08/24/21
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NO. 21-301

IN THE

SUPREME COURT OF THE UNITED STATES

PASTOR MARIO L. SIMS,

Petitioner,

v.

BANK OF NEW YORK

Respondent

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the conduct of the 7th Circuit Court of Appeals was so outrageous that due process principles would absolutely bar the anonymous three judge panel's ability to issue an Opinion and sanction a Plaintiff when the facts and/or evidence were not grounded in reality.

The American judicial system has historically been open to the public and the U.S. Supreme Court has continually affirmed the presumption of openness.

When the anonymous panel of the 7th Circuit Court of Appeals operated in secrecy it ran counter to the very principles of openness and becomes a slippery slope of judicial tyranny. This is a case of first impression.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Pastor Mario L. Sims respectfully requests the issuance of a writ of certiorari to review the judgment and sanction of the United States Court of Appeals for the Seventh Circuit.

DECISION BELOW

The decision of the United States Court of Appeals for the Seventh Circuit is published at *Mario Lamont Sims v. Bank of New York,* No. 20-3158 (7th Cir. 2021) and is reproduced at Pet. App.1a.

JURISDICTION

The Seventh Circuit entered its anonymous Order on April 28, 2021 and ordered Pastor Mario Sims to Show cause why he should not be sanctioned. See Pet. App. A

The Seventh Circuit denied Pastor Sims Petition for Rehearing and Petition for Rehearing Enbanc on May 28, 2021. See Pet. App. B

The Seventh Circuit granted the bank's bill of costs June 3, 2021. See Pet. App. C

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AMENDMENT INVOLVED

The U.S. Constitutions First Amendment, which guarantees a cherished freedom-the right to speak freely and openly, was intended to insure free and open discussion of government affairs and to foster extensive public scrutiny of the government. When Judges, tasked with deciding an appeal become angered when the appellant supports his argument of judicial racism with articles written by mainstream media about racism in the judiciary, should not retaliate by creating non existence facts and evidence to rule against and sanction.

Judicial conduct is certainly a matter of public concern, as is the operation of a judicial conduct. The concept of judicial integrity may be described as the role of the judiciary in leading by example. A court can invalidate or rectify certain kinds of offensive official action on the grounds of judicial integrity. In this way, judges act as a beacon or a symbol to society for ensuring lawful acts by the forces of government. Thus, a court is wise to be cognizant of how its actions will affect the public perception of the judicial system. A court may not sanction or participate in illegal or unfair acts. There are two underlying goals of judicial integrity. First, on a public relations level, the court wishes to be regarded as a symbol of lawfulness and justice. Second, the court has the closely related concern of not appearing to be allied with bad acts. *See, e.g., Olmstead v. United States,* 277 U.S. 438, 483-85 (1928) (Brandeis, J., dissenting); *United States v. Calandra,* 414 U.S. 338, 357-60 (1973) (Brennan, J., dissenting). Brandeis' major concern was not the right of the individual defendants; rather, he stressed the symbolic protection of the entire government through preservation of "the purity of its courts.'" *Casey v. United States*, 276 U.S. 413, 425 (1928) (Brandeis, J., dissenting); see also Olmstead, 277 U.S. at 471-85 (Brandeis, J., dissenting).

Certainly, a panel with three judges cloaked in secrecy, that creates a record from nonexistent facts, is not constitutional.

THE MODEL CODE OF JUDICIAL CONDUCT

The Code of Judicial Conduct states that a judge should be faithful to the law and maintain professional competence in it. Accordingly, flagrant legal error, legal error motivated by bad faith, or a continuous pattern of legal error will be considered to violate the Code of Judicial Conduct. Otherwise, though, legal error will be dealt with through the appellate process, so as to maintain judicial independence. Independence, Impartiality, and Integrity By Jeffrey M. Sharman Inter-American Development Bank Washington, D.C. Sustainable Development Department State, Governance and Civil Society Division Judicial Reform Roundtable II May 19-22, 1996.

STATEMENT OF THE CASE

Pastor Mario Sims is a black, Honorably discharged, United States Marine Corps veteran who obtained a Veteran Administration certificate approving VA financing for a home he and his wife desired to purchase in 2008.

He has also been an outspoken civil rights activist since 1988.

As a result of his activism, in 1994, he was wrongly convicted and imprisoned for 12 and one half years.

While in prison he used the courts to attack that conviction.[1]

Pastor Sims and his wife had signed a three year land contract for the home in 2008, allowing time to determine if there were any problems with the home and to complete the mortgage process.

Pastor Sims had put down $12,000.00 cash in November of 2008 and made monthly timely payment of $1,400.00 a month beginning in December 2008, totaling $26,000.00, until it was determined in December 2009, the home's seller, a white real estate agent, had not used the money to pay his bank, Bank of New York, that held his mortgage.

Since January of 2010, Pastor Sims and his wife have attempted to complete the purchase of the home using his VA guarantee, but because of racism by the Bank of New York, the servicer, Shellpoint, their employees and agents were

1 A suit seeking damages for his wrongful conviction is proceeding in the St. Joseph County (Indiana) Superior Court, Cause 71D06-2001-CT-00024, filed after the investigating office admitted to planting evidence to a mainstream media reporter in 2019.

prevented from doing so from 2010 until the present.

To stave of sheriff sale, Pastor Sims filed Chapter 13 in 2018.

After his appeal to the Northern District Court of Indiana was denied, he appealed to the U.S. Court of Appeals for the 7th Circuit.

In his opening brief, Pastor Sims argued that racism was behind his inability to buy the home and pointed that the bank and Shellpoint attorneys, all of whom were white, arguing before all white courts, used a dog whistle to incite the white courts by pointing out Pastor Sims has used the "race card" and played to racial stereotypes portraying Pastor Sims as an angry loud black man that had lived in the "house free."

That court issued an Opinion written anonymously on April 28th that falsely claimed Pastor Sims "plotted with" (without any factual basis) the white real estate agent, John Tiffany, that had actually stolen Pastor Sims money, even though the record shows Pastor Sims requested an investigation into that misappropriation, and Mr. Tiffany, the Indiana license Realtor, was sanctioned by the Indiana Attorney General.

The record also show Pastor Sims not only had applied for a VA loan which neither the Bank of New York nor the servicer responded with the paperwork needed to complete the purchase, he had offered cash to purchase the house.

The Opinion claimed falsely with no evidence on the record before the panel that Pastor Sims "lacked funds to pay the mortgage anyway", when in fact he had made cash offers to purchase the home that were on the record and rejected, and ignored that in 2013 Pastor Sims and his wife bought and paid off a 50,000 square foot church on the historic registry in South Bend, Indiana.

April 28, Opinion ignored that the Bankruptcy Court Judge had only recused himself after he ignored Pastor Sims' factually unchallenged motion for recusal, and made rulings, then sua sponte recused himself.

The April 28, Opinion claimed Mr. Sims filed almost 200 legal cased, while not naming one that was ever determined to be frivolous, failed to acknowledge that Mr. Sims has fought what he believes is his wrongful conviction only since 1994 availing himself of the Courts as allowed by the United States Constitution, to challenge his wrongful conviction, there has never been a ruling by any court on the merits of the underlying facts of his wrongful conviction, and now punishing him for doing so by calling his efforts "frivolous" with not one Order supporting that finding cited.

The anonymous panel ignored the record for review showing that the Bankruptcy Court had stayed discovery and denied his motions for discovery in July of 2019, falsely claiming, contrary to the record for review Pastor Sims had a year to conduct discovery before the trial in January of 2020, Finally, the April 28 the

anonymous panel Opinion chills the valid exercise of the constitutional rights of free dom of speech and petition for the redress of grievances because Pastor Sims quoted, not his opinion, but the opinions of other judges and journalists regarding the fact that the 7th Circuit and the Northern District of Indiana has no jurist of color, giving the appearance of racism. An appearance recently confirmed by the April 27, 2021, letter by The Leadership Conference on Civil and Human Rights, stating as follows:

Dear Senator,

On behalf of The Leadership Conference on Civil and Human Rights, a coalition of more than 220 national organizations committed to promoting and protecting the civil and human rights of all persons in the United States, we write to express our strong support for the confirmation of Candace Jackson-Akiwumi to the U.S. Court of Appeals for the Seventh Circuit. Ms. Jackson-Akiwumi is highly qualified and has an exemplary record of defending and protecting the rights of all people. She is currently in private practice, though she spent most of her legal career as a public defender. For 10 years, Ms. Jackson-Akiwumi served as a staff attorney for the Federal Defender Program for the Northern District of Illinois, Inc., representing more than 400 clients who could not afford counsel. She has clerked for Judge David Coar of the U.S. District Court for the Northern District of Illinois and Judge Roger Gregory of the U.S. Court of Appeals for the Fourth Circuit. She is a graduate of Yale Law School and Princeton University. Ms. Jackson-Akiwumi is also an involved member of her community, as demonstrated by her service on the boards of the Federal Bar Association, the Black Women Lawyers' Association of Greater Chicago, and the Just the Beginning Foundation. She has a demonstrated commitment to upholding civil and human rights, and her experience at all levels of the federal court system qualifies her to fill this seat on the Seventh Circuit.
Ms. Jackson-Akiwumi has demonstrated her commitment to civil and human rights throughout her career. As a law student, she helped plan a conference at Yale Law School called "The Legacy of Brown v. Board of Education: Reflections on the Last Fifty Years." Ten years later, she reflected further on this landmark civil rights case, writing, "we must continue to fight for equal opportunity with an energy that should match those who fought for civil rights fifty and sixty years ago." Indeed, she has dedicated her career to pursuing equal justice. If confirmed, Ms. Jackson

Akiwumi would be the first Seventh Circuit judge who spent most of their career as a public defender. Federal public defenders play a critical role in our criminal-legal system yet are underrepresented on the federal bench. For every former public defender on the federal bench, there are at least four former prosecutors.

Overall, just more than 2 percent of all federal appellate judges have experience as a public defender. Our judiciary needs to reflect the diversity of the legal profession, including more judges experienced in ensuring that defendants have counsel and that their rights are recognized in federal court.
Ms. Jackson-Akiwumi's experience would bring significant value to the Seventh Circuit. Public defenders play a meaningful role in our legal system by helping their clients navigate the complexities of federal law and ensuring their access to justice.

Ms. Jackson-Akiwumi said of her work at the Federal Defender Program: "I am a counselor, helping clients to navigate difficult choices," and "I am an investigator: hunting down facts and evidence... I am a teacher, introducing clients and their families to the federal court system... I am a lay social worker: many of our clients have disadvantaged backgrounds, extensive mental health histories, substance abuse issues, and other everyday challenges." This work has been meaningful to her — as she herself explained: "Representing clients and safeguarding the Sixth Amendment and Fourth Amendment is incredibly rewarding and meaningful and important work... I cherish the ability to walk client s through what were some of the most harrowing days of their life, when they were being judged for some of their worst days." During her time as a public defender, M s. Jackson-Akiwumi demonstrated a deep commitment to upholding the rights of co mmunities that have been marginalized by the criminal-legal system, including Black and Brown communities. She successfully argued that robbery stings run by the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) were unfairly targeting people by their race. During a nearly two year period, 26 people in the Chicago area had been incarcerated as a result of the ATF stings, and all of them were either Black or Hispanic.A court later found that there was a "strong showing of potential bias" in the stings.This order, and the arguments advanced by Ms. Jackson-Akiwumi, illuminated the discriminatory practice of selective prosecution of people by their race. She has used this experience to train other defense lawyers on how to spot racial bias in proceedings. Her experience as a public defender would bring a much-needed perspective to the currently all-white Seventh Circuit created by the previous administration. In addition to the professional experience Ms. Jackson-Akiwumi would bring to the bench, it is notable that if confirmed she would be the only judge of color on the Seventh Circuit and would be only the second judge of color to ever serve on that court. She would also be the first Black woman to be confirmed to a federal appellate court in nearly 10 years.

In 2016, President Obama nominated Myra Selby, the first woman and first Black justice on the Indiana Supreme Court, to serve on the Seventh Circuit. Unfortunately, her nomination expired, and the Seventh Circuit has had an all-white bench since 2017. More than 7.5 million people of color reside within the court's jurisdiction, including 2.8 million " Black residents, 3.1 million Latino reside nts, and 1 million Asian American residents. It is shameful that any 21st-century federal court has an entirely White bench. Our courts depend upon the public's trust for legitimacy, and it is vital that decision-makers share characteristics with the people their decisions impact — especially for those who are a party to a case.

Diversity helps improve decision-making and ensures that judicial rulings reflect a broad set of viewpoints, particularly from perspectives that have historically been left out of the federal judiciary — including Black, Brown, and Asian American and Pacific Islander individuals, women, LGBTQ people, and people with disabilities. The nomination of the eminently qualified Ms. Jackson-Akiwumi is a step towards ensuring that our federal judiciary reflects the rich diversity of our nation.

Throughout her career, Ms. Jackson-Akiwumi has proven to be an experienced, dedicated defender of the rights of all people. She has demonstrated a commitment to upholding constitutional and legal rights and protections for defendants that is needed on the federal bench. We strongly urge the Senate to confirm Candace Jackson-Akiwumi to the Seventh Circuit. If you have any question s or would like to discuss this matter further, please contact Lena Zwarensteyn, Senior Director of the Fair Courts Campaign, at (202) 466-3311. Thank you for your consideration.

Sincerely

Wade Henderson, Interim President & CEO Executive
LaShawn Warren, Vice President of Government Affairs

"Jackson-Akiwumi would be rare judge who was a public defender highlighted at her Senate confirmation hearing"

That the Chicago-based federal appeals court is all-white was spotlighted at Jackson-Akiwumi's Senate Judiciary Committee confirmation hearing.

By Lynn Sweet Apr 28, 2021, 8:06pm CDT

WASHINGTON — The Wednesday confirmation hearing for Candace Rae Jackson-Akiwumi, nominated by President Joe Biden to sit on the 7th Circuit Court of Appeals, threw a spotlight on the fact that the Chicago-based panel is all white and the lack of Black women and criminal defense attorneys in the federal judiciary. Sen. Richard Blumenthal, D-Conn., highlighted the absence of diversity on the 7th, which handles cases from Illinois, Indiana and Wisconsin.

The 7th, said Blumenthal, "presides over 7.5 million people of color, and its jurisdiction includes Chicago, Milwaukee and Indianapolis among other cities, yet all of the judges currently sitting on the court are white in 2021."I am dumbstruck. It's breathtaking that a federal circuit court in any part of our country is all white," Blumenthal said. If confirmed, Jackson-Akiwumi will be the very rare judge who brings the perspective of a public defender to the bench and one of only a few Black womenever on federal appeals courts. It's believed that in the history of the U.S., there have been only eight Black female appeals judges. A partner in a D.C. law firm since last year, Jackson-Akiwumi spent a formative 10 years, between 2010 and 2020, as a staff attorney at the Federal Defender Program for the Northern District of Illinois. If confirmed, as expected — Senate Judiciary Committee Chair Dick Durbin recruited her for the position — she will mark two milestones: Jackson -Akiwumi will be only the second Black woman ever on the 7th Circuit and will be the only person of color on the 11-member Chicago appeals court. Jackson-Akiwumi and U.S. District Court Judge Ketanji Brown Jackson, Biden's pick to replace Attorney General Merrick Garland on the appeals court in Washington — and mentioned as a prospect for a Supreme Court vacancy — were among five of Biden's court picks before the Senate Judiciary Committee on Wednesday. They are both former public defenders. Durbin called it a "historic day" because the Biden slate of nominees were all people of color and also represented "demographic and professional diversity." Former President Donald Trump, Durbin noted, did not nominate any Black appeals court judges among the 54 he tapped in his four years. Durbin also pointed out how — and this is my word — Republicans stole a seat on the 7th Circuit after a Black female judge was nominated for it in order to keep it open for a GOP president to fill. Ex-President Barack Obama nominated Myra Consetta Selby to the 7th Circuit on Jan. 12, 2016 — with almost a year left to his term. Selby, the first Black associate justice on the Indiana Supreme Court, would have been, if confirmed, the second Black woman on the 7th, with retired Judge Ann Williams the first and, so far, only.Republicans, who then controlled the Senate, never gave Selby a hearing, and her nomination expired when Obama left of fice. It's the same scheme the GOP- run Senate used to block Obama's nomination of Garland for the Supreme Court in order to keep the seat open for a Republican nominee.Trump filled the spot — with Amy Coney Barrett, who went on to become his third Supreme Court pick.

Jackson-Akiwumi and Jackson are among those in Biden's first wave of 11 judicial nominations, where he made good on a promise to diversify the white, male-dominated federal bench as well as to draw on lawyers with different backgrounds. Jackson-Akiwumi, a graduate of Princeton and Yale law school, was asked during the hearing about the role of race in judicial decisions. "I don't believe race will play

a role in the type of judge that I would be if confirmed," she said. "I do believe that demographic diversity of all types, even beyond race, plays an important role in increasing public confidence in our courts and increases the public's ability to accept the legitimacy of court decisions."It's very akin to the way in which we guarantee a jury of one's peers." She also said that "demographic diversity of all types" creates role models for "anyone aspiring to public service." In her Senate Judiciary Committee questionnaire, Jackson-Akiwumi revealed how her nomination was in the works even before Biden was president. She said Durbin's staff reached out to her about the 7th Circuit vacancy last Dec. 30, a few weeks before Biden was sworn-in. After preliminary interviews, she wrote, "On March 4, 2021, I met with President Biden and White House Counsel Dana Remus at the White House concerning the nomination. On March 30, 2021, the President announced his intent to nominate me."

Pastor Sims' use of the of *opinion of elected officials, journalists and civil rights organizations* that the 7th Circuit Court and the Northern Indiana District Court lacks jurists of color which could impact its treatment of people of color, coupled with his filing a uncontroverted motion to recuse based on his verified motion that the bankruptcy judge was biased, incurred the wrath of the panel. Then to punish Pastor Sims, for citing articles written by mainstream media report ers and civil rights organizations, the anonymous panel sanctioned him, ordering him to pay $13,450.20 as a fine. A civil suit, which began as a adversary proceeding in Pastor Sims' Chapter 13, but by agreement of the parties is before the St. Joseph County Indiana Superior Court Cause Number 71D07-1902-CT-000063, *Mario L. Si ms, Plaintiff, vs. Attorney David M. Bengs, Shellpoint New Penn Financial, Attorne y Jeffrey J. Hannekan, The Bank of New York,* seeking damages for violations of 42 U.S.C. §§ 1985(3) and 42 U.S.C. 1986 in the matter of the home Pastor Sims and his wife are still trying to buy, 11 years later.

Record citations above are to the record filed in the Seventh Circuit Court.

I. **This is of exceptional importance as the April 28th anonymous panel decision to uphold the District Court, by creating facts and evidence, that does not exist and the decision of the 14 judges that refused to grant rehearing enbanc, are in conflict with the First Amendment to the United States Constitution which guarantees a cherished freedom—the right to speak openly and freely. (U.S. Const., 1st Amend. ["Congress shall make no law ... abridging the freedom of speech..."].)**

The April 28, Opinion is in conflict with U.S. Const., 1st Amend., and this court.

II. The Model Code of Judicial Conduct requires this Court to intervene to perserve both the integrity and the public perception of the judicial system.

This Court must take a stand to show in America we cannot allow a panel of judges to use a hood of anonimity over their faces while using creating non existing facts and evidence to rule against and sanction a citizen because he used articles showing a lack of minority representation on the bench exists in Indiana, in retaliation.

In this case the Seventh Circuit was focused on retaliating against Pastor Sims that it wholely failed to address the District Court's errors which included misconduct by the Banks attornies and agents who interfered with a investigation of the Indiana Attorney General. "A court may not sanction or participate in illegal or unfair acts. There are two underlying goals of judicial integrity. First, on a public relations level, the court wishes to be regarded as a symbol of lawfulness and

justice. Second, the court has the closely related concern of not appearing to be allied with bad acts. "*See, e.g., Olmstead v. United States,* 277 U.S. 438, 483-85 (1928) (Brandeis, J., dissenting)

The District Court's ruling allowed due process violations to stand unadressed and the Bank as appellees and its agents and attornies to get away with interfering with an investigation conducted by the Indiana Attorney General, engage in identity theft and simply lied to the courts, all at set out in Pastor Sims all as shown below as taken from Pastor Sims'; "BRIEF, REQUIRED APPENDIX, AND SHORT APPENDIX OF APPELLANT" filed in the Seventh Circuit."

Statement of the Issues

Whether the bankruptcy court denied Mr. Sims due process by holding a hearing without notice to him;
Whether the bankruptcy court erred when it failed to recuse after Mr. Sims filed his verified motion;
Whether the bankruptcy court erred when it failed to acknowledge the misconduct by the bank and its agents;
Whether the bankruptcy court erred when it denied Mr. Sims' motion to continue the trial;
Whether the bankruptcy court erred by granting The Bank of New York Mellon's motion for relief from stay and abandonment

Summary of the Argument

The bankruptcy court erred by failing to follow well settled case law, statutes and the U.S. Constitution of America

Argument

I. Whether the bankruptcy court denied Mr. Sims due process by holding a hearing without notice to him;

"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." *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306, 314 (1950). *See also Richards v. Jefferson County,* 517 U.S. 793 (1996) (res judicata may not apply where taxpayer who challenged a county's occupation tax was not informed of prior case and where taxpayer interests were not adequately protected). Service of the notice must be reasonably structured to assure that the person to whom it is directed receives it. *Carey v. Piphus,* 435 U.S. 247, 259 (1978). "[P]rocedural due process rules are shaped by the risk of error inherent in the truth-finding process as applied to the generality of cases." *Mathews v. Eldridge,* 424 U.S. 319, 344 (1976). *Mathews v. Eldridge,* 424 U.S. 319, 333 (1976). "Parties whose rights are to be affected are entitled to be heard." *Baldwin v. Hale,* 68 U.S. (1 Wall.) 223, 233 (1863). Notice of hearing and the opportunity to be heard "must be granted at a meaningful time and in a meaningful manner." *Armstrong v. Manzo,* 380 U.S. 545, 552 (1965). Here, Mr. Sims, was given no notice before denial of his claim on his property was made.

II. The bankruptcy court erred when after Mr. Sims filed a verified motion to recuse in both the adversary case and the chapter 13 it continued to preside over both, never acknowledging or ruling on his motion, denying the claim Mr. Sims filed on the bank's behalf, only after *sua sponte* recusing on its own motion

Judge Dees did not deny categorically deny all the allegations made in Mr. Sims' Verified Motion to Recuse filed January 21, 2019, in both the bankruptcy

and adversary case that a reasonable person might find an appearance of partiality.

When Judge Dees failed to recuse himself from a case in violation of Sec 455, any decision he makes is void and of no legal force and effect. Section 144 reads in it s entirety: "Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding. Section 144 of the Judicial Code, 28 U.S.C. Sec. 144, requires a judge to recuse himself if a party files a timely and sufficient affidavit that the judge has "a personal bias or prejudice" against him. The law is clear that in passing on the legal sufficiency of the affidavit, the judge must assume that the factual averments it contains are true, even if he knows them to be false. *E.g., United States v. Jeffers*, 532 F.2d 1101, 1112 (7th Cir.1976), *aff'd in part and vacated in part*, 432 U.S. 137, 97 S.Ct. 2207, 53 L.Ed.2d 168 (1977). An affidavit is sufficient if it avers facts that, if true, would convince a reasonable person that bias exists. *United States v. Baskes*, 687 F.2d 165, 170 (7th Cir.1981) (*per curiam*). The factual averments must give fair support to the charge of a bent of mind that may prevent or impede impartiality of judgment. *Berger v. United States,* 255 U.S. 22, 33-34, 41 S.Ct. 230, 233, 65 L.Ed. 481 (1921).

Section 455(a) "requires a judge to recuse himself in any proceeding in which her impartiality might reasonably be questioned." *Taylor v. O'Grady,* 888 F.2d 1189 (7th Cir. 1989). In *Pfizer Inc. v. Lord,* 456 F.2d 532 (8th Cir. 1972), the Court stated that "It is important that the litigant not only actually receive justice, but that he believes that he has received justice." The Supreme Court has ruled and has reaffirmed the principle that "justice must satisfy the appearance of justice", *Levine v. United States,* 362 U.S. 610, 80 S.Ct. 1038 (1960), citing *Offutt v. United States,* 348 U.S. 11, 14, 75 S.Ct. 11, 13 (1954). "Recusal under Section 455 is self-executing; a party need not file affidavits in support of recusal and the judge is obligated to recuse herself sua sponte under the stated circumstances. " *Taylor v. O'Grady,* 888 F.2d 1189 (7th Cir. 1989). Here, only after presiding over a hearing Mr. Sims was not present and then ruling against him, did he recuse *sua sponte.*

The subsequent legal actions that occurred involving misconduct of the Bank and its Attorney are rendered null and void by virtue of the Sec 455 violations in this case and therefore the grant of the banks' motion for relief from stay was improper. Should a judge not disqualify himself, then the judge is violation of the Due Process Clause of the U.S. Constitution. *United States v. Sciuto,* 521 F.2d 842, 845 (7th Cir. 1996) ("The right to a tribunal free from bias or prejudice is based, not on section 144, but on the Due Process Clause.").

The Supreme Court has also held that if a judge wars against the Constitution, or if he acts without jurisdiction, he has engaged in treason to the Constitution. If a judge acts after he has been automatically disqualified by law, then he is acting without jurisdiction, and that suggest that he is then engaging in criminal acts of treason, and may be engaged in extortion and the interference with interstate commerce.

III. The bankruptcy court erred when it denied Mr. Sims any discovery after ordering on November 19, 2019, only two witnesses would be heard at trial January 23, 2020 scheduled on the bank's motion to lift stay, but allowed a witness other than the two to testify, without benefit of a witness list and denied Mr. Sims' motion to continue to allow him to prepare for the third witness and to allow Mr. Sims' witness to appear

Due process requires an opportunity for confrontation and cross-examination, and for discovery. Broad procedural rights to discovery were created by the Federal Rules of Civil Procedure. The bankruptcy court litigation involves extensive procedural rights granted by court rules, permitting broad discovery and extensive motion practice. *Carey v. Piphus*, 435 U.S. 247, 266–67 (1978).

By denying Mr. Sims any discovery and his witness, due process was denied at the trial. The Order of the bankruptcy court granting the bank's motion for relief from stay was improper. Further there is no way a trial can proceed because of the Bank through counsel thwarting discovery it is motion for a protective order that was granted by the bankruptcy court i.e., the bank and its counsel's Attorney

Bengs' refusal to participate in discovery. "There was no way that this Court could have tried this case . . ." *Levy v. Golant (In re Golant),* No. 96 B 007376, *slip op.* at 7 (Bankr. N.D. Ill. Sept. 8, 1998).

IV. The bankruptcy court erred when it granted the bank's motion to lift stay and abandoned the property and;

V. The bankruptcy court erred when it failed to consider the misconduct of the Bank's agent, Attorney David Bengs, making false representations to the bankruptcy court on February 7, 2019 during a hearing and issues raised in the adversary complaint pending in state court after removal that showed the misconduct of the bank and its agents and attorney's to have obtained the foreclosure judgment

The value of the Bank's interest was not declining in value. Debtor's exhibit 2, a letter from the bank's servicer, entered at trial shows when Mr. Sims had attempted to assume the mortgage the balance was $126, 257.96. Debtor's exhibit 3 entered at trial shows the Bank offering to accept a settlement of $198,000.00, an increase of $71,000. Adequate protection is intended only to assure that a secured creditor, during the pendency of the bankruptcy case does not suffer a lose of value of its interest in the property of the estate. *In re Markus Gurnee P'ship,* 252 B.R. 71 2,716 Bankr.N.D Ill. 1997(citing *United Sav. Ass'n v. Timbers of Inwood Forest Ass ocs., Ltd.,* 484 U.S. 365 (1988). An under secured creditor does not lack adequate

protection merely by reason of being under secured or by reason of not receiving post-petition interest. *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.,* 484 U.S. 365 (1988).

Further, the issues of the misconduct of the bank and unclean hands of its agent during the bankruptcy proceeding, as shown in Debtor's exhibit 1, were excluded from the trial and therefore still need to be decided by the remanded adversary case. Only after a initial showing which was not made at trial that the Bank was not adequately protected would the burden shift. Finally, the filing of a bankruptcy petition creates an estate, which includes assets owned by the debtor. In this case it is undisputed that Mr. Sims by virtue of the land contract has owners hip and legal and equitable interest in the property and its is a necessary part of the bankruptcy. Bankruptcy Code § 541(a)(1). The issue of Mr. Sims equity in the property, as shown in Debtor's exhibit 1, the verified complaint from the adversary proceeding were excluded from the trial and therefore still need to be decided. *See TTS, Inc. v. Stackfleth* (*Matter of Total Tech. Servs.Inc.*), 142 B.R. 96, 99 (Bank r.D. Del. 1992) ("A proceeding is ' related' if the out come of that proceeding could conceivably have any effect on the estate being administered in bankruptcy."

Finally, Mr. Sims had filed a claim with the bankruptcy court after the mortgage company failed to do so that if not denied by the disqualified judge, would had secured his home at amount of $43,620.00, as the bank failed to appeal

the confirmation of Mr. Sims' chapter 13 plan. *See In re Shank,* 569 B.R. 238 (Bank. S.D. Tex. 2017).

Because above acts of the 7th Circuit Court of Appeals, are in conflict with the U.S. Constitutions First Amendment, and the Model Code of Judicial Conduct, this Court's review is required.

CONCLUSION

Pastor Mario Sims, respectfully requests that this Court issue a writ of certiorari.

Respectfully submitted

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