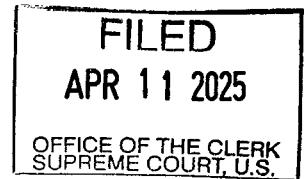


24-6993

ORIGINAL

No _____

IN THE
SUPREME COURT OF THE UNITED STATES



IN RE: DEON D. COLVIN (II) —PETITIONER

vs.

DONALD W. TUNNAGE, ASSOC. JUDGE —RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

DISTRICT OF COLUMBIA COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

DEON D. COLVIN

(Your Name)

743 FAIRMONT STREET NW #211

(Address)

WASHINGTON, DISTRICT OF COLUMBIA. 20001

(City, State, Zip Code)

216-396-8512

(Phone Number)

QUESTION(S) PRESENTED

Petitioner is a pro se litigant. The District of Columbia Court of Appeals DENIED

Petitioner's Petition for a Writ of Mandamus. The Questions Presented are as follows:

1. Did the D.C. Court of Appeals deny Applicant's Fifth Amendment right to Due Process by not including 743 Fairmont Street NW LLC as a party in the proceedings, thus rendering the proceedings and its rulings void?
2. Does the D.C. Court of Appeals' failure to include 743 Fairmont Street NW LLC as a party in the proceedings have the appearance of racial bias?
3. Does Respondent's conduct presented in Petitioner's Third Motion to Disqualify Judge Donald W. Tunnage, and Fourth Motion to Disqualify Judge Donald W. Tunnage, qualify as conduct that might cause the average person, fully informed to reasonably question the Respondent's impartiality, thus requiring Respondent's disqualification from proceedings, pursuant to 28 U.S.C. § 455(a)?

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

- A. Hon. Donald W. Tunnage, Associate Judge, Superior Court of the District of Columbia (Respondent)

RELATED CASES

- *In re: Deon D. Colvin*, No. 24-OA-0016, District of Columbia Court of Appeals. Judgment entered October 24th, 2024.
- *In re: Deon D. Colvin*, No. 24-OA-0011, District of Columbia Court of Appeals. Judgment entered June 27th, 2024.
- *Deon D. Colvin v. 743 Fairmont Street NW LLC*, No. 2019-CA-008113-B, Superior Court of the District of Columbia. Judgment entered: Pending.

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OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.
OPINIONS BELOW

☐ For cases from federal courts:

The opinion of the United States Court of Appeals appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States District Court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The **opinions** of the District of Columbia Superior Court appear at Appendix C to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____.

The jurisdiction of the U.S. Supreme Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was FEBRUARY 3, 2025.
A copy of that decision appears at appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date:
February 4, 2025, and a copy of the order denying rehearing appears at appendix B.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____.

The jurisdiction of the U.S. Supreme Court is invoked under 28 U. S. C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This constitutional and statutory provisions involved in the present matter are as follows:

I. THE CONSTITUTION OF THE UNITED STATES OF AMERICA, AMENDMENT V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against itself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

II. UNITED STATES CODE – TITLE 28 – PART I---CHAPTER 21---SECTION 455- Disqualification of justice, judge, or magistrate judge

(28 U.S. CODE § 455)

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

III. UNITED STATES CODE – TITLE 28 – PART IV---CHAPTER 81---SECTION 1254 – Courts of Appeals; certiorari; certified questions

(28 U.S. CODE § 1257)

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal or criminal case, before or after rendition of judgment or decree;

IV. UNITED STATES CODE – TITLE 28 – PART V---CHAPTER 111---SECTION 1651- Writs

(28 U.S. CODE § 1651)

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary and appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

STATEMENT OF THE CASE

Over 50 years ago, Congress passed 28 U.S.C. § 455 (a), which declared, “Any justice, Judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.” The purpose of the legislation was to promote confidence in the judiciary by avoiding even the appearance of impropriety by mandating a judge disqualify from a proceeding in which his partiality might reasonably be questioned by the average person. This “average person” requirement was meant to replace the Court’s subjective standard with an objective test for disqualification, in hopes that an objective measure for judicial recusal would improve public confidence. Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 865, 871-2 (1988).

In Liteky v. United States, this Court explained that bias in a judicial officer can originate from an extrajudicial or intrajudicial source, and ruled that for a 28 U.S.C. § 455 (a) disqualification of a judge based on the latter, the petitioner must present facts and circumstances that show a judge’s conduct evinces a “deep-seated favoritism or antagonism as to make fair judgement impossible.” Liteky v. United States, 510 U.S. 540, 551, 555-6 (1994).

This case—a related case that arises out of events that occurred in the pending matter Deon Colvin v. Superior Court of the District of Columbia (Case #24-6858)—presents the questions of whether (1) the D.C. Court of Appeals denied Applicant’s Fifth Amendment right to Due Process by not including 743 Fairmont Street NW LLC as a party in the proceedings for Applicant’s petition for a writ of mandamus, (2) whether this exclusion by the D.C. Court of Appeals has the appearance of racial bias, and (3) whether Respondent’s conduct articulated in Applicant’s Petition for a Writ of Mandamus warrants disqualification pursuant to 28 U.S.C. § 455 (a).

**1. Events In the Lower Courts Leading to Applicant's Filing of a Petition for
Writ of Certiorari
(D.C. Court of Appeals Case #25-OA-0004)**

On December 9, 2019, Applicant ("Plaintiff") filed a breach of contract case against 743 Fairmont Street NW LLC ("Defendant") in D.C. Superior Court (Case # 2019-CA-008113-B). On January 1, 2023, Superior Court Judge Donald W. Tunnage ("Respondent") began presiding over the case due to a judicial caseload transfer. Prior to Respondent presiding, Applicant had filed a Motion to Disqualify the immediate prior judge pursuant to 28 U.S.C. § 455 (a) and Rule 2.11 (A) of the Code of Judicial Conduct for the District of Columbia Courts (2018) for six rulings the judge made where he allowed Defendant's counsel to disobey the Court's order to respond to Applicant's subpoenas, and refused to sanction him for doing so.

Upon presiding, Respondent, after initially pronouncing that his policy is to allow full briefing by the parties on contested matters, (1) declared that he had the authority to deny full briefing on Applicant's opposed motions, and ruled on Applicant's opposed motions without allowing briefing by the parties; (2) mischaracterized Applicant's motion requesting clarification of the authority that allows the Court to eschew full briefing as a request for reconsideration, and then denied the motion; (3) ignored pronouncements and orders he made concerning Applicant's pending discovery requests to Defendant¹; (4) announced that discovery was complete and scheduled a pre-trial conference with Applicant's discovery requests pending; (5) failed to consider Applicant's motions requesting that he execute his discovery pronouncements for the pending requests *prior*

¹ Respondent directed Applicant to convert his pending discovery motions into two lists, a Praeipice of Requests, which he stated he would order Defendant to produce, and a Praeipice of Disputed Requests, which he stated he would hold hearings on. Respondent also granted in part a supplemental request to Plaintiff's Praeipice of Requests, but did not order a response date. After ordering a Response date for the former, when Defendant did not respond to all the requests, Respondent suspended discovery until after a hearing on liability. The liability hearing was not held and Respondent did not return to discovery.

to the pre-trial conference, and (6) refused to take the *required* appropriate action articulated in Rule 2.15 (C) and (D), cmt. [2] and [3] of the Code of Judicial Conduct, District of Columbia 2018 upon learning of the likelihood of lawyer and judicial misconduct by Defendant's counsel and the immediate former judge of discussing and possibly reporting the incident, preventing harm to Applicant caused by the misconduct and reoccurrence, and instead took no action. See App. D.

Not having the discovery necessary to participate in a pre-trial conference, Applicant filed a motion for a continuance and two motions to disqualify Respondent pursuant to 28 U.S.C. § 455 (a) and Rule 2.11 (A) of the Code of Judicial Conduct For the District of Columbia Courts (2018), citing six (6) claims of appearance of bias and appearance of racial bias², claiming the above conduct by Respondent (1) might reasonably cause the average person, fully informed, to question his impartiality; (2) displays a deep-seated favoritism or antagonism that makes fair judgment impossible; and (3) shows a bias and racial bias that appears to be "overpowering"^{3 4} (the D.C. Court of Appeals' "overpowering" standard), citing Liteky v. United States, 501 U.S. 540, 551, 555-6 (1994) and Plummer v. United States, 870 A. 2d 539, 547 (D.C. 2005) as supporting case law. Respondent denied Applicant's third and fourth motions to disqualify,

² Applicant is African American, Defendant's counsel is Caucasian, and the former judge is Caucasian.

³ Applicant claimed that an objective observer viewing Respondent's conduct—which was clearly beneficial to the former judge and Defendant's counsel and detrimental to the Applicant—and the racial dynamics in the case, might reasonably conclude Respondent's conduct has the appearance of racial bias.

⁴ Respondent purports to be of the same race as the Defendant. Applicant observed in his petition the holding of this Court that being of the same race does not preclude Respondent from holding a racial bias against him. Lucas v. United States, 240 A. 3d 328, 350 (2020)("Indeed, it is well known that people can demonstrate bias and discriminate against others who fall in within the same protected category they do."); Oncale v. Sundowner Offshore Sers. Inc., 523 U.S. 75, 78-79 (1988)("...it would be unwise to presume as a matter of law that human beings of one definable group will not discriminate against other members of their group.")

reasoning that the motions were incorrect on the facts and the law. *See App. C.*

2. Proceedings at the D. C. Court of Appeals

Applicant filed a petition for a writ of mandamus with the D.C. Court of Appeals requesting the Court issue a writ directing Respondent disqualify from the case for appearance of bias and racial bias, pursuant to 28 U.S.C. 455 (a) and the 2.11 (A) of the Code of Judicial Conduct, District of Columbia Courts (2018), on the basis of the facts and circumstances articulated in the six claims of appearance of bias and racial bias in his motions to disqualify, which were incorporated in the petition.

Applicant filed an application to proceed *in forma pauperis*, and a motion for a stay of proceedings until disposition of the petition. Applicant indicated his motion for a stay was opposed by Defendant's Counsel, William P. Cannon III. *See App. E.* Seeing that the case next scheduled action was a review of all documents, Applicant filed Petitioner's Notice of Incorrect Case Status, notifying the Court that the next scheduled action in the case was in the wrong status ("pending") when it should still have been scheduled for opposition filings (*i.e.*, still have "opposition" in the "Next Scheduled Action" field). *See App. F.*

The Court approved Applicant's *in forma pauperis* application. The Court denied the petition for writ of mandamus, reasoning that Applicant had not shown "extreme circumstances" and a "clear and indisputable" right to the relief sought; observed the petition was based on "legal rulings" and did not display "circumstances so extreme that a judge's bias appears to have become overpowering."⁵ *See App. A.* The Court denied the motion for a stay of proceedings as moot.

⁵ At least, the Court appears to say such through its citations.

Applicant filed a petition for rehearing en banc, and a motion to reconsider the Court's denial of a stay. In the petition, Applicant appealed the Court overlooked the fact that (1) he presented "exceptional circumstances" when he presented Respondent's refusal to take the *required* appropriate action to prevent harm to the affected party upon learning of the likelihood of lawyer and judicial misconduct, an ethical breach that displays Respondent has a bias for the Defendant's counsel, and also makes him complicit in the harm done, and thus unfit to be the judge in the case; (2) that he showed a "clear and indisputable right to relief" by presenting claims that satisfy the Court's "objective observer," "favoritism or antagonism," and "overpowering standards" per Litkey v. United States and Plummer v. US; (3) that a clear majority of the claims—4 out of 6—are not based on rulings; (4) for those claims that are, they display "a favoritism or antagonism that makes clear judgment impossible" as required by Liteky; and (5) the Court failed to include 743 Fairmont Street NW as a Respondent, which is a violation of D.C. Court of Appeals Rule 21 and Applicant's Fifth Amendment Right to procedural due process, "as it is illegal for a Court not to involve all parties in the proceeding that should be included—or to put it another way, to exempt some parties from participating who are legally required to be a part of the proceedings." See App. G at 7.

Applicant further claimed that when one considers the appearance of racial bias claims in the petition, the Court's failure to include Defendant and Defendant's Counsel William P. Cannon in the proceedings has the appearance of a racial bias⁶, and that "this Court itself, and the members of the Division who authored the Order may be racially biased." See App. G at 7. Applicant concluded that a rehearing en banc was necessary to correct the Division's errors of judgment and preserve the integrity of the proceedings. Applicant filed a motion for the court to rule

⁶ Mr. Cannon, being counsel for Defendant in the underlying matter, would have been counsel for Defendant as Respondent in the mandamus proceedings.

on his petition for rehearing en banc. Applicant filed a motion for an expedited ruling on his petition for rehearing en banc. The Court denied Applicant's petition for rehearing without providing a reason. *See App. B.*

The Court denied Applicant's motion for a ruling and Applicant's motion for an expedited ruling as moot. Applicant filed a motion to stay the mandate pending his filing of a writ of certiorari to this Court. The D.C. Court of Appeals did not issue the mandate.

Reasons for Granting the Writ

The Court should hear this case because of the Court's supervisory role over the nation's Courts and because of its national implications. This case indicates the D. C. Court of Appeals allowed a district judge to declare he can circumvent the rules of civil procedure and not allow briefing by the parties on opposed motions. This is a radical departure from the adversarial tenets on which the U.S. judicial system is based and violates procedural due process requirements. This case indicates that the D.C. Court of Appeals is allowing a judge to stay on the case with clear ethical violations, thus not enforcing the ethical standards it is supposed to uphold as the high court of the District of Columbia. Finally, this case indicates the D.C. Court of Appeals violated Applicant's Fifth Amendment right to Due Process by not including all parties that must be included in a mandamus proceeding, conduct that can reasonably be argued has the appearance of racial bias. This Court acknowledges that racial bias is a cancer that impedes the fair administration of justice. Pena-Rodriguez v. Colorado, 580 U.S. 206, 224 (2017) ("But while all the forms of improper bias pose challenges to the trial process, there is a sound basis to treat racial bias with added precaution.") ("Racial bias ... implicates unique historical, constitutional, and institutional concerns, **and if left unaddressed**, would risk systemic injury to the administration of justice.").

Hence, this Court should use this case to address all of the above. Specifically, this Court should use this case to make a clear point that longstanding rules of civil procedure must be observed; that due process must be observed for mandamus proceedings, or decisions cannot stand; that a serious violation of ethical standards having the appearance of impropriety is disqualifying; that when the standards established in Liteky are met, disqualification shall be effectuated; *and that conduct that has even the appearance of racial bias* cannot be tolerated and must be addressed by the tribunal.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Deon D. Colvin

Date: April 11th 2025