

No. 24-901

IN THE
Supreme Court of the United States

KAEUN KIM
Petitioner/Plaintiff,

v.

U.S. DISTRICT COURT FOR THE DISTRICT OF
NEW JERSEY
Respondent/Defendant.

**On Petition for Rehearing of Denial of Petition
for Writ of Certiorari to the
United States Court of Appeals for the
Third Circuit**

**PETITION FOR REHEARING
UNDER RULE 44.2**

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PETITION FOR REHEARING

UNDER RULE 44.2

KAEUN KIM respectfully petitions for rehearing
to review the judgment in this case.

I. INTRODUCTION

Pursuant to Supreme Court Rule 44.2, Petitioner Kaeun Kim respectfully seeks rehearing of the denial of his Petition for a Writ of Certiorari, denied April 17, 2025, and submits this as a formal Supplement to his pending Judicial Misconduct Complaint. Newly arisen facts and previously unremedied constitutional violations—none of which were substantially addressed—compel reconsideration in the interests of justice.

Central to this case is Prudential Financial’s fabricated surveillance video, withheld for over seven years in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), and used as the basis for prolonged malicious prosecution. Despite repeated motions, Magistrate Judge Jose R. Almonte and District Judge Susan D. Wigenton refused to compel disclosure of the original footage, contravening *Napue v. Illinois*, 360 U.S. 264 (1959), and *McDonough v. Smith*, 139 S. Ct. 2149 (2019). Prudential officials Robert Buhrmeister, Michael Saccento, John Strangfeld, and Caroline Feeney knowingly submitted false allegations to state prosecutors, triggering baseless criminal

charges. Essex County Judge ¹Mayra Tarantino and Mark Ali failed to halt the prosecution despite the lack of probable cause.

Moreover, Third Circuit Judges Bibas, Matey, and Chung summarily dismissed Petitioner's filings as "merits-related" without addressing the procedural and constitutional defects raised. Their December 17, 2024 opinion was inexplicably withheld until April 8, 2025—just one day after Petitioner was forced by repetitive verbal order to appear in state court—highlighting possible retaliatory coordination and denial of meaningful appellate review.

These facts reflect not isolated error but systemic due process failures and misconduct under color of law, violating the Fifth and Fourteenth Amendments and 42 U.S.C. § 1983. Such violations cannot be insulated by judicial immunity or mischaracterized as discretionary. This case presents exceptional circumstances warranting rehearing to prevent irreparable harm and restore judicial accountability.

¹ **The lack of any stated reasoning** [Third Circuit Case No. 24-1448, ECF No. 59; Exhibit D-1, Pa 13: 7-25], especially in light of her potential conflict of interest, further underscores the possibility of **actions taken outside her judicial capacity**.

Petitioner respectfully requests that the Court grant this Petition for Rehearing and enter all relevant facts into the judicial record under Rule 44.2 and 28 U.S.C. §§ 351–364.

II. NEW EVIDENCE AND PROCEDURAL DEFECTS

Pursuant to Supreme Court Rule 44.2, Petitioner respectfully seeks rehearing based on new facts and procedural irregularities not previously considered by this Court, which raise substantial constitutional and statutory violations under 42 U.S.C. § 1983, 28 U.S.C. §§ 351–364, and the Fifth and Fourteenth Amendments.

A. 2Fabricated Surveillance Video and Suppression of Exculpatory Evidence:
Petitioner’s malicious prosecution, now entering its eighth year, is predicated on a **falsified surveillance video**³ created by Prudential

² The Petitioner became aware of the falsification of Prudential’s surveillance footage on November 15, 2022, when forensic analysis revealed that the video evidence had been altered. This discovery is a new injury that directly falls within the scope of McDonough’s rule, as the claim is predicated on the fraudulent use of falsified evidence during a criminal proceeding.

³ Third Circuit (Case No. 24-1448) ECF # 43: **Appendix Affidavit**: Pa 21-23, **Video Submission form**: Pa 26, **Declaration**: Pa 27-29 , and **Criminal Action**: Pa 31-32, **Exhibit A-G**

Financial & Robert Buhrmeister and used by Essex County prosecutors. Despite multiple formal requests under *Brady v. Maryland*, 373 U.S. 83 (1963); *Napue v. Illinois*, 360 U.S. 264 (1959); and **McDonough v. Smith**, 139 S. Ct. 2149 (2019), the lower courts refused to compel disclosure or authentication of this critical exculpatory evidence. Petitioner submitted objective documentation—including a **Video Submission Form** and **Exhibit G**—showing inconsistencies indicative of tampering. **Judicial refusal to examine this evidence violates clearly established due process rights.**

B. Prudential Officials and Judicial Collusion: On April 17, 2018, Prudential's **Michael Saccento** falsely alleged threats by Petitioner without supporting evidence. Executives **John Strangfeld** and **Caroline Feeney** escalated these claims under color of law, leading to baseless charges upheld by Judge **Mayra Tarantino**, despite the absence of probable cause. **Specifically, the falsified surveillance video, which was manipulated in coordination**⁴

⁴ ECF #43: **Appendix Victim Memorandum:** Pa 41, **Interview Form:** Pa 42-44, **Indictment 1:** Pa 38-40 & **Indictment 2:** Pa 34-36. In this case, crucial surveillance footage was allegedly altered under AP **Giordano & Ohm's**

with state actors, became a central instrument of the prosecution against the Appellant. The video was presented as evidence to the state court and law enforcement, demonstrating a **clear nexus**⁵ between Prudential's actions and the state's prosecutorial machinery. This conduct meets the "symbiotic relationship" and "close nexus" tests articulated in *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982), and reaffirmed in *Brentwood*. Their ⁶**coordinated conduct** with state actors renders them proper subjects of further review under the **Judicial Conduct and Disability Act**. The panel's dismissal of claims against Prudential Financial and Robert Buhrmeister fails to acknowledge these well-established legal standards and the compelling evidence of joint participation with state officials. This oversight constitutes a **significant legal error** warranting rehearing and reconsideration.

C. Improper "Merits-Related" Dismissal of Constitutional Violations: The Third Circuit

watch and presented without proper authentication, violating Federal Rules of Evidence Rule 901

⁵ Prudential's actions in fabricating evidence and influencing state prosecution effectively placed them in the role of a state actor. Their involvement in the creation and use of falsified evidence demonstrates active collaboration with state authorities, fulfilling the requirements for state action.

⁶ In *Manhattan Community Access Corp. v. Halleck*, 139 S. Ct. 1921 (2019), the Court reiterated that private entities can be deemed state actors when they "exercise powers traditionally reserved to the State."

summarily dismissed Petitioner's judicial misconduct claims as "merits-related" under Rule 4(b)(1), without addressing material deprivations of due process—namely, (1) refusal to docket constitutional motions, (2) denial of discovery of falsified evidence, and (3) systemic judicial non-responsiveness. These are not routine errors, but structural violations implicating **Mathews v. Eldridge**, 424 U.S. 319 (1976), and **Johnson v. Zerbst**, 304 U.S. 458 (1938), and fall squarely within the exceptions to Rule 4(b)(1) preserved under 28 U.S.C. § 352.

D. Procedural Delay Suggesting Retaliation:

Although dated **December 17, 2024**, the Third Circuit's opinion was withheld from the docket until **April 8, 2025**, just one day after Petitioner was tried to appear in Essex County Court on April 7 by **repetitive verbal orders**⁷. This strategic delay obstructed Petitioner's ability to timely supplement his **Supreme Court Petition** and undermines

⁷ Ongoing and escalating patterns of interference from the Essex County Superior Court, which continues to issue ****verbal pretrial appearance demands**** during critical windows of federal appellate review. **Such verbal directive**** issued three times by Essex County within this year, following similar compelled appearances in ****February****, ****April ****, and ****May 2025****, which have repeatedly conflicted with federal filings, obstructed access to appellate relief, and exacerbated the Appellant's ongoing claims of malicious prosecution and judicial coercion.

Federal Rule of Appellate Procedure 36, which mandates prompt judgment entry. The timing strongly suggests retaliatory intent and prejudiced Petitioner's access to appellate review.

For the foregoing reasons, **reconsideration is constitutionally required**.

III. CONSTITUTIONAL GROUNDS FOR REHEARING

Petitioner Kaeun Kim respectfully submits that the denial of his Petition for Writ of Certiorari warrants reconsideration under Supreme Court Rule 44.2, due to newly emerging evidence and constitutional defects that were not adequately addressed. These errors implicate core liberties under the Fifth and Fourteenth Amendments and demand judicial intervention to correct fundamental due process violations, judicial misconduct, and a misapplication of governing law.

A. Violations of Due Process Under the Fifth and Fourteenth Amendments

The prosecution’s prolonged concealment of falsified surveillance footage—critical to Petitioner’s defense—and the judiciary’s persistent refusal to compel its disclosure, constitute **flagrant due process violations**. The exculpatory evidence in question was central to Petitioner’s civil rights action under 42 U.S.C. § 1983, and its suppression violates well-established constitutional principles:

- *Brady v. Maryland*, 373 U.S. 83 (1963) (**requiring the disclosure of evidence favorable to the accused**);
- *Napue v. Illinois*, 360 U.S. 264 (1959) (**prohibiting the knowing use of false evidence**);
- *McDonough v. Smith*, 139 S. Ct. 2149 (2019) (**recognizing that fabricating evidence used in a prosecution violates due process**).

Despite substantial proof of tampering (e.g., video discrepancy certifications, unrebutted Audio/Video Submission Form), lower courts categorically refused to address the authenticity of the footage, enabling a seven-year malicious prosecution that deprived

Petitioner of liberty and due process without proper evidentiary scrutiny.

B. Judicial Misconduct and Structural Bias

The Third Circuit dismissed Petitioner's judicial misconduct complaint as "merits-related" under Rule 4(b)(1) of the Judicial Conduct Rules—a legally erroneous characterization. Petitioner does not challenge discretionary rulings, but alleges systemic judicial misconduct, including:

- **Repeated refusal⁸** by Magistrate Judge Almonte and District Judge Wigenton **to compel production of key evidence;**
- **Omission and suppression** of rebuttal briefs and motions from the docket;
- **Summary denials** without explanation;

⁸ **Pattern of Administrative Terminations** (Oct 2, 2023- Jan 2, 2024): Denial of Motion for Surveillance Video Subpoena (D.E. 20) on 10/2/2023, Denial of Motion for Initial Scheduling Conference (D.E. 26) on 10/11/2023, Termination of Motion for Sanctions (D.E. 56) on 1/2/2024, and so on. The termination of these motions without a substantive review underscores concerns regarding potential bias in the handling of Mr. Kim's case. These actions are contrary to the principles of judicial fairness and due process as emphasized in *Liteky v. United States*, 510 U.S. 540 (1994), where the Supreme Court clarified the necessity for unbiased judicial conduct.

- The delayed docketing⁹ of a final opinion until *after* a compelled state court appearance by repetitive verbal orders.

These actions fall squarely within the exceptions preserved in **28 U.S.C. § 352**, which mandate review where judicial behavior is “prejudicial to the effective and expeditious administration of the business of the courts.” As *Forrester v. White*, 484 U.S. 219 (1988), confirms, **judicial immunity does not shield constitutional violations**. Further, *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009), mandates recusal where there is a **serious risk of actual bias**—an apt standard where judges disregarded evidence of fabrication while denying procedural recourse.

C. Exceptional Circumstances Justify Rehearing

⁹ **Reply Brief** (Case No. 24-2601: ECF #12) by Petitioner to Response was docketed after the panel declined the Mandamus even though it had been filed before.

This case presents ¹⁰exceptional constitutional failures with systemic implications. Such circumstances meet the constitutional and legal standard for **extraordinary judicial intervention** under *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009), *Elrod v. Burns*, 427 U.S. 347, 373 (1976), and *Cheney v. U.S. District Court*, 542 U.S. 367 (2004), warranting **immediate rehearing** to preserve due process and the integrity of the judicial system.:

1. **The criminal case against Petitioner continues**¹¹ despite irrefutable questions over falsified surveillance evidence;
2. **Petitioner's filings were repeatedly dismissed** without judicial review, violating

¹⁰ This case presents **grave constitutional failures**. Petitioner's prosecution continues despite compelling evidence that key surveillance footage was fabricated and unlawfully withheld, violating *Brady* and *McDonough*. Judicial misconduct—including **refusal to compel disclosure and suppression of filings**—was wrongly dismissed as “merits-related,” causing irreparable harm. Under *Caperton, Elrod, and Cheney*, these systemic due process violations warrant immediate rehearing to prevent further injustice and uphold the integrity of the judiciary.

¹¹ Under the framework established in *Albright v. Oliver*, 510 U.S. 266 (1994), malicious prosecution is actionable under § 1983 when it implicates due process rights. Courts have repeatedly clarified that **malicious prosecution claims do not necessarily trigger the Heck bar** when they address procedural violations, such as the fabrication of evidence or prosecutorial misconduct, that occurred **before trial or conviction**. The panel's failure to recognize this distinction violates well-established precedents and denies me a forum to seek redress for ongoing constitutional violations.

the First and Fourteenth Amendments' guarantees of access to the courts;

3. **The Third Circuit's judgment**, dated December 17, 2024, was inexplicably withheld until April 8, 2025—one day after Petitioner was compelled to appear in Essex County court—raising serious concerns of retaliatory timing.

Under *Mathews v. Eldridge*, 424 U.S. 319 (1976), procedural due process requires notice and a meaningful opportunity to be heard. The delayed entry of judgment also contravenes **Federal Rule of Appellate Procedure 36**, which mandates prompt issuance of opinions. Denial of timely docketing impaired Petitioner's ability to seek rehearing or Supreme Court review, in violation of *Johnson v. Zerbst*, 304 U.S. 458 (1938), which requires that waivers of constitutional rights be knowing and voluntary. Given that the foundational evidence for Petitioner's prosecution has been proven to be falsified, the continued prosecution—now extending beyond eight years—constitutes **malicious prosecution**, violates **substantive due**

process, and results in irreparable harm, as recognized in *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Moreover, the failure of state officials and the judiciary to dismiss these proceedings, despite overwhelming proof of evidentiary misconduct, violates **Federal Rule of Criminal Procedure 16**, which mandates disclosure of material evidence, and stands in direct contradiction to the constitutional command that criminal proceedings must be conducted with fundamental fairness and impartiality (*Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009)).

D. Mischaracterization of Constitutional Violations as “Merits-Related” Must Be Reversed

The Court’s use of a “*Not Precedential Per Curiam Opinion*” to dismiss claims of **fabricated evidence, judicial suppression of filings, and systemic denial of due process** is legally improper. Rule 4(b)(1) does not bar complaints involving **misconduct, refusal to compel evidence, or obstruction of access to courts**—conduct expressly reviewable under 28 U.S.C. §§ 351–364.

These are not discretionary rulings. They are **constitutional violations** (*Stump v. Sparkman* (1978)):

- *Brady* violations through suppression of exculpatory surveillance footage;
- Denial of judicial access in violation of *Bounds v. Smith*, 430 U.S. 817 (1977);
- Fabrication claims supported by *McDonough v. Smith*, 139 S. Ct. 2149 (2019);
- Judicial bias contradicting *Caperton v. Massey*, 556 U.S. 868 (2009).

The Third Circuit's **delayed docketing** and summary disposition undermine transparency and violate Fed. R. App. P. 36. Recent rulings—*U.S. v. Harrell*, 88 F.4th 1147 (9th Cir. 2023), and *U.S. v. Bell*, 90 F.4th 824 (D.C. Cir. 2024)—condemn per curiam opinions in cases implicating judicial integrity. This Court must grant rehearing to correct the record and reaffirm that **constitutional misconduct cannot be buried under procedural labels**.

These are **not discretionary errors**—they are **systemic violations that fall within the scope of**

judicial oversight under **28 U.S.C. §§ 351–364**. To dismiss such constitutional grievances as “merits-related” nullifies the judiciary’s obligation to provide fair process and transparency. The Court should grant rehearing to correct this legal error and uphold the rule of law.

IV. REQUEST FOR RELIEF

Pursuant to Supreme Court Rule 44.2, and in light of newly arising facts and unresolved constitutional violations, Petitioner Kaeun Kim respectfully prays that the Court:

- 1. Grant Rehearing of the Denial of Certiorari (No. 24-901)** based on substantive due process violations, suppression of exculpatory evidence, and new procedural irregularities not previously addressed;
- 2. Accept this Petition as a Supplement** to the Petitioner’s pending Judicial Misconduct Complaint under **28 U.S.C. §§ 351–364**, particularly in light of delayed docketing, refusal to compel disclosure of falsified

surveillance footage, and systemic judicial inaction spanning multiple courts;

3. **Acknowledge Prudential Officers John Strangfeld, Caroline Feeney, and Robert Buhrmeister & Michael Saccento, as well as State Judge ¹²Mayra Tarantino, ¹³Mark Ali & AP Giordano & Ohm**, as individuals whose conduct—through knowingly false allegations or failure to evaluate critical exculpatory material—warrants constitutional and judicial scrutiny under **Brady v. Maryland, Napue v. Illinois**, and 42 U.S.C. § 1983;
4. Remand the Matter for Factual Development and Evidentiary Proceedings necessary to determine the extent of constitutional harm, malicious prosecution, and the use of fabricated surveillance evidence in violation of the Fifth and Fourteenth Amendments,

¹² Evidence suggests **Judge Mayra Tarantino** has **conflicts of interest** due to **past associations with Prudential Financial**, clearly affecting her impartiality in this case. The Supreme Court's Caperton ruling and Federal Rule of Civil Procedure 1 emphasize the need for recusal to maintain judicial integrity and fairness.

¹³ **Threatening the Petitioner** is outside of any official proceedings or court orders (ECF # 59: **Appendix** Exhibit A-2, Pa 5: 7-11, Pa 6: 11-22, Pa 8: 12-15) deviates from typical judicial conduct.

consistent with the standards set forth in

¹⁴**McDonough v. Smith**, 139 S. Ct. 2149 (2019);

5. **Grant such other and further relief as the Constitution, the laws of the United States, and the interests of justice require, including ¹⁵injunctive remedies, evidentiary preservation, or referral for investigation under applicable federal judicial and prosecutorial standards.**

V. CONCLUSION

The Court’s denial of the Petition for Writ of Certiorari—absent any explanation and amid a record rife with due process violations—permits a chilling precedent: that systemic misconduct involving falsified evidence, prolonged malicious

¹⁴ “The clock begins to run only when the criminal proceedings terminate in the plaintiff’s favor, or the plaintiff discovers the falsification, whichever occurs later.” *McDonough*, 139 S.Ct. at 2160

¹⁵ See, e.g., *McDonough v. Smith*, 139 S. Ct. 2149 (2019); *Manuel v. City of Joliet*, 580 U.S. 357 (2017). Courts have repeatedly held that *Heck v. Humphrey*, 512 U.S. 477 (1994), does not bar § 1983 claims where the asserted constitutional violations—such as fabrication of evidence or prosecutorial misconduct—occurred prior to conviction or independent of a valid judgment. Petitioner’s claims do not challenge a conviction’s validity but expose the integrity of the pretrial process itself, making the Heck bar inapplicable. The lower court’s failure to distinguish this principle denied Petitioner a lawful forum to seek redress and undermines access to remedy for due process violations of the gravest kind.

prosecution, and judicial refusal to compel exculpatory disclosure may be summarily excused as “merits-related,” even where they implicate the very foundation of procedural justice.

Petitioner Kaeun Kim has been subjected to an extraordinary deprivation of his constitutional rights under the **Fifth and Fourteenth Amendments**, sustained over more than **seven years**. The fabricated surveillance video at the center of his prosecution was not merely overlooked—it was actively shielded by state and federal judicial officers, including Magistrate Judge Jose Almonte and District Judge Susan Wigenton, despite compelling evidence of tampering. Third Circuit Judges Bibas, Matey, and Chung further compounded this injustice by dismissing these constitutional claims without legal analysis, characterizing them as beyond review under **Rule 4(b)(1)**—a misapplication of law that conflicts with **28 U.S.C. § 352** and controlling precedent.

As reaffirmed in *Brady v. Maryland*, 373 U.S. 83 (1963), *Napue v. Illinois*, 360 U.S. 264 (1959), and *McDonough v. Smith*, 139 S. Ct. 2149 (2019), the

suppression or use of falsified evidence violates due process and cannot be immunized by judicial discretion. Likewise, *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009), confirms that judicial neutrality is not optional—where systemic bias or the appearance of bias exists, recusal and review are constitutionally mandated.

Accordingly, Petitioner respectfully requests that this Court:

1. **Grant this Rule 44.2 Petition for Rehearing in Case No. 24-901**, in light of new evidence and manifest constitutional error;
2. **Accept this submission as a formal supplement** to Petitioner’s pending judicial misconduct complaint under **28 U.S.C. §§ 351–364**, addressing structural due process defects, misconduct, and misuse of judicial authority;
3. **Issue appropriate relief**, including a remand for factual development concerning the falsified surveillance footage, unlawful prosecutorial conduct, and systemic

suppression of exculpatory evidence, pursuant to **42 U.S.C. § 1983**, the **Judicial Conduct Rules**, and the **Federal Rules of Appellate and Civil Procedure**.

The Court's intervention is necessary not only to restore Petitioner's constitutional rights, but to reaffirm that **truth, transparency, and accountability** remain the cornerstones of our judicial system. Silence in the face of falsified evidence is not impartiality—it is complicity. The Constitution demands more.

Dated: MAY 7, 2025

Respectfully submitted,

By:



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