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**United States Court of Appeals
for the Fifth Circuit**

No. 23-30118

IN RE SHIVA AKULA,

Petitioner.

Petition for Writ of Mandamus to the
United States District Court
for the Eastern District of Louisiana
USDC No. 2:21-CR-98-1

UNPUBLISHED ORDER

(Filed Apr. 11, 2023)

Before HIGGINBOTHAM, DUNCAN, and WILSON, *Circuit Judges.*

PER CURIAM:

Shiva Akula has filed in this court a pro se petition for a writ of mandamus. He also moves for an order of emergency stay pursuant to Federal Rule of Appellate Procedure 8.

In his mandamus petition, received by this court on February 28, 2023, Akula complains that the district court judge presiding over his criminal proceedings, Judge Lance M. Africk, should be disqualified

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because he is corrupt and is operating under a conflict of interest. For relief, Akula seeks an order compelling Judge Africk to disclose his financial holdings and any conflicts of interest.

In August 2021, a grand jury issued an indictment charging Akula with 23 counts of health care fraud in violation of 18 U.S.C. § 1347. On or about December 14, 2022, while still represented by counsel, Akula began directing letters to Judge Africk in which he asked to be provided a list of the judge's financial holdings and conflicts of interest in order to establish Judge Africk's impartiality. On February 1, 2023, Akula waived assistance of counsel, elected to proceed pro se, and was appointed standby counsel. The following day, Akula sent another letter to Judge Africk, reiterating his request for a list of the judge's financial holdings and conflicts of interest, and he filed a motion for judicial disqualification under 28 U.S.C. § 144 and 28 U.S.C. § 455. Judge Africk advised Akula during a February 14, 2023 pretrial conference that his financial disclosure reports are publicly available and may be accessed via an internet request and that he was not aware of any basis for recusal in this case. In an order entered on March 13, 2023, the district court denied the motion for judicial disqualification.

A party may not challenge the denial of a judicial disqualification motion by interlocutory appeal. *Nobby Lobby, Inc. v. City of Dallas*, 970 F.2d 82, 86 n.3 (5th Cir. 1992); *Corrugated Container Antitrust Litig. Steering Comm. v. Mead Corp. (In re Corrugated Container)*, 614 F.2d 958, 960-61 (5th Cir. 1980). However, a party may

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seek review of a disqualification ruling by way of a mandamus petition. *In re Chevron U.S.A., Inc.*, 121 F.3d 163, 165 (5th Cir. 1997); *In re Corrugated Container*, 614 F.2d at 961 n.4.

Nevertheless, mandamus relief is an “extraordinary remedy” justified only by “exceptional circumstances.” *In re Corrugated Container*, 614 F.2d at 961-62 (internal quotation marks and citation omitted). The movant has the burden of showing a “clear and indisputable right” to the issuance of the writ. *Id.* (internal quotation marks and citation omitted); *see also In re Willy*, 831 F.2d 545, 549 (5th Cir. 1987) (same). “[T]he writ will not issue to correct a duty that is to any degree debatable: the trial court must be acting beyond its jurisdiction or in a fashion about which discretion is denied it.” *United States v. Denson*, 603 F.2d 1143, 1147 n.2 (5th Cir. 1979) (en banc).

Recusal of judges for bias is governed by 28 U.S.C. § 144 and 28 U.S.C. § 455. *United States v. Scroggins*, 485 F.3d 824, 829 & n.19 (5th Cir. 2007). Section 144 concerns motions for recusal. It provides, in pertinent part, that “[w]henever 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,” the judge shall proceed no further, and another judge shall be assigned to hear the recusal motion. § 144. Similarly, under § 455(a), a judge is required to sua sponte “disqualify himself in any proceeding in which his impartiality might reasonably be questioned.” Subsection (b), in

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turn, lists a number of specific circumstances in which a judge is required to disqualify himself. *See* § 455(b). Most relevantly, disqualification is required when the judge “has a personal bias or prejudice concerning a party,” § 455(b)(1), or when the judge or his spouse “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,” § 455(b)(4); *see also* § 455(d)(4) (defining “financial interest”).

Under either statute, bias warranting disqualification must be personal, rather than judicial. *Scroggins*, 485 F.3d at 830. Adverse rulings on motions ordinarily do not warrant disqualification for bias; they must “reveal an opinion based on an extrajudicial source” or “demonstrate such a high degree of antagonism as to make fair judgment impossible.” *Id.* The same standard applies to critical, disapproving, or even hostile judicial remarks directed to counsel, their parties, or their cases; they will not require recusal unless they show favoritism or antagonism to such a high degree that fair judgment is not possible. *In re Chevron*, 121 F.3d at 165.

We decline to exercise our mandamus authority in this case. In his petition, Akula alleges, among other things, that Judge Africk has a financial interest in Akula’s criminal prosecution and has received bribes from the insurance industry related to the same. For support, he contends that the judge’s failure to provide financial information, despite Akula’s repeated requests, “lend[s] substantial weight to the proposition

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that [certain insurance companies] have corrupted” Judge Africk. According to Akula, this failure is a “tacit” admission by Judge Africk of his corruption, partiality, and obstruction of Akula’s criminal defense.

Although Akula insists that he has been deprived of information regarding Judge Africk’s financial interests, there is no indication that Akula has submitted a Judiciary Financial Disclosure Report request.¹ Nor does he point to anything in Judge Africk’s publicly available financial disclosures that would support disqualification in the criminal matter. Thus, Akula has not shown that Judge Africk has any “financial interest in the subject matter in controversy or in a party to the proceeding” so as to require disqualification under § 455(b)(4). *See In re Placid Oil Co.*, 802 F.2d 783, 786-87 (5th Cir. 1986) (holding that disqualification under § 455(b)(4) is not required when only “an indirect and speculative interest” is shown).

Similarly, Akula has not shown that disqualification was required based on any personal bias or prejudice or any appearance of impartiality. While it is likely that Akula’s pro se certification that his affidavit was made in good faith was insufficient under § 144 because it was not made by counsel of record, *see Morrison v. United States*, 432 F.2d 1227, 1229 (5th Cir. 1970), we need not make that determination, as Akula’s unsubstantiated and speculative affidavit was

¹ *See Judiciary Financial Disclosure Reports*, U.S. Cts. <https://www.uscourts.gov/nudges-judgeships/judiciary-financial-disclosure-reports>

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legally insufficient to trigger the requirement that the proceeding be handled by a different judge because it failed to state facts with particularity that “would convince a reasonable person that a bias exists,” *Patterson v. Mobil Oil Corp.*, 335 F.3d 476, 483 (5th Cir. 2003). Likewise, Akula’s disqualification motion was insufficient under § 455 as it was wholly speculative and failed to show that the district court judge’s “impartiality might reasonably be questioned.” *United States v. Miranne*, 688 F.2d 980, 985 (5th Cir. 1982) (quoting § 455(a)); *see also* *Sensley v. Albritton*, 385 F.3d 591, 600 (5th Cir. 2004) (holding allegations insufficient to support disqualification under § 455 when argument was made “by layering several speculative premises on top of one another to reach a speculative conclusion”). Finally, Akula’s references to the district court’s adverse rulings are insufficient grounds for recusal. *See Scroggins*, 485 F.3d at 830.

The petition for a writ of mandamus is DENIED. Akula’s request for an emergency stay order is DENIED as moot.

[SEAL]
A True Copy
Certified order issued Apr 11, 2023

/s/ Lyle W. Cayce
Clerk, U.S. Court of Appeals,
Fifth Circuit

AO 187 (Rev.7/87) Exhibit and Witness List

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES TRIAL EXHIBIT LIST

OF AMERICA

VERSUS

SHIVA AKULA

CASE NUMBER: 21-98 "I"

PRESIDING JUDGE Lance M. Africk	GOVERNMENT'S ATTORNEY Kathryn McHugh and Jeffrey McLaren	DEFENDANT'S ATTORNEY David DeVillers and Townsend Myers
HEARING DATE(S) October 30, 2023 thru November 6, 2023	COURT REPORTER Samm Morgan	COURTROOM DEPUTY Bridget Gregory and Jennifer Limjuco

GOV. NO.	DEF. NO.	DATE OF-FERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS
1		10/30/23	✓	✓	In Globo: Canon Hospice Combined Enrollment Documents

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10		10/30/23	✓	✓	In Globo: Canon Hospice enrollment forms and audit documents
	32	10/30/23	✓	✓	Louisiana Hospice Average Length of Stay Comparison Summary – 2 page Excel worksheet
73		10/31/23	✓	✓	In Globo: Akula Tax Returns for 2013-2019
31		10/31/23	✓	✓	In Globo: HospiceSoft notes, logs, and documentation for CaDa for 2016
32		10/31/23	✓	✓	In Globo: HospiceSoft notes, logs, and documentation for CaDa for 2016-2018
33		10/31/23	✓	✓	In Globo: HospiceSoft notes, logs, and documentation for PrA1 for 2016-2017

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34		10/31/23	✓	✓	In Globo: HospiceSoft notes, logs, and documentation for DoTu for 2016-2017
35		10/31/23	✓	✓	In Globo: HospiceSoft notes, logs, and documentation for EtWi for 2017
36		10/31/23	✓	✓	In Globo: HospiceSoft notes, logs, and documentation for YvDu for 2017
37		10/31/23	✓	✓	In Globo: HospiceSoft notes, logs, and documentation for JoMo for 2017
41		10/31/23	✓	✓	In Globo: HospiceSoft labs, documentation, and legals for CaDa for 2016
43		10/31/23	✓	✓	In Globo: HospiceSoft labs, documentation, and legals for PrA1 for 2016

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44		10/31/23	✓	✓	In Globo: HospiceSoft labs, documentation, and legals for DoTu for 2016
45		10/31/23	✓	✓	In Globo: HospiceSoft labs, documentation, and legals for EtWi for 2016
46		10/31/23	✓	✓	In Globo HospiceSoft labs, documentation, and legals for YvDu for 2017
47		10/31/23	✓	✓	In Globo: HospiceSoft labs, documentation, and legals for JoMo for 2017
	35	10/31/23	✓	✓	Copy of 42 CFR 418.304
	60	10/31/23	✓	✓	In Globo: Physician Services Agreement between Canon and Dr. Blalock with related emails

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	36	10/31/23	✓	✓	Palliative Performance Scale PPS
16		10/31/23	✓	✓	In Globo: Photos of billing area at Canon Hospice
	29	10/31/23	✓	✓	In Globo: Photographs of Canon Facility
50.002		11/1/23	✓	✓	10/16/2017 email from Anderson to Akula re Raj filing NOE's
50.003		11/1/23	✓	✓	10/18/2017 email from Anderson to Manisha re Raj filing NOE's
50.009		11/1/23	✓	✓	12/1/2017 email from Kelly Anderson RE disabling Raj's user rights on HospiceSoft
50.010		11/1/23	✓	✓	12/17/2017 email from Shiva Akula to Anderson RE a raise

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50.015		11/1/23	✓	✓	6/26/2017 email from Shiva Akula to Murray and Biiyam
50.021		11/1/23	✓	✓	8/9/2017 email from Akula to Anderson RE Ms. May
50.023		11/1/23	✓	✓	9/20/2017 email from An- derson RE bill- ing and Raj
50.055		11/1/23	✓	✓	11/1/2017 email from An- derson to Shiva Akula RE "If Raj bills for October"
50.059		11/1/23	✓	✓	6/10/2017 email from Shiva Akula to Anderson and May
50.060		11/1/23	✓	✓	6/10/2017 email from Shiva Akula to Jennifer Ber- geron

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50.063		11/1/23	✓	✓	8/12/2017 email from Shiva Akula to Seymour and Anderson
50.067		11/1/23	✓	✓	5/11/2017 email from Shiva Akula to Kelly Ander- son
22	11/1/23		✓	✓	1/29/2018 email from Kelly Ander- son to Mark Tobey
18	11/1/23		✓	✓	9/26/2017 email from Kelly Ander- son with link to .zip file
19	11/1/23		✓	✓	9/23/2017 email from Kelly Ander- son to Akula
15	11 1/23		✓	✓	9/27/17 email between Kelly Anderson and Julia Marange
5-199	11/1/23		✓	✓	5/31/2020 Email between Akula and An- derson re: Raise

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	5-216	11/1/23	✓	✓	6/9/2020 email between Akula and Anderson re: Payment
50.031		11/1/23	✓	✓	3/20/2018 email from Siva Akula to Harris, Anderson and May
50.072		11/1/23	✓	✓	10/13/2017 email from Akula to May Cooperation is Vital
20.002		11/2/23	✓	✓	Amended Medical Review
	34	11/2/23	✓	✓	Palmetto GBA letter regarding repayment plan for previous audit
	39	11/2/23	✓	✓	Email from Sue May to multiple recipients dated 10/31/2014 regarding Failure to Thrive as a diagnosis

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	40	11/2/23	✓	✓	Email from Sue May to multiple recipients dated 10/31/2014 regarding principal diagnosis codes that cannot be used
	41	11/2/23	✓	✓	Email from Sue May to Shiva Akula dated 8/28/2017 regarding meeting with Raj and Manesha
	42	11/2/23	✓	✓	Email from Sue May to multiple recipients dated 10/31/2014 regarding turning in documentation timely
	43	11/2/23	✓	✓	Email from Sue May to Shiva Akula dated 7/7/2014 regarding billing updates

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	44	11/2/23	✓	✓	U.S. Customs and Border Protection Personal Encounter List regarding Raj Biyyam
	45	11/2/23	✓	✓	Email from Sue May to Shiva Akula dated 10/19/2017 re LMHPCO
	47	11/2/23	✓	✓	Email from Sue May to Shiva Akula and others dated 5/5/2014 re Suncoast billing
	48	11/2/23	✓	✓	Email from Sue May to Shiva Akula dated 12/6/2013 regarding weekend update
50.005		11/2/23	✓	✓	7/22/2017 email from Akula to Sue May

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93.001		11/6/23	✓	✓	Section 3.3.1.1 – Medical Record Review
	38	11/6/23	✓	✓	Email from Sue May to Kittu and Raj dated 3/24/2014 regarding scheduling for webinar
	49	11/6/23	✓	✓	Email from Sue May to Shiva Akula dated 7/19/2016 asking for increased incentives
	50	11/6/23	✓	✓	Email from Sue May to Shiva Akula dated 10/13/2017 regarding Spot Checking
	51	11/6/23	✓	✓	Email from Shiva Akula to Sue May dated 9/27/2016 re Administrator/Board Meeting

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	52	11/6/23	✓	✓	Email from Sue May to Joshua Bruce dated 7/26/2017 re performance plan
91.001		11/6/23	✓	✓	Summary of text messages between Sue May and Kelly Anderson in 2017
91.000		11/6/23	✓	✓	Text messages lines 157638 through 157662
	54	11/6/23	✓	✓	La. Admin. Code tit. 48 Section I-8217

* Include a notation as to the location of any exhibit not held with the case file or not available because of size.
