

No. 17-6907

IN THE SUPREME COURT OF THE UNITED STATES

Lei Ke

Petitioner,

v.

Drexel University, John Fry, Richard Homan, Samuel
Parrish, Amy Fuchs, Jennifer Hamilton, and Anthony
Sahar,

Respondents.

On Petition for a Writ of Certiorari to
The United States Court of Appeals for the Third Circuit

PETITION FOR REHEARING

Lei Ke
4025 Roosevelt Blvd.
Philadelphia, PA 19124
215-459-8490
davek8@gmail.com

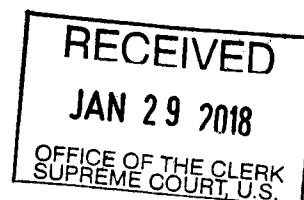


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PETITION FOR REHEARING

This is a petition for rehearing, pursuant to Rule 44.2, with respect to this Court's prior order denying petitioner's petition for a writ of certiorari on January 8, 2018. In his petition, petitioner focused on issues regarding the lower court's failure to exercise its supervisory role in addressing the district court's collusive action with respondents to obstruct justice and its persistent failure in addressing the district court's economic interest in petitioner's case that could have a retroactive effect under 28 U.S.C. §2106.

In the instant petition for rehearing, petitioner presents two substantial grounds that were not previously presented. They are (1) whether allowing a district court judge to collude with a party in his court to obstruct justice would seriously weaken the American public's confidence in the judicial system, and (2) whether the lower court has sent the negative message that not all Americans shall have access to equal justice through due process.

These two important questions have national significance, given the harsh reality at the grassroots level across America today, and they constitute substantial grounds to justify a rehearing. The two new issues are derived from the same background but were not issues of the previous petition, both now emphasizing that this Court has an ineluctable Constitutional obligation to rehear the petition as allowing a district court judge to collude with a party in his court to obstruct justice would cause a serious erosion of public confidence in America's courts and send the wrong message that not all Americans—particularly minority Americans—shall have access to equal justice through due process.

FACTUAL & PROCEDURAL BACKGROUND

A. Proceedings Below

Ke filed his 42 U.S.C § 1981 race discrimination suit in October 2011. After four years of litigation, the district court judge ruled against him through summary judgment by resorting to legal errors in September 2015. During the lawsuit, Ke was unaware of the district court judge's economic interest in the outcome of his case although he experienced hostile rulings against him. While preparing the appeal to the lower court toward the end of 2015, Ke found out that economic interest as the judge's spouse, a doctor, had privileges to practice medicine in Hahnemann and Friends Hospitals, both of which are Drexel Medicine's campuses. In reality, Drexel Medicine's Department of Psychiatry is physically located in Friends Hospital that is jointly managed by Drexel Medicine and the hospital. Thus, the judge's spouse had a fiduciary responsibility to both hospitals and the judge therefore had an appearance of impropriety under 28 U.S.C. § 455(a). *See Caperton v. Massey Coal Co.*, 556 U.S. 868 (2009).

In March 2016, the lower court used the deferential standard of review to affirm the district court judge's summary judgment, making many legal errors including—but not limited to—not even addressing Ke's disparate treatment argument that was front and center of his entire appeal, denying racial animus on the part of respondents although in the same breath contradictorily stating that “[t]he *only* evidence that could be construed as evincing racial animus are comments [racial slurs],” and calling petitioner's argument about respondents' smoking gun “Caucasian[student]s are smarter than minority students”—which was stated in writing—“fallacious.” It also mooted Ke's simultaneous motion to disqualify the district court judge for having an economic interest

in the outcome of his case without a single word of explanation in contravention of 28 U.S.C. §2106 (2006).

As a result of their “win,” respondents wanted petitioner to pay them the litigation costs of \$5,765.95 on September 17, 2015. After his objection, the clerk’s office of the district court ruled, on June 1, 2016, that Ke should pay respondents \$4,503.15. Because respondents refused to provide the invoices and used transcripts that overcharged, Ke appealed to the lower court on Dec. 16, 2016. The lower court ruled on Ke’s appeal on April 13, 2017, *Ke v. Drexel, et al*, No. 16-2960 (3d Cir. 2017), directing the district court to rule on petitioner’s objection to the taxation of the costs. This time Ke moved the district court judge to recuse himself, but he denied the motion on May 12, 2017 without denying petitioner’s allegation that he had an economic interest in the outcome of the lawsuit. As a result, Ke filed a petition for a writ of mandamus on May 23, 2017 to let the lower court determine the issue of the district court judge’s economic interest.

Seeing the district court judge in a challenging situation, respondents rushed to strategically withdraw their demand for the entire litigation costs on May 25, 2017 although they had been pounding on Ke for them for two years—demanding the same even after petitioner filed his motion for recusal in the district court on April 14, 2017. They directly advised the district court judge in their filing that their withdrawal of the costs would “render[] moot” petitioner’s “petition [for a writ of mandamus in the Third Circuit Court].” The district court judge acted fast and approved the withdrawal within hours before Ke was even aware of that. It was obvious that respondents did what they did to save the summary judgment erroneously entered in their favor while the district

court judge did what he did to avoid the inevitable finding of his economic interest in the outcome of petitioner's case in his court. However, their conduct constituted collusive action, and that served to obstruct justice. *United States v. Johnson*, 319 U.S. 302 [63 S. Ct. 1075, 87 L.Ed. _]

In retrospect, the lower court, to be collegial, persistently declined to determine if the district court judge had an economic interest in the outcome of Ke's case, to which the taxation of the costs was only the end part of it and of which 28 U.S.C. § 2106 (2006) had a role to play. The lower court's declining to make such a determination violated petitioner's due process right under the Fifth Amendment, which would have required it—based on the expected determination—to vacate the district court judge's erroneous summary judgment under 28 U.S.C. §2106 and in light of the holding in *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847 (1988) and to remand the case for a jury trial, which petitioner deserved and had demanded.

B. Proceedings Before This Court

Ke timely filed his petition for a writ of certiorari on November 15, 2017, and this Court asked respondents to respond by December 29, 2017. On December 6, 2017, respondents filed their Waiver. On December 21, Ke's petition was distributed for conference of January 5, 2018. On that day, his petition for a writ of certiorari was denied.

REASONS FOR GRANTING THE PETITION

- A. Allowing A District Court Judge To Collude With A Party In His Court To Obstruct Justice Would Seriously Weaken The American Public's Confidence In The Judicial System.

A federal district court is a venue of general jurisdiction where justice is meted out. This is the place where a sitting judge is held to the highest standard of integrity. But, in the instant case, when the sitting judge colluded with respondents in order to sabotage petitioner's pending petition for a writ of mandamus in the lower court and thereby obstructed justice and when the lower court did not exercise its supervisory role to review such a serious infringement, their conduct collectively would serve to seriously weaken the American public's confidence in the federal judicial system and tarnish the image of that system. A demeanor of indifference itself is a violation of petitioner's rights under the Fifth Amendment, which provides: "No person shall be...deprived of life, liberty, or property, without due process of law..."

Because of the seriousness of the matter, this Court has a Constitutional duty to exercise its supervisory power, pursuant to Rule 10, and to review the matter and grant this petition for rehearing and petitioner's petition for writ of certiorari, as a condoning of such conduct would suggest that judges can manipulate court events to prejudice citizens without consequences.

B. The Lower Court Has Sent The Negative Message That Not All Americans Shall Have Access To Equal Justice Through Due Process.

The district court judge colluded with respondents to preemptively defeat petitioner's petition for a writ of mandamus in the lower court, and then the lower court mooted petitioner's petition for a writ of mandamus without addressing the issue of judicial collusion to obstruct justice, writing that "Ke's request that we disqualify the District Judge from presiding over the taxation-of-costs proceeding is moot, and we will dismiss his petition on that basis." *In re: Lei Ke*, No. 17-2154 (3d Cir. 2017). For the sake

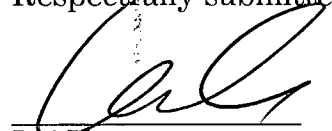
of justice, the lower court should never have tolerated such collusive action to suppress Ke's due process right to a proper appellate review of his petition for a writ of mandamus, as guaranteed by the Fifth Amendment. In doing so, the lower court erred by not addressing the issue of collusive action to obstruct justice, and such tolerance would constitute "willful blindness" to the district court's conduct. That was against its own norm and practice and ill served justice. *See Koon v. United States*, 518 U.S. 81, 100 (1996) ("A court by definition abuses its discretion when it makes an error of law.")

If this Court—the highest court on the land—declines to exercise its supervisory power, then the district court judge and respondents' collusive action to obstruct justice will go undeterred and will virtually get affirmed and endorsed. That would negatively impact America's judicial system and victimize certain litigants in contravention of equal justice for all. The indifference will particularly send the undesirable message that if you are individuals suing large private corporations you simply have no access to justice. The indifference will further encourage judicial collusion to obstruct justice to make the violation of due process go undeterred. If the Court declines exercise its supervisory power, another message will also be sent out such that the district court judge and respondents, a giant private corporation in Philadelphia, can simply get away with the collusion and obstruction of justice to keep petitioner out of court, as they successfully did with his petition for a writ of mandamus in the lower court. Finally, if this Court denies this petition for a rehearing, petitioner will doubtlessly be given to understand that the American judicial system is preferential and American citizens like him simply have no access to it.

CONCLUSION

For the foregoing reasons, the Court should grant this petition for rehearing and order respondents to respond as to why they directly advised the district court judge to approve the sudden withdrawal of their demand for litigation costs after relentlessly pounding on petitioner for them for two years.

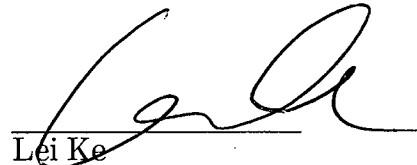
Respectfully submitted,



Lei Ke
4025 Roosevelt Blvd.
Philadelphia, PA 19124
215-459-8490

CERTIFICATE OF PETITIONER

I hereby certify that the grounds for this petition for rehearing are limited to other substantial grounds not previously presented and that the petition is presented in good faith and not for delay.



Lei Ke
4025 Roosevelt Blvd.
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