ORIGINAL

No. 23-1035

In the Supreme Court of the United States

IN RE: ANGELA W. DEBOSE, PETITIONER

On Petition For A Writ of Certiorari
To The Eleventh Circuit Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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February 19, 2024

QUESTION PRESENTED

While the reviewability of a judicial disqualification decision must be analyzed in terms of the underlying basis for the judicial disqualification motion, the statutory grounds for judicial disqualification are made of no effect when analyzed based on the suitability of mandamus, the collateral order doctrine, and certification under 28 U.S.C. § 1292(b) as devices to gain immediate appellate review. If the judge had unwaivable disqualifying conflicts, the fact that the judge should have self-recused without waiting for a party to file a motion to disqualify, was not considered or appropriately analyzed by the court of appeals in its review of the disqualification decision.

The questions are:

(1) Whether the district judge should be disqualified from presiding over a case based on bias or prejudicial, financial interest, or other impermissible undisclosed conflicts of interest.

(2) Whether the district judge should be recused and a successor judge appointed for the district judge's failure to disclose potentially disqualifying situation(s) involving personal bias or prejudice or potential financial interests that cannot be waived.

(3) Whether any of the district court's procedural rulings constituted disqualifying conditions that can lead to the judge's disqualification or the imposition of disciplinary sanctions for the judge's failure to self-disqualify.

(4) Whether the district judge's extrajudicial conduct and/or comments about the Petitioner require disqualification and reversal of the judgment.

PARTIES TO THE PROCEEDING

Angela DeBose, plaintiff-petitioner below.

The United States of America, defendant-respondent;

Thirteenth Judicial State Circuit Court, defendant-respondent(s):
Ronald Ficarrotta individually and in his official capacity,
Elizabeth G. Rice individually and in her official capacity,
Gregory P. Holder individually and in his official capacity,
James M. Barton individually and in his official capacity;

University of South Florida Board of Trustees, defendant-respondent(s):
Ralph Wilcox in his official capacity,
Paul Dosal in his official capacity,
Gerard Solis in his official capacity,
Lois Palmer in her official capacity,

Greenberg Traurig, P.A., defendant(s):
Richard McCrea individually.

STATEMENT OF DIRECTLY RELATED PROCEEDINGS

This case arises from proceedings in the United States Middle District of Florida and the United States Eleventh Circuit Court of Appeals:

Angela DeBose v. United States, et al., No. 8:21-cv-02127-SDM-AAS, U.S. District Court for the Middle District of Florida. Judgment entered on September 12, 2022.

Angela DeBose v. United States, et al., No. 8:21-cv-02127-SDM-AAS, U.S. District Court for the Middle District of Florida. Order Denying Motion for Disqualification entered on March 3, 2023.

In Re Angela DeBose, No. 23-10961, U.S. Court of Appeals for the Eleventh Circuit. Order Denying Petition for Writ of Mandamus entered on September 22, 2023.

Angela DeBose v. United States, et al., Appeal No. 22-13380, U.S. Court of Appeals for the Eleventh Circuit. Judgment entered on February 8, 2024 after the application for an extension to Petition for Writ of Certiorari was approved.

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Petitioner Angela DeBose respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The March 3, 2023 Order denying the Petitioner's motion for disqualification, (A15-16), is unreported. The Petition for Writ of Mandamus and Writ of Prohibition was docketed on March 27, 2023, (Eleventh Cir., No. 22-10961). The September 22, 2023 Order of the Court of Appeals denying Petitioner's Petition for a Writ of Mandamus and Writ of Prohibition, (A17-21), is unreported.

JURISDICTION

The court of appeals entered its judgment denying mandamus and prohibition relief in No. 22-10961 on September 22, 2023. An Application for Extension of Time to File a Petition for Writ of Certiorari was presented on November 1, 2023 and the time extended to and including January 24, 2024. A second Application for Extension of Time was presented on January 24, 2024, and the time was extended to and including February 19, 2024. Petitioner filed the applications for extensions under 28 U.S.C. 2101(e), before the court of appeals took independent action to enter judgment on the Appeal. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISION AND CANONS OF THE CODE OF CONDUCT OF UNITED STATES JUDGES INVOLVED

Section 455(a) of Title 28 of the United States Code provides: "Any justice, judge, or magistrate of the

United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

Section 455(b) provides in pertinent part that the judge (b) shall also disqualify himself in the following circumstances: (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding; (4) He knows that he, individually or as a fiduciary... has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding.

Section 455(e) provides, "No justice, judge, or magistrate shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b)." *In re Corrugated Container Antitrust*, 614 F.2d 958, 968 (5th Cir. 1980).

28 U.S.C. § 144. Disqualification is only required when the alleged bias is personal in nature; that is, the bias stems from an extra-judicial source. *Loranger v. Stierheim,* 10 F.3d 776, 780 (11th Cir. 1994).

Canons 2-3 of the Code of Conduct for United States Judges provides: "A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." 175 F.R.D. 363, 365 (1996).

STATEMENT

The Petitioner filed a civil complaint in the United States District Court for the Middle District of Florida under the Federal Tort Claims Act (FTCA) which authorizes plaintiffs to obtain compensation from the United States for the torts of its employees. See, e.g., 28 U.S.C. § 2674 ("The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a

private individual under like circumstances."). Petitioner filed a Certificate of Interested Persons (hereinafter "CIP"), (A22-25), in which she identified the basis for the district judge's disqualification under the relevant statutory provisions and Code of Conduct for U.S. Judges ("the Code").

The district court entered an Order Staying Discovery and the Requirement to file a Case Management Report, (A30-31). There were no hearings or proceedings, and no trial. The district court entered a single order or set of findings of fact and conclusions of law dismissing the case and all defendants and enjoining Petitioner from future filings pro se in the U.S. Middle District of Florida. The order also disposed of pending motions, and the district court issued a single Judgment. An appeal was filed.

Post-judgment, a motion and affidavit for disqualification was filed based on evidence of the judge's violation of 455(b) and other applicable statutory provisions and the Code. The judge entered an order, (A16), denying the motion for disqualification. A Petition for a Writ of Mandamus and/or Prohibition was filed. The court of appeals issued an order, (A18), denying mandamus and prohibition relief.

REASONS FOR GRANTING THE PETITION

The district judge was aware but did not disclose nonwaivable disqualifying situations under 28 U.S. Code § 455(b)(1) and (4). The district judge should have self-recused under § 455(b)(1) and (4) but also §§ 144, 455(a).[1] Before issuance of the Order and Judgment, the Petitioner filed a Certificate of Interested Persons (hereinafter "CIP"), (A24-25), in which she identified

[1] In *Liljeberg v. Health Services Acquisition Corp.*, ___ U.S. ___, 108 S.Ct. 2194, 100 L.Ed.2d 855 (1988), the Supreme Court held that scienter is not required in order to find a violation of § 455(a).

the basis for the district judge's disqualification. In that respect, the CIP was tantamount to a motion to disqualify. The Petitioner additionally filed evidence worthy of 455(b) disqualification.

A judge who is aware of a disqualifying situation should assess *sua sponte* whether it is appropriate to continue to preside without waiting for a party to file a motion to disqualify. Second, even when the judge chooses not to withdraw because of a possible disqualifying condition, the judge should disclose that condition to the parties, based on applicable statutory provisions or mandates or suggestions in several provisions in the Code.

When conflict checks were performed, the district magistrate judge entered an Order, (A26-27), recusing himself pursuant to 28 U.S.C. § 455. However, the district judge continued to preside in silence despite evidence and information showing his subsection (a) but also subsection (b) violation(s) with one or more of the defendants was filed in the case. The district judge violated the Code by continuing to preside—refusing to self-disqualify *sua sponte*, aware that Section 455(b) was implicated. Section 455 provides, "(e) No justice, judge, or magistrate shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b)." See *In re Corrugated Container Antitrust*, 614 F.2d 958, 968 (5th Cir. 1980). Therefore, a judge who is aware of a disqualifying situation should assess *sua sponte* whether it is appropriate to continue to preside without waiting for a party to file a motion to disqualify.

Inherent in § 455(a)'s requirement that a judge disqualify himself if his impartiality might reasonably be questioned is the principle that our system of "justice must satisfy the appearance of justice." *Offutt v. United States*, 348 U.S. 11, 14, 75 S.Ct. 11, 13, 99 L.Ed. 11 (1954). "The very purpose of § 455(a) is to promote confidence in the judiciary by avoiding even the

appearance of impropriety whenever possible." *Liljeberg* at 2203-05. Thus, section 455(a) embodies an objective standard. The test is whether an objective, disinterested, lay observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt about the judge's impartiality. *See Potashnick v. Port City Const. Co.,* 609 F.2d 1101, 1111 (5th Cir.), *cert. denied,* 449 U.S. 820, 101 S.Ct. 78, 66 L.Ed.2d 22 (1980). Furthermore, though subsection (a) is discretionary and left to the judge's power to make a decision based on his individualized evaluation, personal bias or prejudice or financial interests or other impermissible conflicts of interest cannot be waived under subsection (b). *See Parker v. Connors Steel Co.*, 855 F.2d 1510, 1526 (11th Cir.1988) (extending *Liljeberg* analysis to mandatory recusal under Section 455(b)).[2] Because the district judge was both self-aware and made aware of the disqualifying situations, he did not have to wait for a motion for disqualification to affirmatively self-recuse or step aside. *Id.* The CIP put the judge and the opposing parties on notice of the disqualifying situations well before the Order and Judgment were entered. Therefore, the judge's recusal would not have resulted in prejudice to the defendants.

When the motion and affidavit for disqualification were filed post-judgment, the judge did not self-disqualify but denied the motion. 28 U.S.C. §§ 144 and 455 provide, "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 h[er] or in favor of any adverse party, such judge shall

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[2] *Parker* did not reach whether the subsection (b) violation was subject to harmless error analysis because it reversed under subsection (a). The subsection (b) violation was an abuse of discretion or harmful extra-judicial error.

proceed no further therein, but another judge shall be assigned to hear such proceeding. *In re Corrugated Container Antitrust*, 614 F.2d 958, 963 n.8 (5th Cir. 1980). The CIP was not based on any judicial ruling in the case but an extrajudicial source. *See Liteky v. United States*, 510 U.S. 540, 555 (1994). Thus, the motion for disqualification, filed after the CIP, was incidental to the Order and Judgment—but not because of them. *Id.*

The court of appeals order, (A19), cites *Liteky* that "opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings" do not constitute bias unless a "deep-seated favoritism or antagonism would make fair judgment impossible." *Liteky v. United States*, 510 U.S. 540, 555 (1994). The district judge entered an order, (A28-29), disqualifying himself pursuant to 28 U.S.C. § 455 in the Case, *Gaffney v. Ficarrotta, et al.*, 8:21-cv-21-SDM-CPT (M.D. Fla. Mar. 9, 2021),[3] involving Defendants Thirteenth Judicial State Court and Ronald Ficarrotta. The same personal reasons that led the district judge to affirmatively disqualify himself from that case, and even more heightened personal reasons, applied or provided reasons to disqualify from the instant case, which involved those same defendants but also other state court judge[4] under 28 U.S.C. §§ 144, 455. Because the judge recused himself in the prior case but not the instant case, it raises an appearance of impropriety. The cases had the same body of state judicial defendants and a similar fact pattern: both plaintiffs are attorneys—one practicing and one at all relevant times nonpracticing; one represented in the case and one pro se; both women assaulted by unwanted touching; both filed suit naming the state court judges; and one white

[3] Renumbered 8:21-cv-00021-CEH-CPT.

[4] Defendant Judge whose concurrent employment by Defendants Thirteenth Judicial State Court, Defendant State University, and the District Judge during the case was undisclosed.

and the other black. Continuing to preside in the instant case would violate the jurisdiction's code because the judge showed a strong personal bias and predisposition against the Petitioner, which the court of appeals overlooked. Significant evidence of personal bias was filed in the record. Furthermore, the district judge's judicial conduct was symptomatic of the "lock-in effect". Specifically, the lock-in effect causes a decision maker to be locked in to his earlier decision. Although lock-in does not prevent the decision maker from altering course, it does introduce a systemic bias that should have been taken into account by the court of appeals. The district judge showed a strong personal predisposition to lock the Petitioner out of court. By way of example, the district court ordered an indefinite stay of discovery and abated the requirement to file a case management report, (A30-31). See, e.g., *Feldman v. Flood*, 176 F.R.D. 651, 652–53 (M.D. Fla. 1997) (the court will take a "preliminary peek" at the merits to decide whether to stay discovery pending a motion to dismiss). Courts often discuss preliminary injunctions as an "extraordinary remedy," (See, e.g., *Winter v. Natural Res. Def. Council, Inc.*, 129 S. Ct. 365, 375-76 (2008), even though they simply preserve the status quo. Denials of preliminary injunctions can be justified on that ground. In contrast, discovery stays are not granted routinely and require a demonstration of good cause.[5] Discovery would normally proceed absent a stay, and so in that situation the court is being asked to prevent the status quo from occurring. Therefore, there is not the same inclination for judges to find that a plaintiff does not have a likelihood of success when deciding discovery

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[5] See, e.g., *Jackson v. Denver Water Bd.*, No. 08-cv-01984-MSK-MEH, 2008 WL 5233787, at *1 (D. Colo. Dec. 15, 2008) ("Generally, it is the policy in this district not to stay discovery pending a ruling on motions to dismiss." (citing *Ruampant v. Moynihan*, No. 06-cv00955-WDM-BNB, 2006 U.S. Dist. LEXIS 57304, at *4–5 (D. Colo. Aug. 11, 2006))).

stays. Additionally, the district judge flagrantly disregarded Petitioner's Request for Oral Argument and an Evidentiary Hearing pursuant to Rule 3.01, (A32-34), which was *pending or unanswered* at the time the district judge entered the Order and Judgment.

The district judge was aware of the statutory requirements and mandates or suggestions of such disclosure in several provisions in the Code. When the district judge chose not to withdraw because of potential disqualifying conditions, the judge had the opportunity to disclose the conditions to the parties. "Nothing provides stronger evidence to the parties of [judicial] impartiality than open disclosure."[6] The district judge did not make *any* disclosures. Had he done so, waiver would not have been allowed under subsection (b). The court of appeals expressed that disqualification is only required when the alleged bias is personal in nature and stems from an extra-judicial source, citing *Loranger v. Stierheim,* 10 F.3d 776, 780 (11th Cir. 1994). One or more of the parties may file a motion to disqualify the judge, based either on a judge's disclosure or upon their own independent knowledge. Petitioner filed her CIP, (A24-25), identifying potential disqualifying factors pursuant to 28 U.S.C. § 455(a) and (b)(1) and 28 U.S.C. § 144. The information in the document was the basis for the subsequent motion for disqualification.

Judicial integrity is a cornerstone of a fair and trustworthy legal system. Upholding trust, fairness, and ethical behavior within the judiciary is essential to ensure public confidence, protect individual rights, and safeguard the rule of law. This is not a case in which the violation can be deemed "harmless error" because it was "committed by [a] busy judge[] who inadvertently overlook[ed] a disqualifying circumstance." *Liljeberg,* 486 U.S. 862. The violations

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[6] *Merck & Co. v. Superior Ct.*, 2005 WL 880112, at *2 n.5 (Cal. Ct. App. 2005).

were willful, deliberate, and flagrant error. The violations of Section 455(a) in this case were deliberate. In *Liljeberg*, this Court stated that "in determining whether a judgment should be vacated for a violation of § 455(a), it is appropriate to consider [i] the risk of injustice to the parties in the particular case, [ii] the risk that the denial of relief will produce injustice in other cases, and [iii] the risk of undermining the public's confidence in the judicial process." 486 U.S. 864. All three factors counsel strongly in favor of mandamus and/or prohibition.

Additionally, there is the question of whether the district court's procedural posture to remain in the case and materially false statements and representations in the Order contrary to the law and facts are disqualifying conditions that can lead to the judge's disqualification or the imposition of disciplinary sanctions for the judge's failure to disqualify. The district judge's conduct deprived the court of appeals of critical information for its review and introduced systemic bias in the judicial apparatus.

The statutory grounds for judicial disqualification are made of no effect when analyzed based on the suitability of mandamus, the collateral order doctrine, and certification under 28 U.S.C. § 1292(b) as devices to gain immediate appellate review—particularly given that a judge should self-recuse under subsection (a) and/or (b), without waiting for a party to file a motion to disqualify. A writ of mandamus and an interlocutory appeal under 28 U.S.C. 1292(b) provide distinct avenues for seeking immediate appellate review of a district court order. Mandamus is a "drastic and extraordinary" remedy reserved for those exceptional circumstances when the district court has committed a clear abuse of discretion or usurpation of judicial power. *Cheney v. U.S. District Court*, 542 U.S. 367, 380 (2004). While there are varying formulations of the standards for mandamus, at a minimum a Petitioner must show that there is "no other

adequate means to attain the relief [s]he desires," that the right to the relief sought is "clear and indisputable" and that the writ is otherwise "appropriate under the circumstances." *Cheney*, 542 U.S. at 380–81.

The first condition for mandamus – that there are no alternative methods to seek review of a district court order – intersects with § 1292(b), because an interlocutory appeal under 28 U.S.C. 1292(b) can, theoretically but less often pragmatically, provide such an alternative path to review. As a general rule, pursuing a § 1292(b) appeal first is not an absolute prerequisite to mandamus; rather, it is a factor strongly considered in determining whether there is an alternative avenue of relief available. E.g., *In re Chimenti*, 79 F.3d 534, 538-39 (6th Cir. 1996); *In re School Asbestos Litigation*, 977 F.2d 764, 773-74 (3d Cir. 1992). *In re Ford Motor Co.*, 344 F.3d 648, 654 (7th Cir. 2002).

Under § 1292(b), a district court can certify an order for an interlocutory appeal if the court finds that the order involves a controlling question of law; there is a substantial ground for difference of opinion about the court's order; and immediate appeal would materially advance the ultimate termination of the litigation. *McFarlin v. Conseco Services, LLC*, 381 F.3d 1251 (11th Cir. 2004). A party must, within ten days of the district court's order, apply to the court of appeals for permission to appeal. Id. And the court of appeals must decide in its discretion to exercise interlocutory review. *Id.* The instant case involved a controlling question of law (e.g., subsection 455(b)) and these other factors existed. However, a § 1292(b) interlocutory appeal was not possible because the district judge waited for a motion for disqualification and denied it when it was filed. Additionally, certification under § 1292(b) was not available, although the requirements of that provision could be met. A "controlling question of law" arises where the appellate court can rule on a controlling

question of pure law without having to search deep into the record in order to discern the facts of the underlying case. See *Allapattah Servs., Inc. v. Exxon Corp.*, 333 F.3d 1248, 1252-53 (11th Cir. 2003). With respect to the second element under § 1292(b), where the appellate court is in "complete and unequivocal" agreement with the district court, a "substantial ground for difference of opinion" does not exist. *McFarlin*, 381 F.3d at 1258 (quoting *Burrell v. Bd. of Trustees of Ga. Military Coll.*, 970 F.2d 785, 788-89 (11th Cir. 1992)). Moreover, questions of first impression or the absence of binding authority on an issue, without more, are insufficient to demonstrate a substantial ground for difference of opinion. See *In re Flor*, 79 F.3d 281, 284 (2d Cir. 1996); Instead, the district court should measure the weight of opposing arguments to the disputed ruling in deciding whether there is a "substantial ground for dispute." *In re Flor*, at 284. The final requirement that the controlling question of law "may materially advance the ultimate termination of the litigation" is a straightforward one. This inquiry simply requires an examination of whether the "resolution of [the] controlling legal question would serve to avoid a trial or otherwise substantially shorten the litigation." *McFarlin*, 381 F.3d at 1259.

It would have been futile for the Petitioner to seek § 1292(b) certification. Ultimately, there is a "strong presumption against interlocutory appeals," and both the district and circuit courts are afforded substantial discretion in certifying issues for this purpose. *OFS Fitel, LLC v. Epstein, Becker & Green, P.C.*, 549 F.3d 1344, 1359 (11th Cir. 2008) (citing *Jenkins v. BellSouth Corp.*, 491 F.3d 1288, 1291 (11th Cir. 2007)); *United States v. One Parcel of Real Prop. With Bldgs., Appurtenances & Improvements*, 767 F.2d 1495, 1498 (11th Cir. 1985). Additionally, in some cases, appellate courts have concluded that it would be futile for a party to seek certification under § 1292(b), based on the

district court's prior refusal to reconsider decisions or certify orders for appeal, and therefore have not required § 1292(b) certification as a condition for seeking mandamus. See, e.g., *In re Chimenti*, 79 F.3d 534, 540 (6th Cir. 1996); *In re Briscoe*, 448 F.3d 201, 213 n.7 (3d Cir. 2006). In *In re School Asbestos Litigation*, 977 F.2d 764 (3d Cir. 1992), the Third Circuit issued a writ of mandamus requiring a district judge to disqualify himself based on the judge's highly inappropriate and partial conduct. As a practical matter, § 1292(b) certification is unavailable in this situation because a judge who has refused to disqualify himself is extremely unlikely to certify that issue for appellate review. *Id.* at 777.

Given an actual or prospective denial, a party can still pursue a mandamus petition – not to compel § 1292(b) certification, but to review the substance of the underlying order being challenged. *In re Ford Motor Co.* at 654. Appellate courts have been open to considering a mandamus petition in these circumstances. See, e.g., *In re Lott*, 424 F.3d 446, 449 (6th Cir. 2005); *In re U.S.*, 463 F.3d 1328, 1337 (Fed. Cir. 2006).

The Court has granted certiorari before judgment "not only in cases of great public emergency but also in situations where similar or identical issues of importance are already pending before the Court and where it is considered desirable to review simultaneously the questions posed in the case still pending in the court of appeals." Robert L. Stern et al., Supreme Court Practice 42 (7th ed. 1993). Indeed, the Court has done so a number of times. See, e.g., *National Org. for Women, Inc. v. Idaho*, 455 U.S. 918 (1982); *McCulloch v. Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10, 12 n.1 (1963); *Taylor v. McElroy*, 360 U.S. 709, 710 (1959); *Reid v. Covert*, 354 U.S. 1, 4-5 (1957); *Brown v. Board of Educ.*, 344 U.S. 1, 3 (1952); see also *Roe v. Wade*, 410 U.S. 113, 123 (1973) (noting that a petition for certiorari before judgment would have

been "preferable" to obtain review of issues relating to declaratory relief that were "necessarily identical" to issues raised on appeal of injunctive relief).

CONCLUSION

The Court is respectfully requested to grant the petition for a writ of certiorari.

Respectfully submitted.

Angela Washington DeBose,
Petitioner Pro Se