

NO. 24-6710

**In The
Supreme Court of the United States**

ROBERT KLEIN

Petitioner pro-se

v.

BROOKHAVEN HEALTH CARE FACILITY

The McGuire Group

Respondents.

**On Petition for a Writ of Certiorari to the United States Court of Appeals for the
Second Circuit**

PETITION FOR REHEARING

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10 May 2025

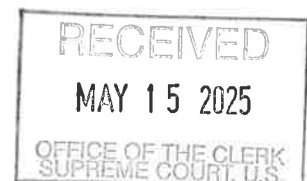


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PETITION FOR REHEARING

Petitioner Robert Klein respectfully petitions for a rehearing of this Court's 28 April 2025 Order denying his petition for a writ of certiorari dtd 19 February 2025.

Pursuant to Rule 44.2 of the Rules of the United States Supreme Court, petitioner is authorized to file this petition.

The United States Supreme Court website clearly states: "About the Court":
"EQUAL JUSTICE UNDER LAW"- "These words, written above the main entrance to the Supreme Court Building, express the ultimate responsibility of the Supreme Court of the United States. The Court is the highest tribunal in the Nation for all cases and controversies arising under the Constitution or the laws of the United States. As the final arbiter of the law, the Court is charged with ensuring the American people the promise of equal justice under law and, thereby, also functions as guardian and interpreter of the Constitution".

REASONS FOR GRANTING REHEARING

Petitioner's WRIT of CERTIORARI explained why This Court's review was warranted in the first instance to only name a few:

The Constitution under the Seventh & Fourteenth Amendments, United States Statutes along with United States Codes, Codes of Federal Regulations, Federal Rules of Civil Procedures, Orders and Motions to Compel, Whistleblower Protection, Discrimination, EEOC Regulations and Medicare Fraud cannot be abolished,

abandon or overlooked without Congress's knowhow & approval within the process.

Discrimination in the workplace is still alive and active with no signs of retreating and enforcement is not. Now an incident bystander will be punished. The Federal Circuit refused to address the matter and denied the Petitioners request to remand back for a trial by jury and misinterpreted the laws. The Petitioner was nevertheless incorrectly and unjustly denied a hearing or relief. To think that even the courts discriminate on a process that is protected and set in stone through the language in the Constitution.

When a U.S.M.C. Vietnam combat veteran who served and was willing to die to protect that Right has now been disadvantaged. "Rights" that should not be swept under the carpet.

This Court has granted certiorari in *Egbert v. Boule, No. 21-147 (U.S.)*. That decision constitutes an "intervening circumstance of a substantial effect", because it provides an additional justification for This Court's review.

If This Court is not active and enforces what is already set in place by Congress, our most vulnerable elderly citizens shall continue to be put in harm's way which presents specific substantial dangers to the public health and safety.

Where does an employee seek judicial review when the courts have turned its cheek when all prevailing codes and statutes define?

This Court has the ensuring and ultimate responsibility to correct the wrongs of subordinate courts and to promise equal justice under law in all cases.

This relief should have been in a form guaranteed by The Constitution and Statute. Trial by jury is where justice is served and was demanded at the onset and throughout. The District Court, the Appellate Court and now This Court refuses to allow a jury to decide what the Constitution guarantees, Statute entitles and This

Court's numerous decisions dictate.

"Trial by jury is more than an instrument of justice and more than one wheel of the Constitution: it is the lamp that freedom lives". Duncan v. Louisiana, 391 U.S. 145 (1968).

Credibility determinations, the weighing of the evidence, and drawing of legitimate inferences from the facts are jury functions, not those of a judge. Liberty Lobby, Inc., 477 U.S. 242 (1986).

The McDonnell Douglas procedure attempts to compensate for his lack of evidence to ensure that the employee has his or her day in court. McDonnell Douglas Corp., v. Green, 411 U.S. 792 (1973).

The District Court misinterpreted the law ... and this error was prejudicial, rather than harmless. It was the jury's function to weigh the evidence and inferences to be drawn therefrom, and to come to an ultimate conclusion of the facts. Continental Ore Co. v. Union Carbide & Carbon Corp., 370 U.S. 690 (1962).

There was, however, sufficient evidence to go to the jury, and it is the jury which "weighs contradictory evidence and inferences" and draws the "ultimate conclusion as to the facts". Tennant v. Peoria & Perkin Union Ry. Co., 321 U.S. 29 (1944).

It is not the function of a court to search the record for conflicting circumstantial evidence in order to take the case away from the jury on a theory that the proof gives equal support to inconsistent and uncertain inferences. The focal point of judicial review is the reasonableness of the particular inferences or conclusion drawn by the jury. It is the jury, not the court, which is the factfinding body. It weighs the contradictory evidence and inferences, judges the credibility of witnesses, receives expert instructions, and draws the ultimate conclusion of facts. The very essence of its function is to select from among conflicting inferences and conclusions that which it considers most reasonable. Id. 321 U.S. 35.

Thus, to enter a judgment for respondent notwithstanding, the verdict is to deprive petitioner of the right to a jury trial. No reason is apparent why we should abdicate our duty to protect and guard that right in this case. We accordingly reverse the judgment of the court below the remand the case to it for further proceedings not inconsistent with this opinion. Id. 321 U.S. 35-36

Fundamental protected entitlements of "Due Process" has been neglected by numerous courts and now a United States Citizen has been deprived and forfeited those Rights. Fundamental requirements of due process is the opportunity to be

heard in a meaningful manner. Procedural due process thus determines both whether a litigant has a protected Right and, if so, what process is due, and the process due is **DUE PROCESS**. (*Constitution- fourteenth amendment- 1868*).

“For the guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to another person of another color, race, religion, gender, ethnicity or national origin, or age”. “...Equality may require acknowledgement or inequality in University admission standards, but it has no place in the application of laws by independent unbiased judges in Federal and State Courts of law applying United States jurisprudence...”. Students for Fair Admissions v. Harvard, 600 U.S. 181 (2023) (No. 20-1199).

Thus, Certiorari is warranted to resolve the due process issues of the Federal Circuit Courts where they have ruled against trickery. Judges are not empowered to decide Constitutionality of bureaucratic actions. This is the function, responsibility and province of a jury. No judge, attorney or citizen is above the law of this land.

There are many cases handed down from This Court as well as the Circuit Courts that are in conflict. Case laws should prevail but in this instance it has not. The rulings and decisions have been in non-compliance and total disregard especially set from the United States Supreme Court jurisprudence.

No Court can pick and choose which case goes to trial when the controlling documents (*Constitution- seventh amendment- 1791*) (*29 U.S.C. 626c2*) (*Lorillard v. Pons, 434 U.S. 575 (1978)*) requires a “trial by jury” in such as this case.

ALL citizens have the protection and it is their RIGHT to have equal Justice? If a United States citizen is to follow the Laws of the Land handed down from our founding fathers through the Constitution, then all Courts of the land should have to abide, follow suit and uphold. “There is no reason to think its drafters meant to incorporate more than the provisions specifically referred to”. It is This Court who sets the standards for all courts to follow and obey the wisdom it has set. When This

Courts wisdom is set adrift; the country has serious problems and havoc, confusion, controversy, conflict and disregard will prevail and citizens protections will be compromised.

Courts are required to abide by what Congress has put into Law within the requirements of certain Statutes. This Court should have to follow its own citing's on its interpretation of the laws, this seems not to be the case herein.

This case has done nothing more other than to dissuade a reasonable person and employees in the workplace from coming forward with noticeable Complaints to report protected activity, violations of substantial dangers to the public, life threatening dangers, abuse and neglect where lives of the elderly residents are put into jeopardy and kept at risk many times over, especially in nursing homes. Even discrimination, fraud or any incident has now become a deterrent to get involved in any situation of harm or a witness to a crime. We now inflict wounds on our souls by looking the other way and ignoring the laws.

The second circuit courts have overlooked or misapprehended a material fact in the record or a material question of law in this case. Even the Record was NEVER reviewed "as a whole" as it was missing parts and a flaw of injustice has taken place.

The "general rule" is "that claims are ripe once a cause of action occurs". A "claim occurs when a plaintiff knows or has reason to know of the harm".

The argument the DC and COA makes is misplaced.

CONCLUSION

Petitioner has stated a claim for taking under the Constitution in numerous amendments and under numerous Statutes and Laws. The Constitution has filled the gaps in the process but has been silent on its compliance. This Court has a duty, responsibility, requirement, and obligation and has taken an oath to uphold the Constitution. This Court also has to "ensure" that, WE THE PEOPLE have been "promised" equal justice under law and by this the case must be remanded for a trial by jury along with numerous overlooked and misconstrued certain laws back to the COA.

For the foregoing reasons, and those stated in the petition for writ of certiorari, This Court should grant the rehearing, and then grant the petition and review the judgments and demand a "Trial by Jury" as per the Constitution in civil matters.

Respectfully submitted; 10 May 2025


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CERTIFICATE OF A PARTY UNREPRESENTED BY COUNSEL

Pursuant to Rule 29, I, Robert Klein, do swear or declare that on this date, 10 May 2025, as required by the U.S. Supreme Court Rules, that I have served the enclosed 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 calendar days. Pursuant to Rule 33.2, 34 and 39 the understanding is followed. Under Rule 44.2 the grounds are for intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. That I hereby certify that the petition for rehearing is restricted to the grounds specified in Rule 44.2 and is being presented in good faith, not for delay and as best as understood for a pro se litigant still filing under *forma pauperis* guidelines. (28 U.S.C. 1746)

The names and addresses of those served are as follows:

Ms. Erin Torcello, ESQ (estorcello@bsk.com)(716-416-7058)

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Robert Klein, petitioner pro se 10 May 2025