

No. 22-341

In The
Supreme Court of the United States

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STATE OF NEBRASKA EX REL. TIMOTHY L.
ASHFORD, P.C. L.L.O., and TIMOTHY L. ASHFORD,

Petitioners,

v.

DONALD KLEINE, DOUGLAS COUNTY
ATTORNEY, STATE OF NEBRASKA,

Respondent.

◆

**On Petition For Writ Of Certiorari
To The Nebraska Supreme Court**

◆

PETITION FOR REHEARING

◆

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QUESTIONS PRESENTED

Petitioner seeks reconsideration of the Petition for Certiorari to apply the standard of federal prosecutor Merrick Garland to appoint the special prosecutor in a conflict case to all prosecutors just as this Court applied the standard used only by the F.B.I. prior to *Miranda* to read all defendants their constitutional rights in *Miranda*.

Whether the precedent of a historical appointment of a special prosecutor in both the Donald Trump and the Joe Biden case by Merrick Garland based upon a conflict of interest are grounds of an intervening circumstance of a substantial or controlling effect and other substantial grounds not previously presented by Petitioner in Petitioner's prosecutorial recusal case? Whether the precedent of prosecutorial recusal of the DOJ, which should be followed by this Court, conflicts with the refusal of the state prosecutor Respondent to recuse himself in Petitioner's conflict case?

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ARGUMENT

COMES NOW the Petitioner, Timothy L. Ashford, having filed for Petition for Writ of Certiorari before this Court in case number 22-341 and files this Petition for Reconsideration on grounds of intervening circumstances of a substantial or controlling effect and other substantial grounds not previously presented.

Petitioner seeks to apply the standard of federal prosecutor Merrick Garland to appoint the special prosecutor in a conflict case to all prosecutors just as this court applied the standard used only by the F.B.I. prior to *Miranda* to read all state defendants their constitutional rights in *Miranda*. *Miranda v. Arizona*, 86 S.Ct. 1602 (1966).

The other intervening circumstances of a substantial or controlling effect and other substantial grounds not previously presented is federal prosecutor Merrick Garland recused his office to avoid the appearance of impropriety and because of a conflict of interest in appointing special prosecutors in the cases of both presidents Joseph R. Biden and Donald J. Trump.

The court should apply the prosecutorial standard by Garland to prosecutors and attorney generals because there is precedent for this Court to issue a rule of law which follows procedures established by the federal government specifically the Federal Bureau of Investigation.

The F.B.I., out of all government agencies, read the rights advisement to criminal defendants charged with

a crime by the federal government before *Miranda* in 1966. In fact, the F.B.I. filed a brief in support of *Miranda*. As a result of the *Miranda* case and the input of the F.B.I. this Court issued the *Miranda* rule of law which required a rights advisement to both state and federal criminal defendants. *Miranda v. Arizona*, 86 S.Ct. 1602 (1966).

Just as this Court followed the procedures of the F.B.I. in *Miranda*, this Court should follow the procedures of U.S. Attorney Merrick Garland in appointing a special prosecutor which should be controlling law for this nation and this Court should grant the petition for the rehearing of the order denying the petition for a writ of certiorari or extraordinary writ.

Garland set the example for all prosecutors that they should recuse themselves in a conflict case just as Hoover set the example of reading criminal defendants their rights before *Miranda* was made the rule of law.

Furthermore, the next U.S. Attorney general may not follow Garland's ethical recusal of the DOJ in appointing a special prosecutor unless it is a rule of law like *Miranda*. *Miranda v. Arizona*, 86 S. Ct. 1602 (1966). Just as *Miranda* is now a rule of law for both federal crimes and state crimes for all criminal defendants the petition should be granted to rule on the issue of prosecutorial recusal. *Id.*

Just as the Federal Bureau of Investigation led by J. Edgar Hoover applied the standard of reading criminal defendants their rights before *Miranda* in 1966 and Merrick Garland recused his office to avoid the

appearance of impropriety and because of a conflict of interest in appointing special prosecutors in both presidents Joseph R. Biden and Donald J. Trump, and the possibility of appointment of special counsel in the Michael Pence case Petitioner petitions this Court to reconsider the denial of the petition for writ of certiorari.

As it stands now two presidents, Biden and Trump, have their due process rights because federal prosecutor Garland appointed special counsel in both cases to avoid the appearance of impropriety and because of a conflict of interest. Conversely, the New York State Attorney General and the Georgia State Attorney General have not appointed a special prosecutor in the Trump case. The New York Attorney and the Georgia State Attorney should appoint a special prosecutor because Trump was a political rival of New York and Georgia when Trump was president.

Now, Michael Pence is under investigation and the DOJ must decide whether they will appoint a special prosecutor in the Pence investigation of the confidential documents. This Court should reconsider this case to guide all courts on prosecutorial recusal.

To avoid the appearance of impropriety and a conflict of interest, New York and Georgia should appoint a special prosecutor. A rule of law by this Court will impose a due process constitutional hurdle on all prosecutors to recuse themselves when they have a conflict or to avoid the appearance of impropriety in any future prosecutions. If this court does not grant certiorari, who is the next president or politician to be prosecuted

by a state or federal prosecutor after they leave office or during a presidential campaign when a conflict exists?

Whether prosecutorial recusal is of such national importance because of the investigation of Donald Trump, Joseph Biden and Michael Pence this Court will reconsider this issue and place the issue on the docket?

Whether this Court's unwritten rule against a pro se attorney Petitioner arguing his own case before this court is more important than the national issue of prosecutorial recusal?

Whether this Court will reconsider the Petition based upon the fact this Court will probably never have a set of facts similar to this case and the unprecedented historical anomaly of the DOJ invoking prosecutorial recusal in their investigation of presidents Trump and Biden and the investigation of Michael Pence?

Although Pro se Petitioner would love to argue this case before this Court, Pro se Petitioner will take a back seat and take the unusual unprecedented step of Petitioner voluntarily recusing himself in oral argument or the brief or both in this case at this Court's discretion so the issue of prosecutorial recusal can be heard by this Court. If the issue of prosecutorial recusal is reconsidered by this Court, this Court will have no problem in any member of this bar accepting an appointment from this Court for prosecutorial recusal which is of utmost national importance. If this court does not create a constitutional hurdle of prosecutorial

recusal prohibiting prosecutors from retaliating against their political enemies or refusing to prosecute crimes against their political enemies the U.S. becomes a third world nation.

Unlike the ruling of the reading of rights to all criminal defendants in *Miranda*, the procedure of federal prosecutor Garland of recusing himself in conflict cases does not apply to prosecutors by a supreme court case rule which requires prosecutors to recuse themselves in conflict cases so this motion to reconsider should be granted.

In Nebraska, the court can issue an order in a civil case to perform a purely ministerial act of recusal of an attorney. *State ex rel. Freezer Servs., Inc. v. Mullen*, 235 Neb. 981, 458 N.W.2d 245 (1990). However, no order for recusal of the Respondent prosecutor was issued in Petitioner's criminal case. Respondent successfully appointed a special prosecutor for the deceased victim James Scurlock, when Scurlock was neither prosecuted nor threatened with prosecution, and Respondent in retaliation for Petitioner's racial discrimination cases against Respondent's client Douglas County denied the appointment of a special prosecutor arguing the Petitioner ". . . was neither prosecuted nor threatened with prosecution." *Linda R.S. v. Richard D.*, 410 U.S. 614 (1973).

The reason for reconsideration is "[t]he requirement of a disinterested prosecutor," because "[a] prosecutor exercises considerable discretion" in a criminal proceeding, and these decisions "are all made outside

the supervision of the court.” *Young v. United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 807, 107 S. Ct. 2124, 2137, 95 L. Ed. 2d 740 (1987); *U.S. v. Spiker*, 649 Fed.Appx. 770 (2016). (Unpublished opinion.)

The case should be reconsidered because prosecutorial recusal should not be left to the prosecutor “. . . as a matter of professional conscience. . . .” *Kaur v. Maryland*, 141 S. Ct. 5 (2020). Due process requires this court does not leave judicial recusal to the conscience of judges so prosecutorial recusal should not be decided by the conscience of the prosecutors. *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868 (2009); *Rippo v. Baker*, 137 S. Ct. 905 (2017).

Although the argument of appointing an attorney for every defendant would create chaos in the court system was made in the *Gideon* case, a new rule of law that courts must guarantee the due process rights of litigants by exercising the court’s inherent supervisory authority to require prosecutorial recusal in conflict cases will not create chaos in the judicial system. *Gideon v. Wainwright*, 372 U.S. 335 (1963). Petitioner requests this court reconsider and grant the petition for writ of certiorari which is supported by average citizens. Average citizens agree with the fact prosecutorial recusal should have occurred in Petitioner’s case.

Affidavits were signed by community activists such as the president of the Omaha Chapter of the NAACP T. Michael Williams, Paul Feilmann and William Perkins which stated:

“I am competent to testify to and have personal knowledge of the facts in this affidavit. I am over the age of 21. I am a citizen concerned with the justice system in the United States. I am a community activist in the Omaha, Nebraska area. I am familiar with the cases involving Timothy Ashford.

African American Attorney Timothy L. Ashford has filed racial discrimination lawsuits against Douglas County to appoint black attorneys to represent poor people in misdemeanor, felony and murder cases. *Ashford v. Douglas County Eighth Circuit Court of Appeals*, 16-3366.

Prosecutors should uphold the law. Prosecutors should not violate the law. Prosecutors should not violate any constitutional or human rights of citizens.

Judges should uphold the law. Judges should not violate the law. Judges should not violate any constitutional or human rights of citizens.

The Office of Donald Kleine is the attorney opposing Timothy L. Ashford in all of the racial discrimination lawsuits filed by Attorney Ashford.

Donald Kleine is the elected Douglas County Attorney and Douglas County is Donald Kleine’s client in court cases.

Attorney Ashford was the victim of an extortion. Attorney Ashford requested the Office of the Douglas County Attorney and Donald Kleine prosecute the extortion case.

The Office of the Douglas County Attorney has a conflict of interest in prosecuting an extortion case involving Attorney Ashford who has sued Douglas County for racial discrimination.

The failure of Donald Kleine to recuse himself in *Ashford v. Kleine* does not avoid the appearance of impropriety, does not promote judicial fairness and independence.

As a member of the community the failure of Donald Kleine to recuse himself appears improper. A special prosecutor should be appointed in the Ashford case just as Kleine appointed a special prosecutor in the James Scurlock case.

In the case of *Ashford v. Kleine*, CI 21 9062, the entire Douglas County District Court Fourth Judicial Panel was recused.

I have received nothing of value for signing this affidavit.

This affidavit is based on my personal knowledge of the facts as I know them that the failure of Donald Kleine to recuse himself creates a strong appearance of impropriety and a special prosecutor should be appointed in the case to promote confidence in the judicial court system.”

The Petitioner requests the Court take judicial notice of the affidavits.

The Respondent recused himself in the James Scurlock case. This court should use its inherent

supervisory authority to recuse the Respondent in Petitioner's case.

The state prosecutors in New York and Georgia in the Trump case and Nebraska should have recused themselves.

The issues for reconsideration are: Whether an attorney has standing and a right to an unbiased prosecutor and can petition the court for a special prosecutor because of a conflict of interest? Whether due process requires this court adopt the standard of Merrick Garland in appointing special prosecutors in the Biden and Trump case, and in the *Caperton* and *Rippo* cases for prosecutorial recusal that objective standards may also require prosecutorial recusal whether or not actual bias exists or can be proven?

Prosecutorial recusal is the reason to reconsider the granting of the petition for writ of certiorari because an important federal question was decided by the Nebraska Supreme Court and this court must adopt the same rule applied by Garland and applied to judicial recusal that courts must exercise their inherent supervisory authority to require prosecutorial recusal in conflict cases to avoid the appearance of impropriety whether or not actual bias exists or can be proven. *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868 (2009); *Rippo v. Baker*, 137 S. Ct. 905 (2017). Due process requires this court adopt the prosecutorial recusal standard of Merrick Garland and the recusal standard for judges in the *Caperton* and *Rippo* case for prosecutorial recusal that objective standards may

also require prosecutorial recusal whether or not actual bias exists or can be proven. *Id.*

The Petitioner previously stated in the initial Petition that the DOJ must recuse themselves as a result of the conflict of interest and the appearance of impropriety in prosecuting Donald Trump because Merrick Garland was appointed by President Joe Biden who is Trump's political enemy. The Respondent has a conflict of interest because he does not avoid the appearance of impropriety in refusing to prosecute the extortionist for crimes against the Petitioner based upon Petitioner's race and Petitioner's filing of personal racial discrimination cases against Douglas County.

It appears that based upon the goodness of the heart of U.S. Attorney General Merrick Garland in appointing a special prosecutor that the due process rights of Biden and Trump have not been violated. *Kaur v. Maryland*, 141 S. Ct. 5 (2020).

Special prosecutors have been appointed to avoid the appearance of impropriety in such cases as James Scurlock (Nebraska) George Floyd (Minnesota) and Ahmaud Arbery (Georgia).



CONCLUSION

For the first time in the history of our nation, the controlling effect of attorney general Garland who decided because of a conflict to take the unprecedented

action of appointing two special counsel to investigate Biden and Trump for their alleged violations of the storage of top secret documents at their home was for the DOJ to recuse the DOJ office.

Just as J. Edgar Hoover of the F.B.I. implemented the reading of rights to criminal defendants before *Miranda* was decided, this Court should grant the Petition for Reconsideration to follow the precedent of federal prosecutor Garland that a prosecuting attorney must recuse themselves when they have a conflict.

What supreme court rule prevents the next federal attorney general from refusing to recuse himself in the future prosecution of presidents?

This case is of such important national impact the Petitioner will recuse himself based upon the reluctance of this Court in allowing a pro se attorney Petitioner to argue his own case. The issue of prosecutorial recusal is so fundamentally important to this nation that the court should set it on the docket and the court can appoint counsel to argue the facts of applying a conflict rule to state prosecutors based upon the precedent of Garland in appointing special counsel in both the Biden case and the Trump case. Now, Garland must decide whether to appoint a special prosecutor in the Pence case!

The Petition should be reconsidered based upon the unprecedented intervening actions of federal prosecutor Merrick Garland of appointing special counsel for two Presidents Biden and Trump just as this court

followed the precedent set by the F.B.I. in reading criminal defendants a rights advisory.

Prosecutorial recusal is the reason the petition for the writ of certiorari should be reconsidered because an important federal question was decided by the Nebraska Supreme Court and this court must adopt the same rule applied to judicial recusal that courts must exercise their inherent supervisory authority to require prosecutorial recusal in conflict cases to avoid the appearance of impropriety whether or not actual bias exists or can be proven.

The petition for writ of certiorari should be reconsidered because we are in a new age of prosecutors weaponizing their prosecutorial power to prosecute their political enemies in the case of *New York v. Trump* or withholding their services to prosecute crimes committed against Petitioner in Nebraska.

The reason for reconsideration is that this is a new age in that the DOJ must recuse the DOJ office in the investigation of two presidents.

The facts of this case are ripe for a decision to rule that prosecutors must be unbiased in their enormous wielding of government prosecutorial power against their political enemies or we have deteriorated our democracy into that of a third world nation. Based upon the facts in this case to set rules for prosecutors, this court may never again have this opportunity of deciding the rule for prosecutorial recusal. This court must create a constitutional hurdle of requiring special prosecutors in conflict cases for prosecutors who

want to wield their power to prosecute their political enemies or deny services to their political enemies so Petitioner requests this Court reconsider this case.

The Nebraska Supreme Court has decided an important federal question previously undecided by this Court which is the issue of prosecutorial recusal which affects the due process rights of Donald Trump, the Petitioner and millions of litigants to a prosecutor who does not have a conflict.

The reason for reconsideration of the denial for the petition for writ of certiorari is prosecutors have no supreme court rule on prosecutorial recusal and this Court should adopt the standard of Garland in appointing special prosecutors based upon a DOJ conflict in the Biden case and the Trump case.

Dated this 31st day of January, 2023.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

Pursuant to Rule 44.2, Counsel certifies that the Petition is restricted to the grounds specified in the Rule with substantial grounds not previously presented. Counsel certifies that this Petition is presented in good faith and not for delay.

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