 428 US 106 (1976)

¹⁹ Whitmore Ex Rel. Simmons v Arkansas , 495 US 149, 165 (1990)

- 17- A Bruen²⁰ Historical analysis showed that non-lawyers – next friend - (prochein ami) were allowed to practice law at common law²¹: Early colonial documents protected the right of litigants to proceed pro se, or to choose whomever they desired to represent them²²
- 18- In Whitmore Ex Rel Simmons v Arkansas, 495 US 149, 163 FN 4 (1990) the US Supreme Court identified Federal and State courts which allowed next friend or prochein ami to prosecute lawsuits in support of third parties see also (1) In Re Moore , 209 US 490 (1908) the next of friend 's right to prosecute the lawsuit on behalf of an infant was not challenged by the federal nor Illinois Courts; (2) Morgan v Potter, 157 US 195 (1895) (The next friend, by whom the suit is brought on behalf of the infant, is neither technically

²⁰ NY State Rifle & Pistol Association v Bruen , 597 US 1, 8-22 (2021) In *New York State Rifle & Pistol Association, Inc. v. Bruen* (2022), the Supreme Court overturned a century-old New York concealed-carry law. The ruling replaced traditional means-end scrutiny with a "text, history, and tradition" standard, requiring the government to prove modern gun regulations are consistent with the nation's historical tradition of [firearm] regulation. Accord : *Unisys Corp v South Carolina*, 551 SE 2d 263, 346 SC 158 (2001) Citing *W. Matthews Contracting Co. v. South Carolina Tax Comm'n*, 267 S.C. 548, 230 S.E.2d 223 (1976) (a Historical analysis is necessary in order to properly ascertain that the state intended to regulate the practice of law) ;

²¹ Unauthorized Practice of Law and Meaningful Access to the Courts, 35 Cardozo Law Rev. 2043, 2046 FN 14 (2014)

²² Ibid , @ page 2047 citing *Faretta v. California*, 422 U.S. 806, 828-30 (1975). For example, the influential Pennsylvania Frame of Government of 1682 explicitly provided that "in all courts all persons of all persuasions may freely appear in their own way, and according to their own manner, and there personally plead their own cause themselves; or, if unable, by their friends." Id. at 828 n.37 (internal quotation marks omitted); see also Benjamin Hoorn Barton, Why Do We Regulate Lawyers?: An Economic Analysis of the Justifications for Entry and Conduct Regulation, 33 ARIZ. ST. L.J. 429, 429 (2001) ("In the middle of the nineteenth century the legal market was virtually unregulated."). See also NJ Bifurcated Bar, 12 Seton Hall Review, 242, 243 FN 11 (1982)

nor substantially the party, but resembles an attorney ..., by whom a suit is brought or defended in behalf of another. The suit must be brought in the name of the infant, and not in that of the next friend. *Crandall v. Slaid*, 11 Met, 288; *Guild v. Cranston*, 8 Cush. 506)); See also (3) Bertinelli v. Galoni, 200 A. 58 , 331 Pa. 73 (1938) *Pennsylvania Supreme Court* (It is urged upon us by appellant (really the insurance company) that the grandmother cannot maintain the action in the infant's behalf, the child's parents being alive and supporting her in their home. We think this position not maintainable. The sole purpose in having a next friend is to supply the want of capacity in the minor, to afford someone responsible for the costs. He is in no sense a party, "**but resembles an attorney**, or a guardian ad litem, by whom a suit is brought or defended in behalf of another": *Haines v. Fitzgerald*, 108 Pa. Superior Ct. 290, 165 A. 52 (Pa. Super. Ct.- 1933). Accord : *Mahoney v. Park Steel Co.*, 217 Pa. 20, 66 Atl. 90 (1907)

19- According to the following entities the ban on non-lawyer representation harm consumers and the poor : the Federal Trade Commission²³ , the

²³ https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-comment-mr.carl-e.testo-counsel-rules-committee-superior-court-concerning-proposed-rules-definition-practice-law/v070006.pdf

Administrative Conference of the United States²⁴ and even the American Bar Association²⁵

20- But the SC Judiciary is precluded from transgressing upon Ms. Perez' fundamental right to access the courts in order to have her grievances redressed; ²⁶.

21- The SC General Assembly is the only entity which is Constitutionally authorized to grant or remove subject matter jurisdiction ²⁷. The Supreme Court has held that a court should not treat a statutory limitation on a cause of action as a limitation on jurisdiction unless the General Assembly “‘clearly states’ that [the] requirement is ‘jurisdictional²⁸

22- There are no Constitutional provisos or statutes preventing non-lawyers from representing others in state courts. Actually , the opposite is true, the General Assembly recognizes that **any individual** may represent another individual before any tribunal²⁹ In Re Unauthorized Practice of Law Rules, 309 SC 304 , 422 SE 2d 123 (1992) citing S.C. Code Ann. § 40-5-8 (1986)

²⁴ <https://www.acus.gov/document/nonlawyer-assistance-and-representation>

²⁵ <https://www.americanbar.org/news/abanews/aba-news-archives/2025/02/non-lawyer-services-close-justice-gap/>

²⁶ *Unisys Corp v South Carolina*, 551 SE 2d 263, 346 SC 158 (2001) citing *Hodges v Rainey* , 341 SC 79 , 532 SE 2d 578 (2000); *Ryland v Shapiro* , 708 F.2d 967 (1987) citing *Chambers v. Baltimore & Ohio Railroad*, 207 U.S. 142, 28 S.Ct. 34, 52 L.Ed. 143 (1907),

²⁷ *Ibid*

²⁸ *Ibid*

²⁹ S.C. Code Ann. § 40-5-8 (1986):

23- The South Carolina Bar have not , and can not , show that denying Ms Perez' right to be heard in State Courts by and through her non-lawyer son is consistent with the Nation's historical tradition of the regulation of the practice of Law³⁰.

24- Furthermore, SC Constitution Article V, Section 15 states : Justices of the Supreme Court must have been **“licensed attorneys at law for at least 8 years”** – Ms Perez respectfully submits that the proviso disqualifies the SC Judiciary imposing restrictions upon non lawyers in “unauthorized practice of law cases ” because the US Supreme Court has ruled that Judges are precluded by the maxim which states that “No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity” . *Gutierrez de Martines v. Lamagno*, 515 US 417 (1995) citing *See In re Murchison*, 349 U. S. 133, 136 (1956) .”); *Spencer v. Lapsley*, 20 How. 264, 266 (1858) and The Federalist No. 10, p. 79 (C. Rossiter ed. 1961).

25- As a US Citizen Ms Perez has the Constitutional right to seek a redress of her grievances , the right to be heard and to marshal evidence in support

³⁰ *Unisys Corp v South Carolina*, 551 SE 2d 263, 346 SC 158 (2001) *Citing W. Matthews Contracting Co. v. South Carolina Tax Comm'n*, 267 S.C. 548, 230 S.E.2d 223 (1976) (a Historical analysis is necessary in order to properly ascertain that the state intended to regulate the practice of law) ; *NY State Rifle & Pistol Association v Bruen* , 597 US 1, 8-22 (2021) (Same)

thereof³¹. A hearing is functionally useless if a nursing home resident is prohibited from or denied the ability to collect evidence to support her claim and/or defend herself.³² Therefore the right to seek a redress of grievance is intertwined with Ms Perez right to life and to defend the same using an assistive device³³, which is guaranteed by, inter alia, the Second and Fifth Amendments³⁴ as well as the Privileges and Immunities Clause³⁵.

26- In a nutshell, the Defendant have failed or refused to show that Ms. Perez does not have the Constitutional and Medicare right to access the court in order to seek a redress of her grievances, to wit: (a) the right to prevent the nursing home from chemically restraining her, (b) the right to have a assistive device, i.e. a granny cam to marshal evidence in support thereof and (c) the right not to be removed from the nursing home against her will

27- There were no findings that Ms Perez' allegation of poverty were untrue;

³¹ *Goldberg v Kelly*, 397 US 254 (1970), *Grannis v. Ordean*, 234 U. S. 385 (1914),

³² Opportunity for Meaningful Hearing | U.S. Constitution Annotated | US Law | LII / Legal Information Institute

³³ *District of Columbia v Heller*, 554 US 570 (2008) citing William Blackstone1 Blackstone 136, 139–140 (1765). cited the arms provision of the Bill of Rights as one of the fundamental rights of Englishmen. See 1 Blackstone 136, 139–140 (1765). It was, he said, “the natural right of resistance and self-preservation,” *id.*, at 139, and “the right of having and using arms for self-preservation and defence,” *id.*, at 140; see also 3 *id.*, at 2–4 (1768). Other contemporary authorities concurred. See G. Sharp, Tracts, Concerning the Ancient and Only True Legal Means of National Defence, by a Free Militia 17–18, 27 (3d ed. 1782); 2 J. de Lolme, The Rise and Progress of the English Constitution 886–887 (1784) (A. Stephens ed. 1838); W. Blizard, Desultory Reflections on Police 59–60 (1785)..

³⁴ *Abigail Alliance v Von Eschenbach*, 445 F. 3d 470, 484 (DC Cir-2006) citing *Cruzan v Director, Missouri Department of Health*, 497 US 261 (1990)

³⁵ *Corfield v Coryell*, 6 F Cas 546, 551-552 (3rd Cir-- 1823) citing U.S. CONST. art. IV, § 2, cl. 1

- 28- Rule 3(b)(1) SCRCF states that : “ **A presumption that the plaintiff is unable to pay the fee required to file the action shall be created if the plaintiff's net household income is less than or equal to the Poverty Guidelines** established and revised annually by the United States Department of Health and Human Services and published in the Federal Register.
- 29- Furthermore, there were no court findings that Ms. Perez’ cause of actions , including her Motion seeking injunctive relief – are frivolous or do not involve fundamental Constitutional Rights³⁶.
- 30- The Federal Trade Commission³⁷ , the Administrative Conference of the United States³⁸ and the American Bar Association³⁹ have concluded . that the ban on non-lawyer representation harm consumers and the poor. The Defendants did not, and could not refute that finding.
- 31- There were no findings of fact or conclusions of law stating that Ms. Perez can’t prove no facts entitling her to relief.⁴⁰

IV

³⁶ Harrison v Harrison, 646 SE 2d 180, 373 SC 524 (SC COA- 2007)

³⁷ https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-comment-mr.carl-e.testo-counsel-rules-committee-superior-court-concerning-proposed-rules-definition-practice-law/v070006.pdf

³⁸ <https://www.acus.gov/document/nonlawyer-assistance-and-representation>

³⁹ <https://www.americanbar.org/news/abanews/aba-news-archives/2025/02/non-lawyer-services-close-justice-gap/>

⁴⁰ Skydive Myrtle Beach, Inc v Horry County , 826 SE 2nd 585, 426 SC 175 (2019) citing Spence v Spence , 368 SC 106, 117-127, 628 SE 2nd 869 (2006)

CONCLUSION

The facts show that the SC Court of Appeals has failed or refused to rule on several motions and is holding the case in an infinite abeyance.

Mr. Perez respectfully submits that the Supreme Court has jurisdiction where, as here, the court of appeals refused to grant an injunction as authorized by A.A.R.P. v. Trump, 605 US 91, 94 (2025). The US Supreme Court has explained that : “Appellate courts have jurisdiction to review interlocutory orders that have “the practical effect of refusing an injunction.” Carson v. American Brands, Inc., 450 U. S. 79, 84 (1981). A district court's inaction in the face of extreme urgency and a high risk of “serious, perhaps irreparable,” consequences may have the effect of refusing an injunction. 16 C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 3924.1, pp. 174, 180–181 (3d ed. 2012) (quoting Baltimore Contractors, Inc. v. Bodinger, 348 U. S. 176, 181 (1955)). The Loss of First Amendment rights constitutes irreparable injury .⁴¹

Respectfully Submitted ,

_____/S/_____
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⁴¹ Elrod v Burns , 427 US 347 , 373-74 (1976) (citing N.Y. Times Co. v. United States, 403 U.S. 713 (1971))