

No. 24-6839

In the Supreme Court of the United States

RALPH W. BAKER, JR.

Petitioner,

v.

TA-NEHISI P. COATES, ET AL.

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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PETITION FOR REHEARING

In accordance with Supreme Court Rule 44 (“Rule 44”), petitioner respectfully petitions for rehearing of the Court’s May 19, 2025 decision. Specifically, petitioner asks for an order (1) granting rehearing and (2) granting petitioner a jury trial in the interest of justice and to ensure the truth emerges.

GROUND S FOR REHEARING

The Court affirmed the decision (the “Court Affirmation”) from the United States Court of Appeals for the Second Circuit (“Second Circuit”) to dismiss Ralph W. Baker, Jr.’s (“Plaintiff”) copyright infringement claim against Ta-Nehisi P. Coates (“Coates” or “defendant”) and others. Five justices recused themselves. The Court lacked a quorum, 28 U. S. C. §1, and the judgment was affirmed under 28 U. S. C. § 2109, with the same effect as if the affirmance was by an equally divided court. The lower court’s decision contradicts (i) the Copyright Act of 1976 (17 U.S.C.) (“Copyright Act”), (ii) federal law, (iii) the 14th Amendment of the U.S. Constitution (U.S. Const. amend. XIV § 1), and (iv) contradicts prior US. Supreme Court precedent. Therefore, the Court Affirmation is null and void.

I. The Court Of Appeals’ Decision Contradicts The U.S. Copyright Act

Plaintiff understands the U.S. Supreme Court interprets the law, while Congress makes the law. The Court has the power to review laws it deems unconstitutional (“judicial review”). Outside of judicial review, this Court cannot affirm a lower court decision that contradicts a congressional

statute like the U.S. Copyright Act (“Copyright Act”), contradicts federal statutes like the Lanham Act (15 U.S.C. § 1051), contradict prior U.S. Supreme Court precedent or contradict a constitutional amendment. The Statute of Anne or The Copyright Act of 1710 (8 Anne c. 21 or 8 Anne c. 19), is widely-considered the world’s first copyright statute; it established an author’s writings were protectable. Lord Mansfield in *Millar v. Taylor* (1769) better defines “writings”:

Or, as Lord Mansfield describes it, ‘an incorporeal right to print a set of intellectual ideas, or modes of thinking, communicated in a set of words or sentences, and modes of expression. It is equally detached from the manuscript, or any other physical existence whatsoever.’ 4 Burrows, 2396, *Holmes v. Hurst*, 174 U.S. 82 (1899).

Millar implies that (i) to copy the order of words in an author’s literary composition is akin to stealing something personal to the author and (ii) an author’s “set of words or sentences, and modes of expression” are protected standalone, and separate from the manuscript. *Jefferys v. Boosey* (1854) builds upon *Millar* – asserting that an author’s order of words is equivalent to his “countenance” or “face”:

Not only are the words chosen by a superior mind peculiar to itself, but in ordinary life no two descriptions of the same fact will be in the same words, and no two answers to your Lordships’ questions will be the same. The order of each man’s words is as singular as his countenance, and although if two authors composed originally with the same order of words, each would have a property therein, still the probability of such an occurrence is

less than that there should be two countenances that could not [be] discriminated. *Jefferys v. Boosey*, 4 H.L.C. 815, 867.

According to Article I, Section 8, Clause 8 of the United States Constitution (“Intellectual Property Clause”): “The Congress shall have Power ... To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”¹ The first U.S. copyright act – the Copyright Act of 1790 – was “modeled after the Statute of Anne.”²

In *Holmes v. Hurst*, the U.S. Supreme Court adopts *Millar* and *Jefferys*’ definitions of “writings.” *Millar v. Taylor*, (1769) 4 Burr. 2303, *Holmes v. Hurst*, 174 U.S. 82 (1899). Secondly, the Copyright Act protects original works of authorship fixed in a tangible medium of expression that can be perceived, reproduced or communicated. 17 U.S.C. § 102(a). Plaintiff’s arrangement of words or order of words in his literary composition – Shock Exchange rhythmic prose and tedious talk – is in a physical form that can be perceived, communicated and reproduced. Therefore, it is an expression protected by copyright. Plaintiff deserves compensation and recognition for his original work.

The Opinion And Order Adopting Report And Recommendation (“O&O”) from the Honorable Judge J. Paul Oetken (“Judge Oetken”) stated “...a particular writing style or method of expression

¹ <https://constitutioncenter.org/the-constitution/articles/article-i#article-section-8>

² <https://www.arl.org/copyright-timeline/>

standing alone is not protected by the Copyright Act,” quoting *Whitehead v. CBS/Viacom, Inc.*, 315 F. Supp. 2d 1, 11 (D.D.C. 2004).³ The ruling contradicts the Copyright Act. The Second Circuit’s summary order (the “Summary Order”) adopted the O&O.⁴ The decision renders the Copyright Act null and void, and could preclude Second Circuit courts from presiding over copyright infringement cases until Plaintiff receives his day in court.

Pursuant to Plaintiff’s arrangement of words, defendants perceived it, communicated it, reproduced it, and made billions from it. Here, “The Case for Reparations” (“2014 Essay”), the 2014 Essay, *Water Dancer, Between the World and Me* (“Between”), “The Black Family In The Age Of Mass Incarceration” (“2015 Essay”), *We Were Eight Years In Power* (“Eight Years”), stage plays, T.V. adaptations, the Captain America comics, the Black Panther comics, and the Black Panther movie are collectively, the “plagiarized works.” The petition for a writ of certiorari’s (“Writ of Certiorari”) analytical dissection proved the plagiarized works copied a substantial portion of the arrangement of words from *Shock Exchange: How Inner-City Kids From Brooklyn Predicted the Great Recession and the Pain Ahead* (“Shock Exchange”).⁵ *Hartfield v. Peterson*, 91 F.2d 998 (2d Cir. 1937). Below are the authors of the plagiarized works. 17 U.S.C. § 107, 17 U.S.C. § 103(a), 17 U.S.C. § 106.

³ Ralph W. Baker, Jr v. Ta-Nehisi P. Coates, et al., No. 24-6839, App. 14, Baker v. Coates, No. 23-7483, Docket Entry: 70-1, Baker v. Coates et al., Docket Number 158.

⁴ Ralph W. Baker, Jr. v. Ta-Nehisi P. Coates, et al., No. 24-6839, App. 1.

⁵ Ralph W. Baker, Jr. v. Ta-Nehisi P. Coates, et al., No. 24-6839, App. 18.

Authors Of Coates' Plagiarized Works

<u>Plagiarized Work</u>	<u>Author(s)</u>
Between	Coates
Water Dancer	Coates, Chris Jackson, Nicole Counts, Victoria Matsui
2014 Essay	Coates
2015 Essay	Coates
Black Panther Movie	Ryan Coogler, Joe Robert Cole, Stan Lee
Black Panther Comic	Coates, Yona Harvey, Roxane Gay
Captain America Comic	Coates
Eight Years	Coates

Source: Ralph W. Baker, Jr.

Coates wrote *Between*, the 2014 Essay, the 2015 Essay, the Captain America comic and *Eight Years*. Coates, and Penguin Random House editors Chris Jackson, Nicole Counts and Victoria Matsui co-wrote *Water Dancer*. Ryan Coogler and Joe Robert Cole wrote the screenplay for the Black Panther movie. Stan Lee (not a defendant) also took writing credit for the movie. Coates, Yona Harvey, and Roxane Gay co-wrote the Black Panther comic. Eight defendants copied Plaintiff's arrangement of words, proving Shock Exchange rhythmic prose and tedious talk is an expression protected by the Copyright Act. The odds that defendants and Plaintiff "composed originally" with the same order of words is "less than that there should be two countenances that could not [be] discriminated." *Jefferys v. Boosey*, 4 H.L.C. 815, 867.

II. The Court Of Appeals' Decision Contradicts Prior Supreme Court Precedent

The O&O also conflicts with this Court's decision in *Holmes* that an author's arrangement of words is protectible:

The right thus secured by the copyright act is not a right to the use of certain words ... But the right is to that arrangement of words which the author has selected to express his ideas. Or, as Lord Mansfield describes it, 'an incorporeal right to print a set of intellectual ideas, or modes of thinking, communicated in a set of words or sentences, and modes of expression. It is equally detached from the manuscript, or any other physical existence whatsoever.' 4 Burrows, 2396. *Holmes v. Hurst*, 174 U.S. 82 at 86.

The nature of this property is perhaps best defined by Mr. Justice Erle in *Jefferys v. Boosey*, 4 H.L.C. 815, 867: 'The subject of property is the order of words in the author's composition ...' *Holmes v. Hurst*, 174 U.S. 82 at 86.

The O&O implied that if Coates copied Plaintiff's arrangement of words, yet the accused passages differ "dramatically ... in total concept and overall feel" as well as elements like plot, themes, and pacing, and differed in "style and content," then Coates did not run afoul of copyright infringement.⁶ The O&O conflicts with this Court's ruling in

⁶ Ralph W. Baker Jr. v. Ta-Nehisi P. Coates, et al., No. 24-6839, App. 15.

Whitesmith Music v. Apollo, which says one only has to copy the order of words in an author's literary composition to run afoul of infringement:

This court has substantially decided that the subject of property in a copyrighted musical composition is the order of the notes in the author's composition, by adopting in *Holmes v. Hurst*, 174 U.S. 86, Mr. Justice Erle's definition of the subject of property in a book or literary composition as being 'the order of the words in the author's composition.' And the same thing must also be true as to the notes of a musical composition. The only thing that has to be copied to constitute a copy of the copyright property is the order in which the notes were set down." *White-Smith Music Co. v. Apollo Co.*, 209 U.S. 1 (1908).

This Court cannot affirm a lower court decision that contradicts prior precedent set by the U.S. Supreme Court. This is exactly what happened in this case. Lower courts are obligated to follow precedents set by higher courts within the same jurisdiction. Judges do not have the authority to follow their own rule, but must follow the rules of the Court. A lower court cannot uphold a decision that contradicts a prior decision from the U.S. Supreme Court. This Court's decisions are binding on all other federal courts, and generally considered binding on state courts.

Plaintiff understands that *stare decisis* – "to stand by things decided" – requires courts to follow precedent set by previous rulings, including those of higher courts within the same jurisdiction. U.S.

Supreme Court decisions are binding on all other federal courts, and on state courts when interpreting federal law. Other courts must follow U.S. Supreme Court rulings when faced with similar legal issues.

III. The Court Of Appeals' Decision Conflicts With The Lanham Act

Plaintiff proved substantial similarity between *Shock Exchange* and the plagiarized works. The fact pattern suggests Chris Jackson, Penguin Random House editors, and Coates used *Shock Exchange* to train authors how to copy Shock Exchange rhythmic prose and tedious talk. According to *PAUL TREMBLAY, et al., v. OPENAI, INC., et al.*, Case Nos. 23-cv-03223-AMO 23-cv-03416-AMO, this is unfair competition:

Assuming the truth of Plaintiff's allegations – the Defendants used Plaintiff's copyrighted works to train their language models for commercial profit – the Court concludes that Defendants' conduct may constitute an unfair practice ... this portion of the UCL claim may proceed.

The *PAUL TREMBLAY* case has been transferred to the U.S. District Court for the Southern District of New York as part of multi-litigation, MDL No. 3143. The Second Circuit has adopted the *PAUL TREMBLAY* court's conclusion by de facto. Likewise, defendants in this case have run afoul of the Lanham Act and New York Common Law Act, which address unfair competition.

In copying Plaintiff's order of words, defendants stole Plaintiff's "countenance" or "face." *Jefferys v.*

Boosey, 4 H.L.C. at 869. Defendants pirated Plaintiff's identity and created a tort:

To impersonate her voice is to pirate her identity ... We hold only that when a distinctive voice of a professional singer is widely known and is deliberately imitated in order to sell a product, the sellers have appropriated what is not theirs and have committed a tort in California. *Midler v. Ford*, 849 F.2d 460 (9th Cir. 1988).

Bert Lahr sued Adell Chemical Company for using a commercial that imitated Lahr's distinctive voice. The First Circuit ruled, "It could well be found that defendant's conduct saturated plaintiff's audience to the point of curtailing his market." *Lahr v. Adell Chemical Co.*, 300 F.2d 256 (1st Cir. 1962). This Court cannot affirm a lower court decision that contradicts federal laws like the Lanham Act.

IV. The Court Of Appeals Decision Conflicts With 14th Amendment

The Summary Order addresses "literary writing style."⁷ The Second Circuit does not address Plaintiff's language and arrangement of words, or the analytical dissection showing Coates copied a substantial portion of Plaintiff's arrangement. The decision makes no reference to case law that addresses an author's arrangement of words – *Jefferys*, *Holmes*, *Hartfield*, *White-Smith Music* or *Nutt v. National Institute Incorporated for the Improvement of Memory*, 31 F.2d 236 (2d Cir. 1929).

⁷ *Ralph W. Baker, Jr. v. Ta-Nehisi Coates, et al.*, No. No. 24-6839, App. 4.

The Second Circuit did not address Plaintiff's claim, thus Plaintiff was denied due process. U.S. Supreme Court decisions are considered binding precedent on all other federal courts, including those in New York, and on state courts when interpreting federal law. Again, stare decisis requires lower courts to follow the rulings of higher courts within the same jurisdiction.

The Second Circuit decision is an open call for this Court to decide the matter. The Fourteenth Amendment to the U.S. Constitution ensures all persons born or naturalized in the U.S. the right to due process. U.S. Const. amend. XIV § 1. This Court cannot affirm a lower court decision that contradicts the U.S. Constitution or any constitutional amendment.

V. Rehearing Is Appropriate In The Name Of Justice And Could Set Legal Precedent

Four justices considered the Writ of Certiorari without requiring a reply brief from respondents. That is indicative of the merits of the case and its precedential value. Plaintiff understands that the Court lacked a quorum in *U.S. v. Aluminum Co. of America* and Congress had to pass a special law that authorized the Second Circuit to render a final judgment.⁸ In this case, the Second Circuit has already appealed to this Court to render final judgement. Since the Court cannot affirm the lower court's decision and the Court cannot hear the case due to lack of a quorum, Plaintiff respectfully asks

⁸ "Five Supreme Court Justices sit out in rare move," Jenna Sundel, msn.com, May 20, 2025.

the Court to let a jury of Plaintiff's peers render a final judgement.

Generally, a rehearing may be appropriate in the name of justice, particularly when a court decision is demonstrably flawed or omits a substantial point. A rehearing can also be important for setting legal precedent, especially when there are conflicts in rulings. This case could set legal precedent. Given the Court's formal Code of Conduct adopted in 2023, recusals could become more commonplace. Future cases involving Penguin Random House or Bertelsmann SE & Co. KGaA could also cause the Court to lack a quorum.

In future cases where the Court lacks a quorum for any reason, Plaintiff respectfully asks the Court to consider letting a jury render final judgement. This would ensure that petitioners receive due process.

CONCLUSION

Plaintiff respectfully asks the Court to Grant a Petition for Rehearing, and to Grant the Petition of certiorari, and schedule a jury trial within a respectful time.

Respectfully submitted,

Ralph W. Baker, Jr.
Pro Se