No. 19-335

IN THE
SUPREME COURT OF THE UNITED STATES

JAIDEEP S. CHAWLA,

PETITIONER,

V.

COURT OF APPEALS OF MASSACHUSETTS,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT FOR THE COMMONWEALTH OF MASSACHUSETTS

PETITION FOR A WRIT OF CERTIORARI

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PRO SE PETITIONER

QUESTIONS PRESENTED

1. Whether a state appeals court violates the Fourteenth Amendment to the U.S. Constitution by changing the composition of an appellate panel during the rehearing phase contrary to its own written rules and without notice or an opportunity to be heard.

2. Whether the Fourteenth Amendment to the U.S. Constitution requires recusal of a judge who was a participant in the executive action under review and was also a witness to disputed facts.

PARTIES

All parties are identified in the caption of this petition. Petitioner was the petitioner in the Supreme Judicial Court for the County of Suffolk and was the appellant in the Supreme Judicial Court for the Commonwealth of Massachusetts. Petitioner is a natural person.

RELATED CASES

Chawla v. *Court of Appeals of Massachusetts*
Supreme Judicial Court for the Commonwealth of Massachusetts
Case No. SJC-12488
Decision Date: April 11, 2019

Chawla v. *Court of Appeals of Massachusetts*
Supreme Judicial Court for the County of Suffolk
Case No. SJ-2017-0095
Decision Date: February 15, 2018

Commonwealth ex rel. Chawla v. *Gonzalez, et al.*
Court of Appeals of Massachusetts
Case No. 2015-P-0483
Decision Date: August 22, 2016

Commonwealth ex rel. Chawla v. *Gonzalez, et al.*
Suffolk Superior Court
Case No. 1484CV2090D
Decision Date: December 10, 2014

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Jaideep S. Chawla ("Petitioner"), acting *pro se*, respectfully petitions for a writ of certiorari to review the judgment of the Supreme Judicial Court for the Commonwealth of Massachusetts.[1]

OPINIONS BELOW

The judgment of the Supreme Judicial Court for the Commonwealth of Massachusetts was entered on April 11, 2019. Appendix to Petition ("App.") 1a. The opinion of the Supreme Judicial Court for the County of Suffolk was entered on February 15, 2018. App. 9a. The opinion of the Court of Appeals of Massachusetts was entered on August 22, 2016 (App. 11a), and rehearing was denied by a new panel on October 6, 2016 (App. 28a).

JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a), or, in the alternative, 28 U.S.C. § 1651(a). On July 2, 2019, Justice Breyer extended the time to file a petition for a writ of certiorari in this case to and including September 9, 2019.

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[1] Alternatively, Petitioner requests that this Court consider this petition as a petition for a writ of mandamus to the Court of Appeals of Massachusetts. 28 U.S.C. § 1651(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Fourteenth Amendment to the United States Constitution, which holds in pertinent part: "No State shall ... deprive any person of life, liberty, or property, without due process of law."

In addition, this case involves Rule 27(a) of the Massachusetts Rules of Appellate Procedure, which holds in pertinent part: "A petition for rehearing shall be decided by the quorum or panel which decided the appeal."[2]

STATEMENT OF THE CASE

This is the second time that Petitioner has requested relief from this Court in connection with a little-known Massachusetts drug law. *Chawla* v. *Heffernan, et al.*, 138 S. Ct. 281 (2017) (certiorari denied). Petitioner directs this Court to the text of and appendix to his prior certiorari petition, both of which contain relevant materials.

The Massachusetts Controlled Substances Tax (Mass. Gen. L. ch. 64K §§ 1-14 or the "CST") imposes a monetary penalty upon the acquisition or possession of marijuana or controlled substances

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[2] The Supreme Judicial Court for the Commonwealth of Massachusetts recently revised the Massachusetts Rules of Appellate Procedure effective March 1, 2019, including some of the text of Rule 27, but the changes do not affect this case.

within the jurisdiction of the Commonwealth of Massachusetts at a rate of $3.50 per gram of marijuana, $200.00 per gram of a controlled substance, and $2,000.00 for each fifty dosage units of a controlled substance. Mass. Gen. Laws ch. 64K, § 8. The Commissioner of the Massachusetts Department of Revenue is responsible for enforcement of the CST. Mass. Gen. Laws, ch. 64K § 2. Violation of the CST is a felony. See Mass. Gen. Laws, ch. 64K § 9.

On November 19, 1998, the Supreme Judicial Court for the Commonwealth of Massachusetts issued its opinion in the case of *Commissioner of Revenue* v. *Mullins*, 701 N. E. 2d 1, 428 Mass 406 (1998). Supreme Judicial Court for the Commonwealth of Massachusetts Appendix ("SJC App.") 43. Since *Mullins*, which determined that the CST has a criminal law component, there have been no criminal prosecutions pursuant to the CST brought in Massachusetts. Id. at 44.

According to uncorroborated statements in state and federal courts by the Massachusetts Attorney General, following *Mullins*, the Commissioner of the Massachusetts Department of Revenue "directed DOR to abstain from enforcing the Controlled Substances Tax." Id. at 47-48. To this day, except for written and verbal statements in court by the Massachusetts Attorney General's Office in connection with this case and related state and federal cases, there has been no public notice of this "direct[ive] ... to abstain from enforcing the

Controlled Substances Tax" (the "Secret DOR Directive"). Id.

Two years before *Mullins* in 1996, Eric Neyman (now a Justice of the Massachusetts Appeals Court) joined the Suffolk County District Attorney's Office, where he prosecuted drug and gang related cases. Id. at 43. Justice David Lowy of the Massachusetts Supreme Judicial Court, who was the single justice disposing of the case for which certiorari is sought, was one of Justice Neyman's colleagues in the Gang Unit of the Suffolk County District Attorney's Office. Supreme Judicial Court for the Commonwealth of Massachusetts Motion Requesting Judicial Notice dated September 11, 2018 ("September 2018 SJC Motion," (dkt. no. 18)) at ¶¶ 1, 2.

On April 29, 1999, more than five months after *Mullins*, Justice Neyman signed an indictment in a crack cocaine distribution case pursuant to Mass. Gen. Laws ch. 94C § 32A(c), which is a different Massachusetts drug law that has been regularly enforced. SJC App. 44. Along with every other state drug prosecutor, Justice Neyman declined to bring charges in 100% of cases pursuant to the CST. Id. At the same time when there was (according to the Massachusetts Attorney General) secret, state-wide non-enforcement of the CST, the Massachusetts Attorney General and the District Attorneys of the Commonwealth accepted millions of dollars from the U.S. Department of Justice's Equitable Sharing Program, which shares drug

money seized under federal law with state law enforcement agencies. Id. at 51-52. Money received by a state law enforcement agency in Massachusetts under the Equitable Sharing Program goes directly to a private bank account, while money paid pursuant to the CST is deposited in the Commonwealth's general fund. Id. at 112-19.

Acting *pro se*, Petitioner brought a *qui tam* action (the "*Qui Tam* Action") pursuant to Massachusetts law in June 2014. SJC App. 109. In the *Qui Tam* Action, Petitioner alleged that two defendants had failed to pay $1,200,000 pursuant to the CST owed upon their acquisition or possession of three kilograms of cocaine in the Commonwealth. Id. at 46-47. The defendants in the *Qui Tam* Action had been arrested and charged with violation of federal narcotics laws in March 2014, during which time they were found to be in possession of more than $1.5 million in cash that was taken into custody by the U.S. Department of Justice pending federal forfeiture proceedings. Id.

Having purchased a number of single-gram controlled substance tax stamps for $200.00 each, Petitioner submitted public and non-public evidence to Suffolk Superior Court showing that the defendants in the *Qui Tam* Action had not paid any portion of the money owed to Commonwealth pursuant to the CST. Id. During the proceedings in Suffolk Superior Court, the Massachusetts Attorney General filed a motion to dismiss and never disclosed

her acceptance of money from the Equitable Sharing Program. Id. at 49.

In moving to dismiss the *Qui Tam* Action, the Massachusetts Attorney General revealed the Secret DOR Directive for the first time and cited it as a basis for dismissal. Id. Suffolk Superior Court dismissed the *Qui Tam* Action in December 2014. Id. at 52.

After Petitioner appealed Suffolk Superior Court's dismissal of the *Qui Tam* Action, Petitioner and the Massachusetts Attorney General presented oral argument at the Court of Appeals of Massachusetts on January 11, 2016. Id. at 48. The Massachusetts Attorney General did not disclose her acceptance of money from the Equitable Sharing Program to the Court of Appeals of Massachusetts. Id. at 48-49.

During the January 11, 2016 oral argument, Assistant Attorney General Amy Crafts ("AAG Crafts") stated that, after *Mullins*, "the Commissioner of Revenue determined that there would be absolutely no enforcement of the Controlled Substances Tax either with respect to referrals from law enforcement or otherwise." Id. at 49. Justice Gary Katzmann then asked, "Where is that in the record, that the Commissioner has made that determination?" AAG Crafts responded that, "[i]t's in the brief. There's no support for it in the record." Id.

On August 22, 2016, the Court of Appeals of Massachusetts issued a memorandum and order (the

"Memorandum and Order") affirming the lower court's dismissal of the *Qui Tam* Action. App. 11a; *Commonwealth ex rel. Chawla* v. *Gonzalez, et al.*, 90 Mass. App. 1102, 56 N.E.3d 894 (2016). The Memorandum and Order did not examine whether the Massachusetts Attorney General had a financial conflict of interest. App. 11a-27a.

On September 9, 2016, Petitioner filed a petition for rehearing and related papers in the Court of Appeals of Massachusetts. SJC App. at 52. Petitioner presented four arguments in his petition for rehearing, including that (1) the Massachusetts Attorney General was wholly compromised by a financial conflict of interest given her acceptance of slightly more than $360,000 from the U.S. Department of Justice during the pendency of the *Qui Tam* Action, thereby necessitating disqualification of her entire Office; (2) the Massachusetts Attorney General was acting in contravention of Mass. Gen. Laws ch. 268 § 36 (the crime of compounding a felony); (3) the Secret DOR Directive violated Article XX of the Massachusetts Declaration of Rights; and (4) the Secret DOR Directive, by virtue of its secrecy and the criminal law component of the CST, violated the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. Id.

On September 13, 2016, the Court of Appeals of Massachusetts ordered "[t]he Commonwealth ... to respond to [Petitioner's rehearing papers] on or before 9/22/16." Id. at 102. Justices Gary

Katzmann, Judd Carhart, and C. Jeffrey Kinder signed this order. Id. The Massachusetts Attorney General responded on September 22, 2016 and asserted that she had no conflict of interest because there was no influence over her prosecutorial decision-making by the U.S. Department of Justice. Id. at 52-56. In her response, the Massachusetts Attorney General presented no evidence as to how or why she came to accept more than $360,000 from the Equitable Sharing Program at the same time that she moved to dismiss the *Qui Tam* Action.[3] Id.

While the petition for rehearing was being litigated, Justice Gary Katzmann departed the Court of Appeals of Massachusetts after receiving his commission for a judgeship on the U.S. Court of International Trade from the president on September 15, 2016. September 2018 SJC Motion at ¶ 3. Gary Katzmann had been confirmed by a voice vote in the U.S. Senate for a judgeship on the U.S. Court of International Trade on June 6, 2016. Id. During the same U.S. Senate session on June 6, 2016, Jennifer Choe-Groves was also confirmed by a

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[3] Petitioner submitted a reply arguing that the Massachusetts Attorney General's acceptance of more than $360,000 during the pendency of the *Qui Tam* Action in fact showed complete control over the Massachusetts Attorney General's prosecutorial decision-making by the U.S. Department of Justice. Id. The difference between the amount accepted by the Massachusetts Attorney General from the Equitable Sharing Program ($360,755) and Petitioner's potential bounty in the *Qui Tam* Action (30% of $1.2 million, or $360,000) is less than two-tenths of one percent. Id.

voice vote for a judgeship on the U.S. Court of International Trade (both had also been nominated on the same day and had a hearing on the same day). Id. at ¶ 4. Unlike Katzmann, who received his judicial commission more than one hundred days after Senate confirmation, Choe-Groves received her judicial commission from the president within two days after the U.S. Senate voice vote. Id.

On October 6, 2016, the Court of Appeals of Massachusetts denied the petition for rehearing and related papers. App. 28a. In a footnote to its October 6, 2016 order, the Court of Appeals of Massachusetts disclosed for the first time that "[t]his case was originally heard by a panel comprising Justices Katzmann, Carhart, and Kinder. Following Justice Katzmann's departure from the Court, Justice Neyman was added to the panel." Id.

On December 6, 2016, Petitioner filed a motion for recusal of Justice Neyman in the Court of Appeals of Massachusetts on grounds of violation of the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution and Massachusetts law governing recusal. SJC App. 103. On December 13, 2016, Petitioner's motion for recusal of Justice Neyman was denied by Justices Carhart, Kinder, and Neyman without any statement beyond the denial. Id.

On March 1, 2017, Petitioner filed a complaint in the nature of mandamus in the Supreme Judicial Court for the County of Suffolk against the Massachusetts Appeals Court (the "Mandamus

Action") seeking to compel both recusal of Justice Neyman and compliance with Rule 27(a) of the Massachusetts Rules of Appellate Procedure, which governs petitions for rehearing.[4] SJC App. at 7. After being assigned to Justice Kimberly Budd at the County Court for several months, Justice David Lowy (Justice Neyman's former colleague) was substituted as the presiding judge in the Mandamus Action without explanation. Id. at 5.

Meanwhile, Petitioner brought two separate civil actions in Suffolk Superior Court: First, a lawsuit seeking public records relating to payments accepted by the Massachusetts Attorney General from the Equitable Sharing Program; and second, a lawsuit seeking recovery of the bounty in the *Qui Tam* Action.[5] These lawsuits involved recusal motions filed by Petitioner for three judges based on 1) fundraising efforts for the Massachusetts Attorney General's first campaign prior to becoming a judge; 2) work experience at the same law firm as the Massachusetts Attorney General and her spouse as

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[4] The Massachusetts Attorney General (Maura Healey), whose Office has represented the Commonwealth and the Court of Appeals of Massachusetts throughout this litigation, is married to Justice Gabrielle Wolohojian of the Court of Appeals of Massachusetts. Motion Requesting Judicial Notice dated August 27, 2018 (dkt. no. 16). Justices Wolohojian and Neyman appeared together and made remarks at a public event advertising their respective positions on May 17, 2017. Id.

[5] This Court may take judicial notice of relevant proceedings in state court that are not part of the record. See *Smith* v. *Duncan*, 297 F. 3d 809, 915 (9th Cir. 2002).

well as campaign donations prior to becoming a judge; and 3) friendship with the Massachusetts Attorney General and her spouse. All three recusal motions were denied.[6]

On January 31, 2018, Petitioner filed a motion to vacate the judgment in the *Qui Tam* Action pursuant to Mass. R. Civ. P. 60(b)(4) in the County Court. Id. That motion, which was based on an alleged due process defect for failure to comply with Mass. R. App. P. 27(a), was denied and the Mandamus Action was dismissed by Justice Lowy on February 15, 2018 on procedural grounds without examination of any due process issues. App. 10a. Petitioner then appealed to the full Supreme Judicial Court for the Commonwealth of Massachusetts. SJC App. 6. On April 11, 2019, the Supreme Judicial Court for the Commonwealth of Massachusetts affirmed Justice Lowy's rulings in the Mandamus Action. App. 1a-7a.

Petitioner now seeks relief from this Court.

REASONS FOR GRANTING THE PETITION

Consistent with this Court's Rule 10(c), this case presents important questions of federal law decided by the Supreme Judicial Court for the Commonwealth of Massachusetts ("SJC") in ways

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[6] *Chawla* v. *Commonwealth, et al.*, No. SUCV-2017-3165E (Super. Ct. Suffolk Cty.); *Chawla* v. *Healey, et al.*, No. SUCV-2017-2087C (Super. Ct. Suffolk Cty.).

that conflict with relevant decisions of this Court. See *Fellers* v. *United States*, 540 U.S. 519, 521 (2004) (granting certiorari where lower court failed to apply *Massiah* v. *United States*, 377 U.S. 201 (1964)).

First, this Court long ago held and has consistently reaffirmed that the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution requires reasonable notice and an opportunity to be heard before deprivation of a property interest in any state government proceeding. *Logan* v. *Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982); *Mullane* v. *Central Hanover Trust Co.*, 339 U.S. 306, 313 (1950). In this case, however, the Court of Appeals of Massachusetts provided no notice or opportunity to be heard concerning the formation of a new appellate panel to dispose of the petition for rehearing filed by Petitioner. See Mass. R. App. P. 27(a) ("A petition for rehearing ***shall*** be decided by the quorum or panel which decided the appeal.") (emphasis added).

When called upon to correct this blatant violation of a fundamental right through a motion pursuant to Mass. R. Civ. P. 60(b)(4) (which is analogous to Fed. R. Civ. P. 60(b)(4)), the SJC hid behind procedural smoke and mirrors and did not deign to mention the words "due process" or "notice." See *United Student Aid Funds, Inc.* v. *Espinosa*, 559 U.S. 260, 271 (2010) ("Rule 60(b)(4) applies only in the rare instance where a judgment is premised either on a certain type of jurisdictional error or on violation of due process that deprives a party of

notice or the opportunity to be heard.") (internal citations and quotation marks omitted); *Field* v. *Mass. Gen. Hosp.*, 469 N. E. 2d 819, 821, 393 Mass. 117, 118 (1984).

The decision below therefore conflicts with relevant decisions of this Court setting forth the Fourteenth Amendment's requirements of reasonable notice and an opportunity to be heard appropriate to the nature of a given state government proceeding prior to deprivation of a property interest. The question of whether a state appeals court must provide notice when acting contrary to its own rules is an important federal issue, because if any court in the United States can suddenly and surreptitiously substitute judges and brazenly violate its own rules to reach a decision, then the United States is a republic in name only.

Second, the decision below conflicts with this Court's recusal jurisprudence under the Due Process Clause, which the lower courts failed to apply. Despite having knowledge of disputed and material facts concerning the secret non-enforcement of the CST (through his position as a state narcotics prosecutor before, during, and after *Mullins*), Justice Neyman parachuted into the rehearing phase and entered an order disposing of the appeal of the dismissal of the *Qui Tam* Action. See *In re Murchison*, 349 U.S. 133, 138 (1955).

The recusal question is an important federal issue because Justice Neyman became involved in the appeal of the dismissal of the *Qui Tam* Action at

the exact moment when the issue of improper payments from the U.S. Department of Justice to the Massachusetts Attorney General was raised for the first time. Justice Neyman's participation in the appeal of the dismissal of the *Qui Tam* Action and the SJC's subsequent welcoming of that participation pose a significant threat to public confidence in the administration of justice for the simple reason that the entire ordeal reeks of a shabby cover-up (because it is one). See *Murchison*, 349 U.S. at 136 ("[J]ustice must satisfy the appearance of justice.") (internal quotation marks and citations omitted).

I. The Decision Below Conflicts With This Court's Due Process Jurisprudence Requiring That Reasonable Notice Be Provided To Apprise Interested Parties Of The Pendency Of State Government Action And To Afford Them An Opportunity To Present Their Objections Prior To Deprivation Of A Property Interest.

In *Mullane*, this Court memorialized the reasonable notice and opportunity to be heard requirements of the Due Process Clause of the Fourteenth Amendment. 339 U.S. at 313 ("An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."). Once

again, this Court is "faced with what has become a familiar two-part inquiry: [This Court] must first determine whether [Petitioner] was deprived of a protected interest, and, if so, what process was his due." *Logan*, 455 U.S. at 428.

As noted in *Logan*, "[t]he first question ... was affirmatively settled by the *Mullane* case itself, where the Court held that a cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause." *Id.* The sudden and surreptitious substitution of Justice Neyman into the appellate panel disposing of the appeal of the dismissal of the *Qui Tam* Action, in view of the straightforward requirement of Mass. R. App. P. 27(a), represents the kind of deprivation at issue in both *Mullane* and *Logan*.

While it is true, as the SJC found, that Petitioner could have appealed the ruling of the newly formed panel through an application for further appellate review to the SJC, that finding ignores the fundamental point: Petitioner was entitled as a matter of state law to the disposition of his petition for rehearing by the panel or quorum which decided the appeal. See *Logan*, 455 U.S. at 430 ("The hallmark of property ... is an individual entitlement grounded in state law, which cannot be removed except 'for cause.'"). Petitioner's entitlement was set forth in Mass. R. App. P. 27(a), which holds that "[a] petition for rehearing shall be decided by the quorum or panel which decided the appeal."

Having established deprivation of property, the next inquiry is what sort of process Petitioner was due. See *Logan*, 455 U.S. at 428. The SJC would have you believe that further appellate review is somehow an adequate post-deprivation remedy for the failure of the Court of Appeals of Massachusetts to comply with its own rehearing rules. As this Court held in *Logan*, "[w]hat the Fourteenth Amendment does require, however, is an opportunity ... granted at a meaningful time and in a meaningful manner, for [a] hearing appropriate to the nature of the case." *Id.* at 437. The Court of Appeals of Massachusetts disposed of Petitioner's appeal of the dismissal of the *Qui Tam* Action at the same time that it provided notice of Justice Neyman's participation, thereby failing to provide reasonable notice and foreclosing any opportunity for Petitioner to object at a meaningful time.

The Massachusetts Rules of Appellate Procedure required that Petitioner file any application for further appellate review (or a motion for an extension of time, which is what Petitioner filed) while the petition for rehearing was still pending. See Mass. R. App. P. 27.1(a) ("Within 21 days after the date of the decision of the Appeals Court, any party to the appeal may file an application for further appellate review of the case by the Supreme Judicial Court."). That is, if no extension request had been filed by Petitioner concerning an application for further appellate review, he would have been forced to file an

application for further appellate review prior to notice of Justice Neyman's parachuting act: Only in Massachusetts, land of the undocumented judge, can a court call extensions of time to file an application for further appellate review an adequate post-deprivation remedy for suddenly and surreptitiously suspending a court's own rules. See *Fuentes* v. *Shevin*, 407 U.S. 67, 81 (1971) ("If the right to notice and a hearing is to serve its full purpose, then, it is clear that it must be granted at a time when the deprivation can still be prevented. ... But no later hearing and no damage award can undo the fact that the arbitrary taking that was subject to the right of procedural due process has already occurred.").

The SJC found another post-deprivation remedy that Petitioner purportedly failed to make use of: "Specifically, he could have filed an appropriate postjudgment motion in the Superior Court, see Mass. R. Civ. P. 60, 365 Mass. 828 (1974), and appealed from any adverse ruling." App. 5a. Apparently, a litigant deprived of due process by an intermediate state appeals court should find his remedy back in the trial court, even though the state's highest court has exclusive supervisory authority over all inferior courts. Mass. Gen. Laws ch. 211 § 3.

Now is probably a good time to remind you that Petitioner filed two separate lawsuits during 2017 related to the *Qui Tam* Action in Suffolk Superior Court. In those lawsuits, Petitioner had recusal motions denied for three separate judges:

One judge who, before becoming a judge, held a campaign fundraiser at her home for Maura Healey (then a candidate for Massachusetts Attorney General) and participated in a different fundraiser for Healey at her law firm; another judge who is a former colleague of the Massachusetts Attorney General and her spouse and also donated to Healey's campaign prior to becoming a judge; and still one more judge who is a friend of the Massachusetts Attorney General and her spouse.[7] Are you noticing a trend developing? Have a look at PACER if you think federal district court is somehow a remedy.

Notwithstanding the SJC's supervisory role and the fact that Petitioner keeps landing conflicted judges who refuse to recuse in Suffolk Superior Court (and elsewhere), the SJC was still obligated as a matter of law to vacate the judgment in the appeal of the dismissal of the *Qui Tam* Action. See *Graciette* v. *Star Guidance, Inc.*, 66 FRD 424, 426 (S.D.N.Y. 1975) (noting void judgment may be challenged by collateral attack ***in any court*** where its validity is an issue); *Field,* 469 N. E. 2d at 821, 393 Mass. at 118 ("Rule 60(b)(4) allows relief only from void judgments. A court ***must*** vacate a void judgment. ... ***No discretion is granted by the rule.***") (emphasis added); Wright, Miller, and Kane,

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[7] *Chawla* v. *Commonwealth, et al.*, No. SUCV-2017-3165E (Super. Ct. Suffolk Cty.); *Chawla* v. *Healey, et al.*, No. SUCV-2017-2087C (Super. Ct. Suffolk Cty.). Either the dockets of these cases or a simple internet search will yield this indisputable information.

11 Federal Practice and Procedure at § 2862 ("There is no question of discretion on the part of the court when a motion is under Rule 60(b)(4).").

In order to bless this manifest corruption of the judicial process, the SJC twisted itself into quite a pretzel. First, the SJC pretended that Mass. R. App. P. 27(a) did not count for anything. Second, the SJC put all of its weight behind Mass. R. App. P. 24(a) — try not to laugh when you re-read Mass. R. App. P. 27(a).[8] Meanwhile, the SJC appears to have solved the problem for all litigants except for Petitioner by adopting Rule 24(b), which was effective March 1, 2019 and holds that "[i]f a justice who has participated in a case becomes unable to participate further, then the Chief Justice of the appellate court may substitute another justice."

Of course, neither the Massachusetts Attorney General nor the SJC can point to a precedent for any situation remotely resembling this train wreck of a judicial proceeding. The Massachusetts Attorney General only repeats that there was no problem with Justice Neyman's sudden and surreptitious

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[8] Rule 24(a) holds that "[w]henever the justices before whom a case has been heard so desire, others of the justices may be called in to take part in the decision, upon a perusal of the record and briefs, and the recording of any oral argument, without reargument." A recently effective amendment substituted the word "review" for "perusal" in Rule 24(a).

Rule 27(a) holds that "[a] petition for rehearing ***shall*** be decided by the quorum or panel which decided the appeal" (emphasis added).

substitution. The legal authority for this comical conclusion is that whatever the Massachusetts Attorney General utters from her perch in Boston is gospel, so hurry up and genuflect.

The inescapable conclusion is that the judgment entered in the appeal of the dismissal of the *Qui Tam* Action by the Court of Appeals of Massachusetts is void for failure to conform to the requirements of the Due Process Clause of the Fourteenth Amendment. See *Espinosa*, 559 U.S. at 271; *Field,* 469 N. E. 2d at 821, 393 Mass. at 118. The SJC's decision is in direct conflict with this Court's due process jurisprudence requiring reasonable notice and an opportunity to be heard prior to state government deprivation of a property interest. For that reason, this Court must intervene to put a stop to the SJC's embarrassing endorsement of the void judgment.

II. The Reasonable Notice Question Is An Important Federal Issue.

When any court suddenly and surreptitiously substitutes a judge and then disposes of a case without notice or an opportunity to be heard, a reasonable person could and should suspect that the proceeding is not on the level. In this case, a straightforward due process violation was compounded by what was transpiring at the moment when Justice Neyman parachuted into the rehearing phase of the appeal of the dismissal of the *Qui Tam*

Action: Petitioner had brought new information that was unavailable in the trial court regarding improper and illegal payments by the U.S. Department of Justice to the Massachusetts Attorney General. The original appellate panel of Justices Katzmann, Carhart, and Kinder agreed with Petitioner that this new information warranted further inquiry and those justices ordered the Massachusetts Attorney General to respond.

Two days after that order, Justice Katzmann resigned from the Court of Appeals of Massachusetts and accepted his commission as a judge on the U.S. Court of International Trade. Although a judge getting a new job is an ordinary occurrence, it is not everyday that a judge (Katzmann) waits one hundred days for his federal judicial commission. Meanwhile, a judge who was nominated, had a hearing, and was confirmed on the same days as Katzmann (Jennifer Choe-Groves) received her judicial commission for the same court just two days after Senate confirmation of both Choe-Groves and Katzmann — nothing to see here, move along.

It is apparent that the executive branch of the United States pulled strings to manipulate the outcome of the appeal of the dismissal of the *Qui Tam* Action. Those who chose this course of action were not concerned with adherence to the law, because aside from violating the federal criminal code, there was a total lack of concern for the requirements of the Due Process Clause, namely Petitioner's entitlement under Mass. R. App. P.

27(a). Indeed, had there been a period of notice preceding Justice Neyman's involvement in the appeal of the dismissal of the *Qui Tam* Action prior to final disposition, there would be no question of a void judgment.

Instead, Petitioner was ripped off by his own government not once, but twice: First, by the U.S. Department of Justice and the Massachusetts Attorney General, which worked in tandem to steal his whistleblower bounty; and second, by the court system itself, which brazenly rigged the outcome of his appeal without even attempting to conform to the requirements of due process of law. If this Court, like the SJC, is willing to tolerate this kind of lawlessness, then let it be known that the United States of America is a nation of reprobates, not laws. See *Olmstead* v. *United States*, 277 U.S. 438, 485 (1928) (Brandeis, J., dissenting) ("If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy.").

III. The Decision Below Conflicts With This Court's Recusal Jurisprudence Under The Due Process Clause.

Justice Neyman's recusal was and is required under the Due Process Clause, because, based on representations made by the Massachusetts Attorney General, Justice Neyman sat in review of his own conduct as a state narcotics prosecutor and

either has or should have personal knowledge of disputed facts. See *Williams* v. *Pennsylvania*, 136 S. Ct. 1899, 1913, 195 L. Ed. 2d 132, 149-50 (2016) (Roberts, C.J., dissenting) ("First, *Murchison* found a due process violation because the judge (sitting as grand jury) accused the witnesses of contempt, and then (sitting as judge) presided over their trial on that charge. We held that such prejudgment violated the Due Process Clause. Second, *Murchison* expressed concern that the judge's recollection of the testimony he had heard as grand jury was 'likely to weigh far more heavily with him than any testimony given' at trial. For that reason, the Court found that the judge was at risk of calling 'on his own personal knowledge and impression of what had occurred in the grand jury room,' rather than the evidence presented to him by the parties.") (citations omitted); *Murchison*, 349 U.S. at 138.

According to repeated representations of the Massachusetts Attorney General, the CST was secretly suspended following the SJC's decision in *Mullins*. Justice Neyman (as a state narcotics prosecutor) carried out this secret policy of non-enforcement of the CST and then he (sitting as a judge in the appeal of the dismissal of the *Qui Tam* Action) determined that the same, secret non-enforcement policy was not unlawful. See *Murchison* at 136. It would be very strange if our legal system permitted a prosecutor to carry out an unlawful executive directive and then permitted him to review

the same, unlawful directive as an appellate judge. See *id.*

According to the SJC, which briefly touched on the recusal issue in a footnote, because some of these events occurred twenty years ago and in different counties in Massachusetts, there is no reason to require recusal. But this conclusion, like much of what the Commonwealth of Massachusetts does, ignores basic realities: The CST is a state law that applies to all of Massachusetts. It is of no consequence whether Justice Neyman partook in the secret non-enforcement of the CST in Boston, Barnstable, or the Berkshires.

The elapse of time, too, does not change the fact that repeated statements in court made by the Massachusetts Attorney General implicate Justice Neyman in the fact pattern which he reviewed. Similar to the judge in *Murchison*, Justice Neyman wore two hats: A prosecutor carrying out an executive directive and a judge reviewing the same executive directive. These dual roles placed Justice Neyman in a capacity to prejudge that any honest and fair court would find intolerable under the Due Process Clause.

In addition, similar to the judge in *Murchison*, Justice Neyman had personal knowledge of disputed facts regarding how and why the CST was secretly suspended. These disputed facts include the extent to which payments from the U.S. Department of Justice have influenced the enforcement or non-enforcement of the CST. Alternatively, if the

Massachusetts Attorney General is lying about the secret suspension of the CST (incredibly, we still do not know about that), Justice Neyman would be aware of the lie because he was a state narcotics prosecutor during the relevant period.

Justice Neyman's personal knowledge of disputed facts disqualified him from participation in the appeal of the dismissal of the *Qui Tam* Action, because there was an unacceptable risk that he would call upon personal knowledge regarding the CST rather than the evidence presented by the parties. See *Williams*, 136 S. Ct. at 1913, 195 L. Ed. 2d at 149-50; *Murchison*, 349 U.S. at 138. Moreover, the manner in which Justice Neyman parachuted into the appeal of the dismissal of the *Qui Tam* Action moved his participation from questionable to comical.

Like the issue of reasonable notice, the SJC did not deign to explore or even mention any of these issues, let alone the words "due process." For these reasons, the decision below conflicts with this Court's recusal jurisprudence under the Due Process Clause.

IV. The Recusal Question Is An Important Federal Issue.

In recent years, this Court's recusal jurisprudence concerning the Due Process Clause has befuddled lower courts and litigants alike, not to mention some of this Court's own members. See, *e.g.*, *Williams*, 136 S. Ct. at 1913, 195 L. Ed. 2d at

149-50. This Court would be wise to both repair the damage caused by this train wreck of a case and to use this opportunity to clarify what the Due Process Clause specifically requires with respect to recusal.

There is, of course, something deeper and more sinister at play in this case than a recusal dispute about the surprise participation of Justice Neyman. Indeed, in a parallel state court case concerning recovery of the bounty in the *Qui Tam* Action, a Boston-based judge (and friend of the Massachusetts Attorney General) closed her opinion by warning future courts against opening "a Pandora's Box." *Chawla* v. *Commonwealth, et al.*, No. SUCV-2017-3165E (Super. Ct. Suffolk Cty., Dec. 20, 2018).

You would have to be hiding under a rock for the past few years to not see, hear, and feel the disbelief, disillusionment, and disgust that we, the unwashed masses, have for our own justice system. Former Judge Richard Posner was right about the way that courts in this Country treat non-lawyers: We are a "kind of trash" to the clueless and crooked clowns who control the courts. As one former member of this Court was fond of saying, "garbage in, garbage out."

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted.

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