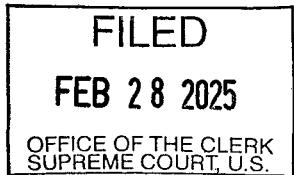


No. 24 - 6696



IN THE

SUPREME COURT OF THE UNITED STATES

James R. Turner III, Petitioner,

Vs.

Edward Rapp, Respondent

On Petition for a Writ of Certiorari to the United States

Court of Appeals for the Second Circuit

**Petition for a Writ of Certiorari**

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## QUESTION(S) PRESENTED

1. Whether the United States Court of Appeals erred in denying petitioner's motion for leave to proceed in forma pauperis in violation of and applicable constitutional protections.
2. Whether the Court of Appeals properly dismissed the petitioner's appeal for lack of an arguable basis in law or fact, conflicting with Supreme Court precedent.
3. Whether the District Court judge erred in refusing to recuse themselves despite circumstances that would reasonably question their impartiality.

## **PARTIES TO THE PROCEEDING**

James R. Turner III is the Petitioner in the proceeding below. The respondent is Edward Rapp, who was the party in the United States Court of Appeals.

Megan Lee, The Port Authority of New York and New Jersey office of the General Counsel 4 World Trade Center 24<sup>th</sup> floor 150 Greenwich Street New York, NY 10007 (212)435-3435.

Barbara D. Underwood, New York State Office of the Attorney General 28 Liberty Street New York, NY 10005

## **RELATED CASE**

Turner v. Rapp, No. 24-1242, U.S. Court of Appeals for the Second Circuit.

Judgment entered Oct 9, 2024

Turner v Rapp, No 23-CV-9516, U.S. District Court for the Eastern District of New York.

Judgment entered Apr 12, 2024

## TABLE OF CONTENTS

	Page
QUESTION(S) PRESENTED.....	i
PARTIES TO PROCEEDING.....	ii
RELATED PROCEEDING.....	iii
TABLE OF CONTENTS.....	iv
TABLE OF AUTHORITIES .....	v
OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL & STATUTORY PROVISIONS	
INVOLVED.....	3
STATEMENT OF THE CASE.....	4
REASON FOR GRANTING THE PETITION.....	10
CONCLUSION .....	15
INDEX TO THE APPENDIX.....	16
APPENDIX.....	16

## TABLE OF AUTHORITIES

28 U.S.C. 1915 (Proceedings in forma pauperis) .....	4,6
28 U.S.C. 455 (Disqualification of judges) .....	7,9,11
28 U.S.C. 144 (Bias or prejudice of judge) .....	9
28 U.S.C. 1254(1) (Supreme Court jurisdiction)	
Adkins v. El DuPont de Nemours & Co.,	
335 U.S. 331 (1948)	
Berger v. United States,	
255 U.S. 22 (1921)	
Caperton v. A.T. Massey Coal Co.,	
556 U.S. 868 (2009) .....	9,11
Conely v. Gibson,	
355 U.S. 41 (1957) .....	10
Denton v. Hernandez,	
504 U.S. 25 (1992) .....	4,7
Dioguardi v. During,	
139 F.2d 774 (1944) .....	10
Haines v. Kerner,	
139 F.2d 774 (1944) .....	10
Jackson v. State of Arizona,	
139 F.2d 774 (1944) .....	6
Jones v. Morris,	

777 F.2d 1277 (1985)

Liljeberg v. Health Services Acquisition Corp.

777 F.2d 1277 (1985) .....9

Liteky v. United States,

510 U.S. 540 (1995) .....9,12

Neitzke v. Williams,

510 U.S. 540 (1995) .....4,7

Sills v. Bureau of Prisons,

761 F.2d 792 (1985)

Supreme Court Rule 10 (Considerations Governing Review on Certiorari)

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

## OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is unpublished.

## JURISDICTION

For cases from federal courts:

The date on which the United States Court of Appeals decided my case was  
A timely filed petition for rehearing was denied by the United States Court of  
Appeal on August 28, 2024. A copy of the order denying rehearing appears at  
Appendix October 1, 2024

An extension of time to file the petition for a writ of certiorari was granted to and  
including (date) on (date) in Application No.

A

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Amend. I (Freedom of Speech)

U.S. Const. Amend. XIV (Due Process and Equal Protection Causes)

28 U.S.C. 144 (Bias or prejudice of judge)

28 U.S.C. 455 (Disqualification of judges)

28 U.S.C. 1915 (Proceedings in forma pauperis)

## STATEMENT OF THE CASE

Petitioner filed a civil action in the District Court in the Eastern District of New York and sought leave to proceed in forma pauperis under U.S.C. 1915. The District Court denied this motion, and upon appeal, the Court of Appeals affirmed the decision, dismissing the appeal on the grounds that it lacked an arguable basis in law or fact. This dismissal conflicts with this Court's precedents in *Neitzke v. Williams*, 490 U.S. 319 (1989), which held that a complaint is frivolous only if it lacks an arguable basis either in law or facts, and *Denton v. Hernandez*, 504 U.S. 25 (1992), which clarified the standards for in forma pauperis determinations. Petitioner James R. Turner, appearing pro se, as and for his Amended Complaint, hereby states: I am filing as petitioner from a decision by the United States Court of Appeals from the second circuit and the District Court of the Eastern District of New York, against Respondent Edward Rapp former detective of the Port Authority Police Department of NY & NJ at John F. Kennedy International Airport, the lead law enforcement investigator in a criminal investigation.

This case involved a matter of a breach of airport security, a National Security Breach. Petitioner was an airport security agent, employee of FJC Security Services Inc., contracted by the Port Authority to perform Aeronautical Surveillance around JFK airport. Petitioner was off for two days, Friday and Saturday, and when returning back to work, was scheduled to work the 4-12 C tour Sunday, on January 19, 1997. While changing into his uniform, Petitioner was subjected to a series of

assaults that not only endangered his personal safety but also exposed significant breaches in airport security protocols, raising concerns under national security laws and regulations. Was attacked by an unknown individual who unlawfully accessed a restricted area contravening security requirement prescribed under 49 U.S.C. 46314, which prohibits unauthorized entry into secured airport zones. During this assault, Petitioner was forcibly assaulted by being shoved into the edge of the locker, resulting in injury to his back, and restrained and sustained an injury to his finger while escaping also patted down by the assailant. Petitioner noticed that \$250.00 Dollars was missing off his person sometime later. At the time of the incident, Petitioner was threatened that he would be shot if he reported to anyone what had happened in the locker room. Petitioner promptly reported to airport security manger what had happened in the locker room to his supervisor. However, as he exited the building, he was attacked again, this time by a co-worker, Riccardo Edwards, this second assault underscores a failure in internal security measures and employee vetting processes, potentially violating Transportation Security Administration (TSA) regulations designed to prevent and ensure comprehensive security oversight. In response to these incidents, Petitioner filed a civil lawsuit alleging negligence in maintain secure premises and failure to adhere to federal security mandates. He sought to proceed in forma pauperis under 28 U.S.C. 1915, which allows indigent litigants to pursue legal action without bearing the costs. The District Court denied this motion, upon appeal, the Court of Appeals upheld the dismissal. Petitioner appeal to the Supreme Court

which also dismissed Federal Aviation Administration; Port Authority of New York & New Jersey; F.J.C. Security Services, Inc.,04-cv-1846.

Petitioner was taken to the airport hospital where he was treated for a strained muscle in his back and stiffness in the neck. On Wednesday the 22<sup>nd</sup> of January, Respondent Edward Rapp was contacted by Petitioner and was advised to come to the administration building where everything had occurred the day before. The Respondent picked up both Petitioner and the co-worker, Riccardo Edwards. A written complaint was filed by the Petitioner. Respondent never notified the Petitioner as to the status of the criminal case. Petitioner made several phone calls to the Respondent, including once over a recorded phone where Petitioner questioned the Respondent about the penal code and what was the status of the case. The Respondent said that there was no arrest and that the petitioner didn't report any injuries, so the case was closed. Petitioner obtained a police report and after carefully reading, it the Respondent distorted the facts by saying that Petitioner said that the incident was over a female. Which Petitioner never stated as it was not true. The Respondent tried to shift the blame on Petitioner rather than the Port Authority for lack of security negligence.

As noted in Jackson v. State of Arizona 855 F.2d 679, a compliant is "frivolous within the meaning of Section 1915(d) only if it lacks an arguable basis in law or fact". Thus, a judge may dismiss claims which are "based on indisputably meritless legal theories" or whose "factual contentions are clearly baseless." The Court of Appeals appears to

conflict with precedents set by the Supreme Court, notably *Neitzke v. Williams*, 490 U.S.319 (1989), which clarified that a complaint is frivolous only if it lacks an arguable basis either in law or in fact. The Court emphasized that factual allegations must be “clearly baseless” or the legal theory “indisputably meritless “for a claim to be dismissed as frivolous. Similarly, in *Denton v. Hernandez*, 504 U.S. 25 (1992), the Court reiterated that dismissals should be reserved for claims lacking any factual or legal foundation. In this case, Petitioner’s allegations of security breaches and assault within a sensitive airport environment present substantial question under federal security regulations and constitutional protections. These claims are neither “fantastic” nor “delusional” but are grounded in specific incidents that, if proven, indicate serious lapses in security protocols and potential violations of Petitioner’s constitutional rights. Furthermore, the District Court judge’s refusal to recuse themselves, despite potential conflicts of interest, raises additional concerns. Under 28 U.S.C. 455, a judge is required to disqualify themselves in any proceeding where their impartiality might reasonably be questioned. The judge’s continued involvement, despite evident reasons for recusal, undermines the fairness of the judicial process and contravenes established legal standards. Given these considerations, Petitioner’s claim possesses an arguable basis in both law and fact, warranting a thorough judicial examination rather than summary dismissal. Petitioner filed an administration appeal to the Federal Aviation Administration under the Freedom of Information Act: RE: Appeal AFAA-2024-00004 of Freedom of Information Act Request, since it has been determined that under the provisions of 5

U.S.C. 552(a)(4)(B), Petitioner is entitled to seek judicial review of the decision in the U.S. District Court in the district where one resides, the district where one has their principle place of business, the district where the records are kept, or the District of Columbia. Also, U.S. Department of Homeland Security Transportation Security Administration Case Number: 2023-TSAP-00011 Judicial Review of the decision pursuant to provision of 5 U.S.C. 552(a)(4)(B) in the United States District Court in the district in which one resides, or in which the agency records are situated or in the District of Columbia. United States District judge Pamela K. Chen Professional Career as Assistant U. S. Attorney, Eastern District of New York, 1998-2007, 2008-2013 (Chief, Civil Rights Litigation Unit, 2003-2006; Deputy Chief, Public Integrity Section, 2006-2007, Chief, Civil Rights Section, 2006-2007, 2008-2013). In October 31,2000 petitioner met with one of the Federal Prosecutor with regards to the criminal complaint as Assistance U.S. Attorney, Eastern District of New York Pamela K. Chen would have heard or some way came across petitioner at that time. Also, District Court Judge as Senior Trial Attorney in Civil Rights Division at the Department of Justice while Petitioner sent several letters to investigate violations of his civil rights.

Furthermore, the District Court judges refused to recuse themselves despite circumstances that raised reasonable questions about their impartiality. The District judge Chen Pamela Ki Mai is a Board Chair member of Associate Justice Sonia Sotomayor Circuit Justice, the Sonia & Celina Sotomayor Judicial Internship

Program Board Chair. Under 28 U.S.C. 455, a judge must reasonably disqualify themselves if their impartiality might reasonably be questioned. The District judge had rendered a judgement twice in Plaintiff cause of actions 04-CV-1846, 23-CV-9516, Liteky v. United States 510 U.S. 540 (1994). Petitioner moved to disqualify the District judge pursuant to 28 U.S.C. 455(a). The motion relied on events that occurred during trial involving Petitioner before the same District judge for a second time. Quite simply, recusal was required whenever “impartiality might reasonably be questioned”. In Liljeberg v. Health Service Acquisition Corp 486 U.S. 847 the court first noted that judge Collins should have immediately disqualified himself when his actual knowledge of Loyola’s interest was renewed. Additionally, 28 U.S.C. 144 allows a party to seek disqualification if they provide a sworn affidavit showing personal bias or prejudice. The Petitioner submitted such a request, which was improperly denied. The judge’s refusal to recuse is inconsistent with the principles set forth in Liteky v. United States, 510 U.S. 540 (1994), which held that bias must stem from an extrajudicial source but recognized cases where judicial conduct itself may reveal deep-seated favoritism. Moreover, in Caperton v. A.T. Massey Coal Co., 556 U.S. 868 (2009) the court held that recusal is required in cases of extreme bias.

Petitioner made several attempts to serve the Respondent twice through Private Investigators (1) Intuit Investigative Resource 45 Rockefeller Plaza New York, NY 10111 January 7, 2025 11:25 am 646-751-7222 spoke to Myles (2) Ryan Investigative Group Inc. 943 4<sup>th</sup> Ave Brooklyn, NY 11232 January 22, 2025 347-417-1610. (3)

Subpoena January 8, 2024 Clerk of U.S. District Court, Eastern District of New York 225 Cadman Plaza East Brooklyn, NY 11201. Petitioner contacted the Port Authority of New York and New Jersey Office of the General Counsel Megan Lee 4 World Trade Center 24<sup>th</sup> floor 150 Greenwich Street New York, NY 10007 thinking that they would be able to contact the respondent through retirement benefits.

#### REASON FOR GRANTING THE PETITION

1. Conflict with Supreme Court Precedent: The lower court's decisions conflicts with *Neitzke v. Williams* and *Denton v. Hernandez*, which establish that a case should not be dismissed solely because the judge subjectively believes it lacks merit. The Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is "a short and plain statement of the claim that will give the defendant fair notice of what the plaintiff's claim is and the ground upon which it rests", (*Haines v. Kerner* 404 U.S.519).

In *Conley v. Gibson* 355 U.S. 41, 45-46, the court noted: "We cannot say with assurance that under the allegations of the pro se complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Such simplified "notice pleading" is made possible by the liberal opportunity for discovery and other pretrial procedures established by the rule to disclose more precisely the basis of the claim and defense, and to define more narrowly the disputed facts and issues (*Dioguardi v. Durning* 139 F.2d 774).

Following the simple guide of rule 8(f) that “all pleadings shall be so construed as to do substantial justice”. We have no doubt that petitioner’s complaint adequately set forth a claim and gave the respondents fair notice of its basis. The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel maybe decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits.

2. Violation of Due Process and Equal Protection: The denial of in forma pauperis status without proper consideration of financial hardship and Equal Protection Clauses of the Fourteenth Amendment.

3. Failure to Recuse Violates Federal Law and Due Process: The refusal of the District Court judge to recuse themselves contradicts the statutory requirements of 28 U.S.C. 455 and 144 and fails to uphold due process as outlined in *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868. Petitioner respectfully requests the recusal of District Judge and Magistrate judge Lois Bloom from this case, citing concerns about potential bias and impartiality. The involvement of these judges in prior related proceeding raises questions about their ability to remain impartial, as required under 28 U.S.C. 455(a), which mandates that any judge “shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.” In *United States v. Liburd*, the defendant sought the recusal of judge Pamela K. Chen, alleging potential bias. The court denied the motion, emphasizing the necessity for concrete evidence of bias rather than speculative assertions. However, the case underscores

the importance of addressing even the appearance of partiality to maintain public confidence in the judiciary. Similarly, in *Llewellyn v. New York*, Magistrate judge Lois Bloom issued a Report and Recommendation, which was subsequently reviewed by judge Pamela K. Chen. The intertwined roles of both judges in related matters may give rise to concerns about impartiality in the present case. The Supreme Court, in *Liteky v. United States*, 510 U.S. 540 (1994), held that recusal is warranted when a judge's action or comments display a deep-seated favoritism or antagonism that would make fair judgement impossible. While prior adverse rulings alone do not constitute bias, the cumulative involvement of judges Chen and Bloom in related proceedings could reasonably lead an objective observer to question their impartiality in this case. Given these circumstances, recusal is appropriate to ensure that justice is administered without any appearance of bias, thereby upholding the integrity of the judicial process.

4. Erosion of Public Confidence in the Judiciary: A judge's refusal to recuse despite circumstances warranting disqualification undermines public confidence in the integrity and impartiality of the judiciary, a principle essential to the legitimacy of the judicial system. While the legal standard requires a high threshold for recusal, the perception of impartiality is crucial. When a judge remains on a case despite a party's reasonable concerns about bias, it can undermine public trust in the judicial fairness. Similarly, in *Perri v. Doe*, the plaintiff moved for the recusal of Magistrate Judge Lois Bloom, alleging threats of case dismissal if he refused to settle. The court

found these claims insufficient for recusal, noting that judicial rulings and standard admonishments do not constitute valid grounds for disqualification. However, from the litigant's perspective, such interactions can foster a belief of judicial partiality, especially when the judge continues to preside over the case despite these allegations.

5. Importance of Access to Justice: The case raises an important question about indigent litigants' access to the courts, the proper application of 28 U.S.C. 1915, and the enforcement of judicial impartiality, warranting review under Supreme Court Rule 10. Importance of Access to justice and Judicial Recusal in Upholding Public Confidence; Access to justice is a cornerstone of a fair and democratic society, ensuring that individuals can seek redress and have their cases heard impartially. The judiciary's role in this process is paramount; judges must not only be impartial but also appear impartial to maintain public trust in the legal system. When circumstance arise that might lead a reasonable person to question a judge's impartiality, recusal becomes essential to preserve the integrity of the judiciary and uphold public confidence. Cases illustrating Judicial Recusal Due to Multiple Complaints, Several instances demonstrate the necessity of judicial recusal in the face of multiple complaints, highlighting the judiciary's commitment to fairness and the perception of impartiality: (1) Young Thug's Trial (2024): In a high-profile case involving rapper Young Thug, multiple defendants filed complaints against Fulton County Chief Judge Ural Glanville, alleging potential bias. Consequently, judge Glanville was ordered to recuse himself from the trial. This decision underscored the

judiciary's responsiveness to concerns about impartiality, ensuring that justice is administered without prejudice. (2) *Vermont vs. Hunt* (1982): This case led to significant scrutiny of judicial conduct, resulting in multiple complaints against three Vermont Supreme Court justices. Allegations included undue influence and conflicts of interest. The extensive review culminated in the recusal of all five Vermont Supreme Court justices from the proceedings, with temporary judges appointed to ensure impartiality. This action highlighted the judiciary's dedication to addressing potential biases and maintaining public trust.

## CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of certiorari.

February 27, 2025

Respectfully Yours,

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