No. 22-7575

IN THE

SUPREME COURT OF THE UNITED STATES

LARRY EDMOND
PETITIONER

VS.

TOMMY WILLIAMS, WARDEN
RESPONDENT

ON REQUEST FOR REHEARING ON PETITION FOR WRIT OF CERTIORARI TO SUPREME COURT OF THE UNITED STATES

REQUEST FOR REHEARING ON PETITION FOR WRIT OF CERTIORARI
(Pursuant to Rule 44.)

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REQUEST FOR REHEARING ON PETITION FOR WRIT OF CERTIORARI
(Pursuant to Supreme Court Rule 44. Rehearing)

Petitioner, Larry Edmond, pursuant to Supreme Court Rule 44. filed in good faith, hereby respectfully petition this Court for a rehearing of judgment or decision on merits of denial of his writ of certiorari on the grounds, and facts supported in petition:

> I. The violation of his Sixth Amendment Constitutional right to be tried by an impartial jury and Fourteenth Amendment Constitutional Due process right to be tried by an impartial judge.

PROCEDURAL BACKGROUND

This Court denied Petitioner's Petition on June 12, 2023. Petitioner now timely files for a rehearing of (1) that judgment of decision of this Court on the merits, and (2) the denial of writ of certiorari of that petition. Petitioner has already been granted leave to proceed in forma pauperis. *See Petition for Writ of Certiorari* received April 4, 2023.

LEGAL BACKGROUND

1. *Supreme Court Rules 44.1*

Supreme Court Rules 44.1 governs petition for rehearing of judgments or decisions on merits.

The power of an individual Justice of the Supreme Court to issue an original writ of injunction, pursuant to the All-Writ Act. (28 USCS 1651(a)) and Rule 44.1 of the Supreme Court Rules, demands of significantly higher justification than the justification described in cases involving stays under 28 USCS 2101(f); the Circuit Justice's injunctive power is to be used sparingly, and only where (1) the most critical and exigent circumstances exist, (2) the legal rights at issue are indisputably clear, and (3) injunctive relief is necessary or appropriate in aid of the Supreme Court's jurisdiction. [Per Scalia, J., as Circuit Justice.]

2. *Supreme Court Rules 44.2*

Supreme Court Rules 44.2 governs petition for rehearing of orders denying petitions for writs of certiorari and extraordinary writs.

While "[t]he right to [rehearing] is not deemed an empty formality as though such petitions will as a matter of course be denied," Petitioner respects it does place a heavy burden of persuasion on him. *Robinson v. United States*, 416 F.3d 645, 650 (7th Cir. 2005). It states that, ". . . grounds shall be limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented." Sup. Ct. R. 44.2.

The *first* stated grounds for rehearing, intervening circumstances, has been interpreted by this Court to require 1) an opposite ruling from another Court of Appeals regarding an identically situated litigant appealing from the same incident; 2) a lower court having, previously ruled on the matter with which the petition is concerned, expressing doubt about the rightness of its ruling in a later similar case; and / or 3) a subsequent decision from this Court expressing views favorable to the petitioner. *Gondeck v. Pan American World Airway, Inc.* 382 U.S. 25 (1965); *see also* U.S.C.S. Supreme Ct R 44, note 2.

The *second* stated ground for rehearing, other substantial grounds not previously presented, does not have as clear a standard. Instead, "[t]he question under such circumstances must be

whether there is any reasonable likelihood of the Court's changing its position and granting certiorari." Richmond v. Arizona, 434 U.S. 1323, 1326, 98 S. Ct. 8, 10 (1977); *see also* Boumediene v. Bush, 550 U.S. 1301, 1302, 127 S. Ct. 1727 (2007) ("Such grounds can hardly provide a basis for believing this Court would reverse course and grant certiorari."). Thus, tautological, the standard for whether the Court ought to change their mind on denial of *cert* is whether the grounds argued are compelling enough to change the Court's mind.

ARGUMENT

Petitioner pro se proffers these grounds are substantial and compelling enough to change this Court's mind denying *Cert*. And that there do exist substantial showing of violation(s) of his Sixth Amendment and Fourteenth Amendment constitutional right to a fair trial by an impartial jury and an impartial judge on merits that deprives him of life, liberty or property, that initiates (1), (2), and (3) of Rule 44.1 of the Supreme Court Rule, and Tenth Circuit Justice's [Per Neil M. Gorsuch] injunctive power, pursuant to the All-Writ Act (28 USCS 1651(a)) in petitioner's particular case.

I. Violation of his Sixth Amendment Constitutional right to be tried by an impartial jury and the violation of his Fourteenth Amendment Constitutional Due process right to be tried by an impartial judge.

[T]he Sixth and Fourteenth Amendments guarantee a defendant on trial for his life the right to an impartial jury. Ross v. Oklahoma, 487 U.S. 81, 85, 108 S. Ct. 2273, 101 L. Ed. 2d 80 (1988). Whatever, the nature of the bias, if a trial court seats a juror who harbors a disqualifying prejudices, the judgment must be reversed. See United States v. Martinez-Salazar, 528 U.S. 304, 316, 120 S. Ct. 774, 145 L. Ed. 2d 792 (2000); Morgan, 504 U.S., at 729, 112 S. Ct. 2222, 119 L. Ed. 2d 492; see also Rose v. Clark, 478 U.S. 570, 578, 106 S. Ct. 3101, 92 L. Ed. 2d 460 (1986) ("Harmless-error analysis thus presupposes a trial . . . before an impartial judge and jury").

"When a defendant's right to have his case tried by an impartial judge is compromised, there is a structural error that requires automatic reversal." See Tumey v. Ohio, 273 U.S. 510, 535, 47 S. Ct. 437, 71 L. Ed. 749 (1927) (rejecting the argument that the judge's failure to recuse

himself was harmless in light of defendant's clear guilt because "[n]o matter what the evidence was against him, he had the right to have an impartial judge"); See *Chapman V. California*, 389 U.S. 18, 23 n. 8, 87 S. Ct. 824, 17. L. Ed. 2d 705 [1967]) (recognizing the right to an impartial judge is among those constitutional right so basic to a fair trial that their infraction can never be treated as harmless error"); *also see Gomez v. United States*, 490 U.S. 858, 876, 109 S. Ct. 2237, 104 L. Ed. 2d 923 (1989) "Among those basic fair trial rights that can never be treated as harmless is a defendant's right to an impartial adjudicator, be it judge or jury.") (citing Gray v. Mississippi, 481 U.S. 648, 668 (1987) (quoting *Chapman V. California*, 389 U.S. 18, 23 (1967).

Petitioner, who is a black (African American), did not forfeit his right to a fair trial by an impartial jury nor by an impartial judge by using a "racial slur" and the district court erred in implicitly finding otherwise and basing it denial to grant Mr. Edmond's motion for mistrial, or in the alternative his request, at the very least to hold a hearing in which he has opportunity to prove actual bias of one (1) in particular of the twelve (12) all-white jurors that he claim and had identified for the district court that he had overheard expressing offense at his use of the term "peckerwoods", as district court so stated Mr. Edmond had forfeited:

> "And if [Mr. Edmond] choose to use something that would have racial overtones, I guess he uses that in his language at his own risk"; "so it would be a good idea not to use that word if you don't want it to be used against you at a later time"; "[t]he defendant had been told in the telephone conversation, every one he does, that these phone calls are monitored, so it wasn't like he had an expectation of privacy, that he could use a 'racial slur' without ever having any consequences that some fact finder [i.e., jury or juror] might not ever hear this"; and, "[y]ou know, the word came out of his mouth, and if that made someone [be it judge or jury] unhappy, then it shouldn't have came out of his mouth. [H]e has a consequence for having made that statement." (R. Vol. 10, 471, 509, 515, 522-23);
>
> (*See also Petition for Writ of Certiorari at *6-10,* Reasons for Granting Petition).

"The due process clause clearly requires a fair trial in a fair tribunal before a judge without no actual bias against the defendant or interest in the outcome of his particular case." *Bracy v. Gramly*, 520 U.S. 899, 904-05, 117 S. Ct. 1793, 183 L. Ed. 2d. 97 (1997). To show actual bias,

petitioner must present "compelling" evidence. See Fero v. Kerby, 39 F.3d 1462, 1478 (10th Cir. 1994). "To subject a defendant to trial involving his liberty or property before a judge having a direct, personal, substantial interest in convicting him is a denial of due process of law. Tumey v. Ohio, 273 U.S. 510, Syl. 1.

District court denial to grant Petitioner's motion for mistrial, and district court's refusal of petitioner's request to hold a hearing in which he has opportunity to prove actual bias, on the findings that " . . . [] ***it wasn't like he had an expectation of privacy, that he could use a 'racial slur' without ever having any consequences that some fact finder [be it judge or jury] might not ever hear this"; and, "[y]ou know, the word came out of his mouth, and if that made someone [i.e., juror] unhappy, then it shouldn't have came out of his mouth. [He] has a consequence for having made that statement,"*** thus, "compelling" evidence not only show actual bias of the trial judge, it show the offense he had taken to Mr. Edmond's use of the word "peckerwoods" he himself calls a "racial slur," and moreover, his interest in the outcome of his particular case. (*See Petition for Writ of Certiorari supporting facts keyed by volume and reference at *6-10)*

See Bracy v. Gramly, 520 U.S. 899, 904-05 117 S. Ct. 1793, 138 L. Ed. 2d 97 (1997) (explaining that the Fourteenth Amendments' Due Process Clause "establishes a constitutional floor" that "requires a 'fair trial in a fair tribunal' . . . before a judge with no actual bias against the defendant or interest in the outcome of his particular case." (quoting Withrow v. Larkin, 421 U.S. 35, 46, 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975).

This Court "has long held that the remedy for allegations of juror partiality is a hearing in which the defendant has opportunity to prove actual bias." See Smith v. Phillips, 455 U.S. 209, 215, 102 S. Ct. 940, 71 L. Ed. 2d 78 (1982). Whatever the nature of the bias, if a trial court seats a juror who harbors a disqualifying prejudice, the resulting judgment must be reversed. See United States v. Martinez-Salazar, 528 U.S. 304, 316 120 S. Ct. 774 145 L. Ed. 2d. 792 (2000).

Structural error undermines the core trial process in a way obviating the need to prove actual prejudice. The very existence of the error requires relief. See Sullivan v. Louisiana, 508

U.S. 275, 281-82, 113 S. Ct. 2078, 124 L. Ed. 2d 182 (1993). And as Petitioner correctly states, the lack of an impartial judge is considered a structural error and is therefore not subject to harmless error analysis. *See* Arizona v. Fulminate, 499 U.S. 279, 308, 111 S. Ct. 1246, 113 L. Ed. 2d 302 (1991) (quoting Chapman V. California, 389 U.S. 18, 23 n. 8, 87 S. Ct. 824, 17. L. Ed. 2d 705 [1967]).

There is question as to the trial judge actual bias or interest in the outcome in Mr. Edmond's particular case, it came out of mouth, and it clearly amounts to "structural error" requiring relief. And as this Court held, in Tumey, "To subject a defendant to trial involving his liberty or property before a judge having a direct, personal, substantial interest in convicting him is a denial of due process of law" *273 U.S. 510, Syl. 1,* this denial, [n]o matter what the evidence was against him, he had the right to have an impartial judge.

Clearly this was structural error on the part of the district court, and actual bias violating petitioner's Sixth Amendment and Fourteenth Amendment right to a fair trial by an impartial jury, and by an impartial judge, and this ground in itself requires automatic reversal.

In accessing an allegation of judicial bias, the relevant question is "not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter, 'the average judge in his position is "likely"' to be neutral, or whether there is an unconstitutional "potential for bias." "*Id.* (quoting Caperton v. A.T. Massey Coal Co., 556 U.S. 868, 881, 129 S. Ct. 2252, 173 L. Ed. 2d. 1208 (2009)). Under this objective standard, a petitioner can demonstrate bias by showing either "actual bias" or "that circumstances were such that an appearance of bias create a conclusive presumption of actual bias." Fero v. Kerby, 39 F. 3d 1462, (10th Cir. 1994).

Under this objective standard, trial judge statements and remarks are both "actual bias" or that circumstances were such that an appearance of bias create a conclusive presumption of actual bias.

Finally, no court has meaningfully reviewed Petitioner's allegations of juror partiality or the lack of an impartial judge, but have instead choose to turn a blind-eye and to ignore the violation of his Sixth and Fourteenth Amendments Constitutional right to fair trial by an

impartial jury, and an impartial judge. This Court has recognized that claims of racial bias must be treated "with added precaution" in light of the special danger such bias poses. *Pena-Rodriguez v. Colorado*, 580 U.S. ___, ___, 137 S. Ct. 855, 197 L. Ed. 2d 107, 125 (2017). That is because racial bias is too grave and systemic a threat to the fair administration of justice to be tolerated or ignored.

CONCLUSION

For the ground set forth above, and all other grounds of equally compelling and substantial showing in his Petition for writ of Certiorari that are not mentioned, and by no means be disregarded, but also taken in this Court's reconsideration to grant Petition for Rehearing as well.

Petitioner humbly request this Court for rehearing of judgments or decisions on the merits, and prays this Court change their mind on denial of certiorari. And not turn a bind-eye or ignore the violations of his fundamental constitutional rights to a fair trial, but grant rehearing, and under equal protection of law and justice relief and remand back to the lower court for reversal of conviction and new trial.

This petition is presented in good faith and not for delay.

Respectfully submitted,

Date: July 5, 2023

CERTIFICATE OF COUNSEL (PRO SE)

No. 22-7575

LARRY EDMOND
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RESPONDENT

As required by Supreme Court Rule 44.1 and 2, I certify that the petition for rehearing of judgment or decision of the Court on the merits and order denying petition for writ of certiorari, is presented in good faith and not for delay.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on **July 5, 2023.**

Larry Edmond Pro se

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PROOF OF SERVICE

I, Larry Edmond, do swear or declare that on this date, **July 5, 2023**, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* AND PETITION FOR REHEARING on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 days.

The names and addresses of those served are as following:

Kristafer R. Ailsileger, Office of Attorney General, 120 SW 10th Avenue, Topeka, Kansas 66612.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on **July 5, 2023.**

Signature

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MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a rehearing pursuant to Supreme Court Rule 44. without prepayment of cost and to proceed *in forma pauperis*.

1. Petitioner has previously been granted leave to proceed in forma pauperis in the following court(s): United States Court of Appeals for the Tenth Circuit; and Supreme Court of the United states, in this matter.

2. Petitioner's affidavit or declaration in support of this Petition for Rehearing pursuant to Supreme Court Rule 44. is attached hereto.

(Signature)