

No. 21-1511

In the
Supreme Court of the United States

JOY GARNER, individually and on behalf of
THE CONTROL GROUP, et al.,
Petitioners,

v.

JOSEPH R. BIDEN, JR., in his official capacity as
PRESIDENT OF THE UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR REHEARING

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LIST OF PARTIES

In addition to the parties listed in the case caption, Petitioners also include:

Joy Elisse Garner, individually and as parent of J.S. and F.G.;

Evan Glasco, individually and as parent of F.G.;

Traci Music, individually and as parent of K.M. and J.S.;

Michael Harris, individually and as parent of S.H.;

Nicole Harris, individually and as parent of S.H.

CORPORATE DISCLOSURE STATEMENT

Petitioners have no corporate interests, as stated in their Petition for a Writ of Certiorari.

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PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44.2, Petitioners hereby petition this Court for rehearing of its October 3, 2022 Order denying the Petition for Writ of Certiorari.¹

Rehearing is needful because of the unique procedural posture here, which the Ninth Circuit neglected to resolve with an order of remand — during the appeal District Court Judge Shubb recused himself (and vacated all his previous orders *nunc pro tunc*) after his vaccine stock holdings were brought to his attention via motion for disqualification.²

Despite thorough briefing by Petitioners and the Department of Justice on the matter, the Ninth Circuit simply rejected said recusal in a footnote, claiming the District Court lacked jurisdiction to recuse during appeal. But the footnote is silent regarding what happens *at the end* of the appeal. Therefore, if this Court denies certiorari now (ending the appeal), without a remand for judicial reassignment, then it creates a potential Schrödinger's box — the complaint is both dismissed and active, with a district court judge who is both recused and presiding.

¹ Petitioners are concurrently filing a motion pursuant to 28 U.S.C. § 455 for review and disqualification of any Justices with actual or perceived conflicts of interest with vaccine developers, vaccine patent holders, and vaccine distributors.

² The disqualification motion was filed by Petitioners' counsel after reading Chief Justice Roberts' year-end report addressing federal judges not recusing themselves from cases where they had a financial conflict of interest. *See* Roberts, J. *2021 Year-End Report on the Federal Judiciary*, U.S. Supreme Court (December 31, 2021). <https://www.supremecourt.gov/publicinfo/year-end/2021year-endreport.pdf>.

Indeed, District Court Judge Shubb continues to preside over this case until the appeals are complete (and his District Court has continued to file appellate records³ as needed). Accordingly, Judge Shubb's February 2022 *nunc pro tunc* order should be addressed by this Court in some form via remand.

Most importantly, however, rehearing is essential on the merits. Substantial intervening circumstance have arisen: considerable new data showing vaccinated Americans are suffering and dying *en masse* from the President's Covid-19 vaccines. Every intervening day, there are new revelations revealing these vaccines as deadly and debilitating medical experimentation upon non-consenting people. For example:

'It's an enormous deal. ... If it had been known two years ago or so that this vaccine would increase cardiac deaths in young men by 84%, would they have approved it? The obvious answer is no,' Dr. Ladapo told Tucker Carlson. ... 'You would never give something to someone who was young and healthy and increase their risk of dying from sudden cardiac death by 84%. But the response is, "well, you know, COVID is pretty bad." Yes, COVID can be terrible, but we don't give people medications that kill them. So there's been so much confusion. But yes, that was our finding and it was a surprise. But that's what the numbers show,' he added.

³ See *e.g.*, No. 2:20-cv-02470-WBS-JDP, Dkt. 52 (April 26, 2022, "USCA MANDATE as to [44] Notice of Appeal: The judgment of this Court, entered February 28, 2022, takes effect this date.")

Nelson, J., *Florida surgeon general blocked from sharing COVID vaccine study on Twitter: 'An enormous deal'; Dr. Joseph Ladapo recommended men under 40 not get the vaccine*, Fox News (October 11, 2022).⁴

Dr. Aseem Malhotra is one of UK's most eminent cardiologists. He was one of the first to take two doses of the jab and promote it on Good Morning Britain. Dr. Malhotra now says that since the rollout of the shots the evidence of their effectiveness and true rates of adverse events have changed:

It cannot be said that the consent to receive these agents was fully informed, as is required ethically and legally. A pause and reappraisal of global vaccination policies for COVID-19 is long overdue.

Malhotra, A., *Curing the pandemic of misinformation on COVID-19 mRNA vaccines through real evidence-based medicine - Part 1*. Journal of Insulin Resistance, Vol 5, No 1, a71 (Sept 26, 2022).⁵

[T]here is a strong scientific, ethical, and moral case to be made that COVID-19 vaccines rollout must stop immediately until raw data has been released for fully independent scrutiny.

Malhotra, A., *Curing the pandemic of misinformation on COVID-19 mRNA vaccines through real evidence-*

⁴ <https://www.foxnews.com/media/florida-surgeon-general-blocked-sharing-covid-vaccine-study-twitter-enormous-deal>
Internet references herein were last visited October 26, 2022.

⁵ <https://doi.org/10.4102/jir.v5i1.71>

based medicine - Part 2. Journal of Insulin Resistance, Vol 5, No 1, a72 (Sept 26, 2022).⁶

‘Why did it take numerous legal demands, multiple appeals, two lawsuits in fact before the CDC finally handed over the V-Safe data. ... 144 million lines of code ... Maybe the answer is now that we have that data and have looked at that data, of the 10 million users within V-Safe, 7.7 percent of them had to seek medical care after vaccination. That is an incredibly high percentage.’ ... ‘We’re talking about emergency rooms, hospitalizations ... another 25 percent missed work or school or had bad reactions to the vaccine.’

Fox News, *Why did this take numerous legal demands before the CDC handed over the data?: Aaron Siri.* (October 4, 2022).⁷

The exodus of the unvaccinated grows daily to increase the control group ranks Petitioners seek to protect.

As Americans continue to suffer and die under the President’s outrageous gaslighting mantra “safe and effective,” the Control Group’s standing must be acknowledged to prevent the government’s destruction of evidence. Denial of certiorari needlessly allows the President to remain beyond injunctive relief for causing widespread vaccine injury and death that he willfully refuses to enumerate via the *only* valid counting method: comparison to a never-vaccinated control group. The President willfully chooses to destroy Petitioners’

⁶ <https://doi.org/10.4102/jir.v5i1.72>

⁷ <https://www.foxnews.com/video/6313218294112>

evidence (control groups). This Court must implement 28 U.S.C. § 2201 (“Creation of Remedy”) with respect to a President who is openly and intentionally destroying control groups’ Fifth Amendment right to exist.

RELEVANT FACTUAL BACKGROUND

A. District Court.

This case was filed in the California Eastern District Court in December 2020.

District Court Judge Shubb (who later recused himself) set an accelerated briefing schedule (giving Petitioners only two court days) to file an opposition to the motion to dismiss, on a Federal Court holiday. D.Ct. Dkt. 27 (minutes of proceedings).

Judge Shubb granted the motion to dismiss with prejudice (which was the subject matter of this Supreme Court’s denial of *certiorari* on October 3, 2022, and is therefore the subject of this petition for rehearing). *See* Petition for Writ of Certiorari, App. B.

B. Ninth Circuit.

Petitioners appealed this dismissal to the Ninth Circuit and filed two motions to recuse affected judges owning vaccine manufacturer stock:

- (1) Motion to Vacate Order and Judgment of Dismissal; and for Disqualification of Judge Shubb. D.Ct. Dkt. 48.⁸
- (2) Motion to Disqualify Circuit Judge Kim

⁸ No. 2:20-cv-02470-WBS-JDP

McLane Wardlaw. Ninth Cir. Dkt. 35-1.⁹

Ninth Circuit Judge Wardlaw recused herself immediately. 9th Cir. Dkt. 36; *Garner v. Biden*, No. 21-15587, 2022 U.S. App. LEXIS 3255 (9th Cir. Feb. 4, 2022).

District Court Judge Shubb did the same and also vacated all his previous orders: “the undersigned judge hereby RECUSES himself from all proceedings in this case nunc pro tunc, and the Judgment and all orders entered by the undersigned judge in this action are hereby VACATED and SET ASIDE.” D.Ct. Dkt. 50.

Over Petitioners’ objection, the Ninth Circuit rejected Judge Shubb’s recusal in a footnote: “The [district] court’s order had no effect, however, because it was issued after Appellants filed their notice of appeal in our court.” Petition for Writ of Certiorari, App. A, 2a.

Then, in a very short and unpublished opinion, the Appellate Court upheld the dismissal. Petition for Writ of Certiorari, App. A. The Ninth Circuit provided no procedure to resolve Judge Shubb’s sweeping *nunc pro tunc* order once Judge Shubb gains jurisdiction again (*i.e.*, at completion of the current appellate process).

C. Supreme Court.

In May 2022, Petitioners filed their petition for writ of certiorari, which cited all of the above-stated facts. On October 3, 2022, this Court denied the petition for writ of certiorari.¹⁰ As the court below it,

⁹ No. 21-70925.

¹⁰ *Garner v. Biden*, No. 21-1511, 2022 U.S. LEXIS 3786 (Oct. 3, 2022).

this Court provided no procedure to resolve Judge Shubb's sweeping *nunc pro tunc* order once Judge Shubb gains jurisdiction again at completion of this appellate process.

ARGUMENT

The requirements for this Court's rehearing of a denial on a petition for writ of certiorari are stated in Rule 44.2, "grounds shall be limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented ... and that it is presented in good faith and not for delay."¹¹

Here, the looming reversal of all district court orders *nunc pro tunc* is an intervening circumstance of a substantial and controlling effect. While this was highlighted in Petitioners' original petition for certiorari, it was not previously presented to this Court with urgency (as it was technically unknown then whether the petition for writ of certiorari would be granted or denied).

This petition for rehearing is brought in good faith, as Petitioners assume this Court would

¹¹ See also, *Gondeck v. Pan American World Airways, Inc.*, 382 U.S. 25 (1965) (Although order denying petition for certiorari to review judgment setting aside award of death benefits to widow of employee of defense base killed in accident outside base, had become final under predecessor to Rule 44, Court would grant second petition for rehearing where subsequent to Court's denial of certiorari (1) another Court of Appeals upheld award to survivors of another employee killed in same accident, (2) court below, in later like case, expressed doubt whether its decision in present case had been consistent with earlier Supreme Court decision, and (3) subsequent decision of Supreme Court having expressed view favorable to petitioner, present case stood completely alone.)

welcome the opportunity to provide clarity in this unique procedural matter regarding the administration of justice. Nor is there any delay to be gained by rehearing, as the dismissal with prejudice in 2021 was already case dispositive.

So long as an appeal in this Supreme Court is ongoing, Judge Shubb's courtroom can apparently maintain the dismissal with prejudice (by claiming Judge Shubb lacks jurisdiction to intervene). But once this Supreme Court denies certiorari (without issuing any stay), then the Ninth Circuit appeal is automatically and simultaneously completed, thereby vesting jurisdiction back to the District Court with its awkward procedural posture that all previous orders will be vacated *nunc pro tunc*, undermining this Supreme Court's order denying certiorari. Is this the Court's intention?

In other words, while the Ninth Circuit appeal was ongoing, Judge Shubb had at least a pretense that he lacked jurisdiction to recuse and reverse all his orders *nunc pro tunc*. But once SCOTUS denies certiorari here without comment and without a stay, then it puts Petitioners in a Schrödinger's box with a complaint that is simultaneously dismissed and active.

Because of the previously issued reversal *nunc pro tunc*, these are the following loose ends that this Court's denial of certiorari leaves uncertain:

- One of Judge Shubb's *nunc pro tunc* reversed orders was to change the Defendant from President Donald J. Trump to Joseph R. Biden. Without a remand, does this Supreme Court's denial of certiorari on October 3, 2022 intend that President Donald J. Trump should now be restored as the rightful defendant pursuant to Judge Shubb's February 2022 *nunc pro tunc*

order reversing his February 2021 renaming of the Defendant?¹²

- Petitioners filed a motion for preliminary injunction and requests for judicial notice. Respondent then filed a motion to dismiss. Do these motions go back on calendar with a new judge? Or does this Supreme Court intend for Judge Shubb to ministerially uphold his previous orders?

A motion to dismiss with prejudice, as the lower

¹² Consistent with evidence of election fraud presented by federal plaintiff Michael Lindell and others, Petitioners' pleadings consistently referred to the Respondent as the *Office* of the President after President Trump voluntarily departed the White House. Mr. Lindell's allegations and evidence of election fraud show authorities willfully miscounting votes in order to destroy the country. If proven in court (so far every election fraud case is dismissed on standing grounds without judges ever formally weighing actual raw data), the problem is *almost* too big for this Court to fix without a constitutional crisis. It is the same situation with the Control Group's evidence that vaccines are injuring literally *most* Americans – if proven in court, the problem is *almost* too big for this Court to fix without a constitutional crisis. Meanwhile, as Petitioners allege, authorities willfully miscount vaccine injuries in order to destroy the country. In both instances (alleged election fraud and vaccine fraud), courts have not desired to admit into evidence raw data of miscounting, but have instead elected to dismiss large cases up front for lack of standing. Petitioners submit the Judiciary's failure to oversee basic accounting in large cases will be considered historically as an institutional failure of Article III, in the sense of the Judiciary's fear of implementing large-scale checks and balances. While this forbearance may be admirable in other areas (to respect separation of powers), history may indeed judge it failure that the judiciary neglected nation-saving matters within its very core competence: preservation of evidence and expert-verified accounting.

courts upheld here, can only be granted if there is no conceivable cause of action that can maintain against the Defendant for the facts alleged. It defies both logic and experience that federal courts are unable to conceive of any cause of action against the President where the plaintiff proves the President's National Vaccine Program injures literally *most* Americans. The only rational explanation for dismissal is the lower courts disbelieve national data showing vaccinated people suffer a 60 to 80 percent chronic illness rate, yet unvaccinated people are perfectly healthy with only the background rate of 2 to 5 percent. The health of the unvaccinated is evidence that must not be destroyed. The Constitution is not a suicide pact.

CONCLUSION

Petitioners request rehearing in order to provide clarity and for the efficient administration of justice, and in respect of the greatest possible rights of the Petitioners as healthy and peacefully natural people.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

Pursuant to Rule 44.2, Counsel certifies that this Petition is restricted to the grounds specified in the Rule with substantial grounds not previously presented. Counsel certifies that this Petition is presented in good faith and not for delay.


GREGORY J. GLASER