

No. **25-5855**

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

FILED

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**OFFICE OF THE CLERK
SUPREME COURT, U.S.**

IN RE CALEB MCGILLVARY
Petitioner

On Petition for Writ of Mandamus to the United States Court of
Appeals for the 3rd Circuit at Appeal Docket Number 25-2159

PETITION FOR WRIT OF MANDAMUS

CALEB L. MCGILLVARY
Third and Federal Street
New Jersey State Prison
Po Box 861
Trenton, NJ 08625-0861
In Propria Persona

QUESTIONS PRESENTED FOR REVIEW

1. Should the writ of mandamus issue to require Circuit Judge Michael A. Chagares to recuse himself from the instant habeas corpus proceedings, when evidence exists which shows that he was personally acquainted with the alleged victim in the underlying homicide case, whose estate donated \$50,000 to Judge Chagares' alma mater and former workplace for transgender research; and when the medical examiner in that case indicated seeing judges including Chagares present at the active crime scene?
2. Should the writ of mandamus issue to require the Judges of the 3rd Circuit U.S. Court of Appeals who are located in New Jersey to recuse themselves, when the medical examiner who was a key witness in the homicide proceeding underlying the instant habeas matter saw numerous NJ-located circuit judges present at the active crime scene; and when a pattern of obstruction by federal judicial officials in New Jersey has already resulted in assignment of the habeas corpus proceeding below to an out of district judge pursuant to 28 U.S.C. 292(b)?

RELIEF SOUGHT

Petitioner prays for a writ of mandamus directed to the U.S. Court of Appeals for the 3rd Circuit, and to the Honorable Judges Patty Shwartz, Paul Brian Matey, Robert E. Cowen, Michael A. Chagares, and Julio M. Fuentes of the U.S Court of Appeals for the 3rd Circuit, directing and commanding these Respondents to recuse themselves from further proceedings in this matter and related matters, pursuant to 28 U.S.C. 455.

UNAVAILABILITY OF RELIEF IN OTHER COURTS

No other court can grant the relief sought by this petition because there exists no recourse to challenge the disputed decision until after the harm has already been occasioned:

1. On June 24, 2025, Petitioner filed a motion to recuse Judges Chagares, Matey, Shwartz, Cowen, and Fuentes in the instant matter. See 3rd Cir. CM/ECF no. 7.
2. On August 15, 2025, the Clerk for the U.S. Court of Appeals for the 3rd Circuit entered an order "At the direction of the Court"; summarily denying Petitioner's motion for Judges Chagares, Matey, Shwartz, Cowen, and Fuentes to recuse themselves. See 3rd Cir. CM/ECF no. 22. A copy of this order is attached in the Appendix, as Exhibit A, Pa5.
3. There is no possibility of petitioning for rehearing of the appeal until after the harm to public confidence has already been occasioned by the deciding of this appeal by personal acquaintances of the alleged victim, who have personal knowledge of the disputed crime scene from having been present at that scene while it was active.

UNSUITABILITY OF ANY OTHER FORM OF RELIEF

The relief requested is distinguished from recusal under 28 U.S.C. 144. Section 144 concerns the interests of the individual litigant. Section 455, in contrast, concerns a wider range of interests. In addressing the mere appearance of partiality, section 455 addresses not only fairness to the litigants but also the public's confidence in the judiciary, which may be irreparably harmed if a case is allowed to proceed before a judge who appears to be tainted. While review after the mandate has issued can cure the harm to a litigant, it cannot cure the additional, separable harm to public confidence that Section 455 is designed to prevent. The Circuit Judges at issue in this petition have refused to recuse themselves, although several were personal acquaintances of the alleged victim, and the medical examiner indicated seeing the judges at the active crime scene. There is no possibility of petitioning for rehearing of the appeal until after the harm to public confidence has already been occasioned by the deciding of this appeal by personal acquaintances of the alleged victim, who have personal knowledge of the disputed crime scene from having been present at that scene while it was active.

LIST OF ALL PARTIES TO THE PROCEEDING

The Respondents to the proceeding below are:

- 1.) Jeffrey Crothers, who has been substituted for Bruce Davis pursuant to Fed. R. Civ. P. 25(d) in his public office as Administrator of the NJ State Prison; and
- 2.) The Attorney General of New Jersey, Matthew J. Platkin.

Petitioner seeks mandamus relief against the following persons, specifically directing them to recuse themselves from further proceedings below pursuant to 28 U.S.C. 455:

- 3.) Hon. Michael A. Chagares, Chief Circuit Judge of the U.S. Court of Appeals for the 3rd Circuit
- 4.) Hon. Paul Brian Matey, Circuit Judge of the U.S. Court of Appeals for the 3rd Circuit
- 5.) Hon. Patty Shwartz, Circuit Judge of the U.S. Court of Appeals for the 3rd Circuit
- 6.) Hon. Robert E. Cowen, Circuit Judge of the U.S. Court of Appeals for the 3rd Circuit
- 7.) Hon. Julio M. Fuentes, Circuit Judge of the U.S. Court of Appeals for the 3rd Circuit

CORPORATE DISCLOSURE STATEMENT

Petitioner Caleb L. McGillvary makes this corporate disclosure statement pursuant to Supreme Court Rule 29.6:

This is Petitioner Caleb L. McGillvary's original Corporate Disclosure Statement.

- 1.) Jeffrey Crothers, Administrator of the NJ State Prison has no parent corporation.
- 2.) The Attorney General of New Jersey, Matthew J. Platkin has no parent corporation.
- 3.) Hon. Michael A. Chagares has no parent corporation.
- 4.) Hon. Paul Brian Matey has no parent corporation.
- 5.) Hon. Patty Shwartz has no parent corporation.
- 6.) Hon. Robert E. Cowen has no parent corporation.
- 7.) Hon. Julio M. Fuentes has no parent corporation.

LIST OF ALL RELATED PROCEEDINGS

- 1.) New Jersey Superior Court, Law Division, Docket Number UNN 16-05-00344-I, State of New Jersey v. Caleb L. McGillvary, April 24, 2019
Entry of Judgment of Conviction;
- 2.) New Jersey Superior Court, Appellate Division, Docket Number A-4519-18, State of New Jersey v. Caleb L. McGillvary, August 4, 2021
Affirmance of Judgment of Conviction;
- 3.) N.J. Supreme Court, Docket Number 086174, State of New Jersey v. Caleb L. McGillvary, Deceomber 7, 2021 Denial of Ceritification
- 4.) U.S. Supreme Court, Docket number 21-7231, Caleb L. McGillvary v. State of New Jersey, April 18, 2022 Denial of Certiorari
- 5.) U.S District Court for the District of New Jersey, Docket Number 1:22-cv-04185-MRH, Caleb L. McGillvary v. Bruce Davis, Administrator of NJ State Prison, Attorney General of New Jersey, June 6, 2025
Denial of Writ of Habeas Corpus
- 6.) U.S. Court of Appeals for the 3rd Circuit, Docket Number 25-2159, Caleb L. McGillvary v. Attorney General of New Jersey, August 15, 2025, Denial of Motion to Recuse Judges Chagares, Matey, Shwartz, Cowen, and Fuentes.

TABLE OF CONTENTS

| | |
|--|-------|
| QUESTIONS PRESENTED FOR REVIEW | ...2 |
| RELIEF SOUGHT | ...3 |
| UNAVAILABILITY OF RELIEF IN OTHER COURTS | ...4 |
| UNSUITABILITY OF ANY OTHER FORM OF RELIEF | ...5 |
| LIST OF ALL PARTIES TO THE PROCEEDING | ...6 |
| CORPORATE DISCLOSURE STATEMENT | ...7 |
| LIST OF ALL RELATED PROCEEDINGS | ...8 |
| TABLE OF CONTENTS | ...9 |
| TABLE OF AUTHORITIES CITED | ...12 |
| TABLE OF APPENDIX | ...15 |
| JURISDICTIONAL STATEMENT | ...17 |
| CITATIONS OF LOWER COURT DECISIONS | ...18 |
| CONTROLLING PROVISIONS, STATUTES, AND REGULATIONS | ...19 |
| STATEMENT OF THE CASE AND GOVERNING FACTS | ...20 |
| A. THE CONFLICTS OF INTERESTS OF THE CIRCUIT JUDGES INVOLVED IN THIS PETITION | ...20 |
| B. THE MULTIPLE REASSIGNMENTS OF THE INSTANT MATTER CULMINATED IN AN ORDER UNDER 28 U.S.C. 292(b) DESIGNATING AN OUT OF DISTRICT JUDGE, WHICH RELIED ON IMPLICIT FINDINGS OF ORGANIZATIONAL BIAS WITHIN THE FEDERAL JUDICIAL COMPLEXES IN NEW JERSEY | |

| | |
|---|-------|
| | ...28 |
| 1. DNJ Officials' Refusal to File Petitioner's Documents | ...29 |
| 2. DNJ Officials Tampering with the Record and Mischaracterizing Filings by Petitioner to Cause him Prejudice | ...30 |
| 3. Undue Delay by Federal Judges in New Jersey | ...31 |
| 4. Gamesmanship in Assignments and Orders | ...34 |
| 5. It Has Already Been Found to be in the Public Interest for the instant case, the Scutari Case, the Galfy Case, and the Long Case to be Heard by a Judge from Outside the DNJ | ...36 |
| 6. The Routine Organizational Practice of DNJ-Located Judicial Officials Creates the Appearance of Impropriety | ...36 |
| C. RELEVANT PROCEDURAL HISTORY | ...37 |
| ARGUMENT | ...39 |
| POINT I: THE MEDICAL EXAMINER IN THE INSTANT CASE STATED TO INVESTIGATORS THAT HE SAW CIRCUIT JUDGES FROM NEW JERSEY STANDING OUTSIDE THE CRIME SCENE; AND THE CHIEF CIRCUIT JUDGE WAS PERSONALLY ACQUAINTED WITH THE ALLEGED VICTIM; AND THERE EXISTS A PATTERN OF OBSTRUCTION IN THIS CASE STRONGLY INDICATING OFFICIAL ANIMUS; WHICH CUMULATIVELY CREATES THE APPEARANCE OF IMPROPRIETY THAT THESE JUDGES SHOULD PRESIDE OVER THIS CASE, AND REQUIRES MANDAMUS TO ISSUE DIRECTING THESE JUDGES TO RECUSE THEMSELVES WHERE THEY HAVE REFUSED TO EVEN AFTER MOTIONS REQUESTING THEM TO DO SO | ...39 |
| A. STANDARD OF REVIEW | ...39 |
| 1. RECUSAL UNDER 28 U.S.C. 455 | ...39 |

| | |
|---|---|
| 2. ISSUANCE OF MANDAMUS UNDER 28 U.S.C. 1651 | ...40 |
| B. ANALYSIS | ...41 |
| 1. The Writ Will Be In Aid of the Court's Appellate Jurisdiction | ...41 |
| 2. Exceptional Circumstances Warrant The Exercise of the Court's Discretionary Powers, Which Circumstances Show Petitioner's Clear and Indisputable Right to Issuance of the Writ | ...42 |
| 3. Adequate Relief Cannot be Obtained in Any Other Form or From Any Other Court | ...45 |
| 4. STATEMENT OF THE OFFICE OR FUNCTION OF EVERY PERSON AGAINST WHOM RELIEF IS SOUGHT | ...46 |
| CONCLUSION | ...48 |
| APPENDIX | ...See Separate Volume, Appendix Volume I |

TABLE OF AUTHORITIES CITED

Cases

| | |
|---|---------------|
| <u>Bell v. Chandler</u> , 569 F.2d 556 (CA10 1978) | ...42 |
| <u>Brady v. Maryland</u> , 373 U.S. 83 (1963) | ...42 |
| <u>Hollingsworth v. Perry</u> , 558 U.S. 183 (2010) | ...40 |
| <u>In re Aetna Casualty and Surety Co.</u> , 919 F.2d 1136 (CA6 1990) (en banc) | ...41 |
| <u>In re Caleb L. McGillvary</u> , App. No. 22-3068 (CA3 2022) | ...31 |
| <u>In re Caleb L. McGillvary</u> , App. No. 24-1129 (CA3 2024) | ...33 |
| <u>In re Caleb L. McGillvary</u> , App. No. 24-3031 (CA3 2025) | ...32 |
| <u>In Re Caleb L. McGillvary</u> , App. No. 24-3327 (CA3 2025) | ...30, 31 |
| <u>In Re Caleb L. McGillvary</u> , App. No. 25-2096 (CA3 2025) | ...29, 30, 42 |
| <u>In re Cement Antitrust Litig.</u> , 673 F.2d 1020 (CA9 1982) | ...41, 42 |
| <u>In re Corrugated Container Antitrust Litig.</u> , 614 F.2d 958 (CA5 1980) | ...41 |
| <u>In re IBM Corp.</u> , 618 F.2d 923 (CA2 1980) | ...41 |
| <u>In re Murchison</u> , 349 U.S. 133 (1955) | ...40 |
| <u>In re Rodgers</u> , 537 F.2d 1196 (CA4 1976) (per curiam) | ...41 |
| <u>In re School Asbestos Litig.</u> , 977 F.2d 764 (CA3 1992) | ...41 |
| <u>In Re United States</u> , 666 F.2d 690 (CA1 1981) | ...41 |
| <u>Liddell v. Board of Education</u> , 677 F.2d 626 (CA8 1982) | ...41 |

| | |
|---|--------------------------------|
| <u>Liljeberg v. Health Servs. Acquisition Corp.</u> , 486 U.S. 847 (1988) | ...39, 40 |
| <u>McGillvary v. AG of N.J.</u> , 2025 U.S. Dist. LEXIS 108692, 2025 WL 1638466 (June 5, 2025) | ...18, 29, 30, 34, 36, 44 |
| <u>McGillvary v. Galfy</u> , Dkt. No. 1:21-cv-17121-JMY (D.N.J.) | ...27, 31, 32, 33, 34, 36, 44 |
| <u>McGillvary v. Long</u> , Dkt. No. 1:24-cv-09507-JMY (D.N.J.) | ...27, 36, 44 |
| <u>McGillvary v. New Jersey</u> , 212 L Ed 2d 588, 2022 US LEXIS 1920 (Apr. 18, 2022) | ...18 |
| <u>McGillvary v. Scutari</u> , App. No. 25-2000 (CA3 2025) | ...23, 27, 30, 35, 36, 44 |
| <u>Roche v. Evaporated Milk Assn.</u> , 319 U.S. 21 (1943) | ...40 |
| <u>SCA Services, Inc. v. Morgan</u> , 557 F.2d 110 (CA7 1977) | ...41 |
| <u>State v. McGillvary</u> , 2021 N.J. Super. Unpub. LEXIS 1651, 2021 WL 3378024 (App.Div., Aug. 4, 2021) | ...18 |
| <u>State v. McGillvary</u> , 249 N.J. 341; 265 A.3d 1242; 2021 N.J. LEXIS 1308 (Dec. 10, 2021) | ...18 |
| <u>United States v. Menendez</u> , Dkt. No. 1:23-cr-00490-SHS (S.D.N.Y. – Jan. 29, 2025) | ...23 |
| Constitution, Statutes, Regulations, and Rules | |
| 28 <u>U.S.C.</u> 144 | ...5, 45 |
| 28 <u>U.S.C.</u> 292(b) | ...2, 26, 27, 28, 33, 36, 44 |
| 28 <u>U.S.C.</u> 455 | ...3, 5, 6, 19, 39, 41, 45, 46 |
| 28 <u>U.S.C.</u> 455(a) | ...37, 39 |
| 28 <u>U.S.C.</u> 455(b)(1) | ...43 |

| | |
|--|-------------------|
| 28 <u>U.S.C.</u> 1651(a) | ...17, 19, 40, 45 |
| 28 <u>U.S.C.</u> 1657(a) | ...33 |
| 28 <u>U.S.C.</u> 2254 | ...20 |
| <u>3rd Circuit I.O.P</u> 10.3.2 | ...34 |
| <u>F.R.A.P.</u> 21(b)(6) | ...32, 33 |
| <u>F.R.A.P.</u> 27(c) | ...32 |
| <u>Fed. R. Civ. P.</u> 25(d) | ...6 |
| <u>Fed. R. Civ. P.</u> 27(a) | ...23, 29, 42 |
| <u>Fed. R. Civ. P.</u> 27(b) | ...31, 32 |
| <u>Fed. R. Civ. P.</u> 59 | ...34 |
| <u>Fed. R. Evid.</u> 201(b) | ...21 |
| <u>Fed. R. Evid.</u> 406 | ...45 |
| <u>Supreme Court Rule</u> 20 | ...17 |
| <u>Supreme Court Rule</u> 20(1) | ...40 |
| <u>Supreme Court Rule</u> 20(3)(b) | ...40, 41 |
| <u>Supreme Court Rule</u> 29.6 | ...7 |
| Texts, Treatises, and Law Reviews | |
| 1974 <u>U.S.C.C.A.N.</u> 6351, 6355 | ...40 |
| <u>H.R. Rep. No.</u> 93-1453, 93d <u>Cong.</u> , 2s Sess. 5 (1974) | ...40 |

TABLE OF APPENDIX

| | |
|--|---------|
| Exhibit A - Order of U.S. Court of Appeals for the 3rd Circuit dated August 15, 2025, denying motion to recuse Circuit Judges Chagares, Matey, Shwartz, Cowen, and Fuentes | ...Pa4 |
| Exhibit B – Text of Controlling Statutes | ...Pa7 |
| Exhibit C – Declaration of Caleb L. McGillvary in support of this Petition for Writ of Mandamus | ...Pa12 |
| Exhibit D - Purported Last Will & Testament of Joseph J. Galfy, Jr. | ...Pa39 |
| Exhibit E - NJ Election Law Enforcement Commission Records for Nicholas P. Scutari | ...Pa53 |
| Exhibit F - Official Transcript of February 8, 2018 hearing in NJ Superior Court Proceeding "State of New Jersey v. Caleb McGillvary", No. UNN-13-001703 | ...Pa57 |
| Exhibit G - Postage Remit Evidencing Mailing of Motion for Summary Judgment on April 5, 2023 | ...Pa77 |
| Exhibit H - Three Postage Remits Evidencing Mailing of Motion for Summary Judgment to 3 DNJ Vicinages on May 8, 2023 | ...Pa79 |
| Exhibit I - Motion to Withdraw Motion to Recuse Judge Kirsch and Return Receipt Evidencing Delivery of Same on May 23, 2025 | ...Pa83 |
| Exhibit J - Motion to Withdraw IFP Application and Return Receipt Evidencing Delivery of Same on June 6, 2023 | ...Pa90 |
| Exhibit K - Petition to Perpetuate Testimony of Theodroe Romankow, Junaid Shaikh, and Robert Pandina Pursuant to Fed. R. Civ. P. 27(a) | ...Pa97 |

Exhibit L - Postage Remit Evidencing Mailing of Petition to Perpetuate Testimony of Theodroe Romankow, Junaid Shaikh, and Robert Pandina Pursuant to Fed. R. Civ. P. 27(a) on November 6, 2023

...Pa125

Exhibit M - Return Receipt Evidencing Receipt by Clerk of DNJ of Petition to Perpetuate Testimony of Theodroe Romankow, Junaid Shaikh, and Robert Pandina Pursuant to Fed. R. Civ. P. 27(a) on November 16, 2024

...Pa127

Exhibit N - Return Receipt Evidencing Receipt by Clerk of DNJ of Brief in Opposition to State's Motion to Dismiss in McGillvary v. Scutari, Dkt. No. 1:23-cv-22605-JMY (D.N.J.) on September 30, 2024

...Pa129

Exhibit O - Docket Report for State of New Jersey v. Caleb McGillvary, Dkt. No. UNN-13-001703

...Pa134

JURISDICTIONAL STATEMENT

The Order of the U.S. Court of Appeals for the 3rd Circuit denying Petitioner's motion to recuse Judges Patty Shwartz, Paul Brian Matey, Robert E. Cowen, Michael A. Chagares, and Julio M. Fuentes was entered on August 15, 2025. No rehearing is available to review this order until after the appeal has been disposed of, at which point the irreparable injury and harm would have already been occasioned. This Court has jurisdiction to issue the writ of mandamus under 28 U.S.C. 1651(a) and Supreme Court Rule 20.

CITATIONS OF LOWER COURT DECISIONS

- 1.) State v. McGillvary, 2021 N.J. Super. Unpub. LEXIS 1651, 2021 WL 3378024 (App.Div., Aug. 4, 2021)
- 2.) State v. McGillvary, 249 N.J. 341; 265 A.3d 1242; 2021 N.J. LEXIS 1308 (Dec. 10, 2021)
- 3.) McGillvary v. New Jersey, 212 L Ed 2d 588, 2022 US LEXIS 1920 (Apr. 18, 2022)
- 4.) McGillvary v. AG of N.J., 2025 U.S. Dist. LEXIS 108692, 2025 WL 1638466 (June 5, 2025)

CONTROLLING PROVISIONS, STATUTES, AND REGULATIONS

- 1.) 28 U.S.C. 455 (See Appendix, Exhibit B, page Pa8)
- 2.) 28 U.S.C. 1651(a) (See Appendix, Exhibit B, page Pa11)

STATEMENT OF THE CASE AND GOVERNING FACTS

Federal Jurisdiction existed in the Court of First Instance by virtue of 28 U.S.C. 2254, which provides federal courts jurisdiction to hear constitutional challenges to unlawful confinement and restraint by prisoners incarcerated pursuant to state convictions.

The U.S. Court of Appeals for the 3rd Circuit has issued an order, attached as Exhibit A to the Appendix; denying the motion to recuse certain 3rd Circuit Judges, Circuit Judges Patty Shwartz ("Judge Shwartz"), Paul Brian Matey ("Judge Matey"), Robert E. Cowen ("Judge Cowen"), Michael A. Chagares ("Judge Chagares"), and Julio M. Fuentes ("Judge Fuentes"); which was filed below as 3rd Cir. CM/ECF no. 7. That motion, and the Declaration attached as Exhibit C to the Appendix, authenticate and set forth evidence showing the following factual and legal grounds in support of the requested relief:

A. THE CONFLICTS OF INTERESTS OF THE CIRCUIT JUDGES INVOLVED IN THIS PETITION

Judge Shwartz, Judge Matey, and Judge Cowen were born in New Jersey. Each of these judges, as well as Judge Chagares and Judge Fuentes practiced law in New Jersey prior to acceding to the federal bench. All of these Circuit Judges hold their judicial office in a Federal

Judicial Complex located in New Jersey. Judge Shwartz was also recommended for nomination to the federal bench by unregistered foreign agent Bob Menendez.

Judge Chagares graduated Seton Hall University School of Law in 1987, and thereafter became an adjunct professor at Seton Hall University School of Law for the period from 1991 until 2006. See <https://www.ca3.uscourts.gov> (Judge Chagares' biography indicates this information); Fed. R. Evid. 201(b) (This information is judicially noticeable). It is judicially noticeable that universities and colleges require faculty to attend charity functions; See Fed. R. Evid. 201(b); so it reasonably appears that, during the time of Judge Chagares' professorship, he attended numerous faculty functions, including but not limited to charity galas, fundraisers, and alumni events. One of the key prosecution witnesses in the case below, Michael Timoni ("Timoni"), indicated that the alleged victim in the case below was "very involved at the charities at Seton Hall University"; See DNJ ECF 12.39, page 123 lines 14-15; and so it reasonably appears that Judge Chagares was personally familiar with the alleged victim over the course of at least 15 years of regular personal contact in the setting of

Seton Hall University charity functions. In fact, the dynamic of such interactions is provably that of one between a faculty member and a wealthy benefactor, as evidenced by the purported last will and testament of the alleged victim, attached to the Appendix as Exhibit D. This will shows that Judge Chagares' former workplace and alma mater was bequeathed \$50,000 for the purpose of advocating for chemical castration of minors; See Id. at Pa53; and that the workplaces of the medical examiner and drug effect expert witness in the instant Habeas Case were each bequeathed \$150,000. See Id. at Pa52.

The alleged victim in the criminal homicide case which Petitioner challenges through habeas corpus in the instant matter; in addition to being a proponent of chemical castration of minors; was also a political lobbyist who used his influence to get judges nominated or recommended for nomination to the bench in New Jersey. See Exhibit E to Appendix (Election Campaign Records showing contributions to chair of NJ Senate Judiciary Committee by alleged victim, attendant on a fundraising gala at "Lana's" restaurant at which the alleged victim lobbied to have his then-law partner nominated for a judgeship). Petitioner has filed an action against the political lobbying network of

that lobbyist, which is currently on appeal to the U.S. Court of Appeals for the 3rd Circuit at McGillvary v. Scutari, App. No. 25-2000 (CA3 2025) ("Scutari Case"). The Scutari Case alleges, amongst other things, that this lobbying network uses bribes and quid pro quo arrangements to secure nominations to the state and federal benches in New Jersey, including by recommendations from now-former U.S. Senator Bob Menendez. Bob Menendez was convicted since the filing of the Scutari Case, for using his office in precisely the way alleged in the complaint in the Scutari Case: offering recommendations for federal positions in quid pro quo arrangements for money and favors. See United States v. Menendez, Dkt. No. 1:23-cr-00490-SHS at CM/ECF No. 732 (S.D.N.Y. – Jan. 29, 2025).

As shown by the transcript attached as Exhibit F to the Appendix, the medical examiner in the underlying homicide case challenged by the instant habeas petition; stated that he saw numerous New Jersey-located judges, some possibly federal, congregated outside the crime scene of said alleged homicide in Clark, NJ. See *Id.* at Pa63, page 9 lines 8 to 18. Although Petitioner filed a petition to perpetuate this medical examiner's testimony under Fed. R. Civ. P. 27(a) in November of 2023,

federal judicial officials in New Jersey have refused to enter this petition onto the docket, nor to allow him to depose the medical examiner. As a result, clarification of who was seen at the crime scene, and what their activities there were, has been unforthcoming up to this point.

Whether Judges Shwartz, Matey, Cowen, Chagares, or Fuentes were personally outside the scene or not, it reasonably appears that they or one of their colleagues with whom they regularly associate in the robing room, lunch facilities, and elsewhere in the federal judicial complexes in New Jersey; may have a vested personal interest in the matter, or have personal knowledge about who accessed the crime scene and what was brought into or out of it. Additionally, one or more of the judges whom the medical examiner saw outside the crime scene seems to be actively propagating official animus in the New Jersey federal vicinages which is evidenced by the pattern of obstructions listed below in section "B."

There have been numerous reassignments of the instant habeas case, none of which were explained in any reasoned opinion or with any public accountability. The instant case was reassigned after numerous

obstructions to the case had been documented on the record, including documents going missing and the writ of habeas corpus being suspended. All three of the judges from which the case was reassigned, Hon. Madeline Cox Arleo ("Judge Arleo"); Hon. Michael Farbiarz ("Judge Farbiarz"); and Hon. Christine P. O'Hearn ("Judge O'Hearn"); held their judicial office in New Jersey and were recommended for nomination by unregistered foreign agent Bob Menendez. Additionally, Petitioner's state trial judge, Hon. Robert A. Kirsch ("Judge Kirsch"); was nominated to the state bench by the same State Senator, Nicholas Scutari, whom Petitioner has shown evidence that the alleged victim in the instant matter lobbied for other appointments to the state bench. Judge Kirsch was thereafter recommended for nomination to the federal bench by unregistered foreign agent Bob Menendez, and by that reason is now a federal judge. Judges Farbiarz and Arleo are located in the Newark Federal Judicial Complex, Judge Kirsch in Trenton, and Judge O'Hearn in Camden. Between the four of them, there is not a single Federal Judicial Complex in New Jersey in which there isn't a judge recommended for nomination by unregistered foreign agent Bob Menendez; and who has presumably had the instant case reassigned

from themselves for reason of obstructing it; who regularly interacts with, and mingles regularly in the robing rooms and lunch facilities with, other judges in that complex. The Chief Circuit Judge, Judge Chagares, faced with a petition for mandamus regarding the suspension of the writ of habeas corpus, implicitly found it was in the public interest for the instant case to be heard by a judge from outside of New Jersey, and issued an order designating an out-of-district judge under 28 U.S.C. 292(b). However, Judge Chagares explicated no reason for his order, and behind the opacity of the unreasoned and unexplained order lies the implication that there is such official animus in the New Jersey Federal Judicial Complexes as to prevent Petitioner from receiving a fair decision on his Habeas Corpus petition by *any* of the judges located in New Jersey. Certainly, the appearance of impropriety of any New Jersey-located judge presiding over this case may be presumed by the entry of this order under 28 U.S.C. 292(b); and it appears to the reasonable observer that this is related to the numerous reassignments in the Davis Case, none of which were explained or held to public accountability.

It should be noted that an order under 28 U.S.C. 292(b) has been entered in three other cases besides the instant case: in the Scutari Case; in McGillvary v. Galfy, Dkt. No. 1:21-cv-17121-JMY (D.N.J.) ("Galfy Case"); and in McGillvary v. Long, Dkt. No. 1:24-cv-09507-JMY (D.N.J.) ("Long Case"). The very entry of these orders indicates the appearance of impropriety that any New Jersey-located judge should preside over this case.

When a petition for mandamus in the instant case had an order for response entered on August 19, 2024; the order was inexplicably vacated the next day; followed by an action by the district court the day after that; and two days later an order denying the mandamus petition. This is a clear indication that the panel had discussions off the record with the district court in which they coordinated decisions in the case without making any published record of the discussions between the panel and district court underlying the decisions. Such opacity and evident denial of public access to Court Proceedings regarding important decisions in a case creates the objective appearance of impropriety. One of the Judges in this panel, Judge Shwartz, was recommended for nomination by former U.S. Senator Bob Menendez

(D-NJ), after having an in-depth ex parte discussion with him on January 13, 2012. Two of the judges in this panel, Judges Shwartz and Chagares, practiced law in New Jersey prior to acceding to the bench, and have their current judicial office located in New Jersey.

B. THE MULTIPLE REASSIGNMENTS OF THE INSTANT MATTER CULMINATED IN AN ORDER UNDER 28 U.S.C. 292(b) DESIGNATING AN OUT OF DISTRICT JUDGE, WHICH RELIED ON IMPLICIT FINDINGS OF ORGANIZATIONAL BIAS WITHIN THE FEDERAL JUDICIAL COMPLEXES IN NEW JERSEY

The order under 28 U.S.C. 292(b) entered in this case, designating a judge outside the district for service, was not accompanied by any explicit findings of why such an order was in the public interest. The Court must therefore look to the record for the factual basis of exceptional circumstances underlying the finding of public interest. This basis is readily apparent from the numerous instances of prejudicial conduct towards Petitioner by judges located in the federal judicial complexes in New Jersey. The extraordinary pattern of tamperings with the record, refusal to file his documents, undue delay, and blatant gamesmanship with assignments and timing of orders; is so voluminous and recurrent as to invoke the doctrine of objective chances. In fact, the longstanding recurrence of these instances is

evidence of official animus, of a routine organizational practice of DNJ Officials obstructing Petitioner's cases:

1. DNJ Officials' Refusal to File Petitioner's Documents

Petitioner's Motion for Summary Judgment was received by the Newark Vicinage in the Habeas Case in early April 2023; See Exhibit G to Appendix; but it wasn't until he sent it again, this time to all 3 vicinages, that the Clerk filed it on May 15, 2023; See Exhibit H to Appendix. See also DNJ ECF 15. The Clerk at the Newark Vicinage received his motion to withdraw his motion to recuse Judge Kirsch on May 23, 2023; See Exhibit I to Appendix; and his motion to withdraw his IFP application on June 6, 2023; See Exhibit J to Appendix; yet these have never been filed onto the docket. Petitioner sent a Rule 27(a) petition requesting to depose two expert witnesses in the homicide proceeding underlying the instant case, who received \$150,000 each from the alleged victim's estate; See Exhibit K to Appendix; to the D.N.J.'s Camden Vicinage on November 6, 2023; See Exhibit L to Appendix. The Clerk at the Camden Vicinage received this petition on November 16, 2023; See Exhibit M to Appendix; yet this was never entered onto the docket. See also In Re Caleb L. McGillvary,

App. No. 25-2096 at CM/ECF no. 1 (CA3 2025) (Mandamus petition requesting 3rd Circuit to direct DNJ to file the Rule 27(a) petition). The Clerk at the Camden Vicinage received his Brief in Opposition in the Scutari Case on September 30, 2024; See Exhibit N to Appendix; yet steadfastly refused to file it until January 17, 2025, and then only after a petition for writ of mandamus had been filed. See In Re Caleb L. McGillvary, App. No. 24-3327 at CM/ECF no. 1 (CA3 2025) (Mandamus petition requesting 3rd Circuit to direct DNJ to file the brief in opposition). There are too many of these refusals to file to be a matter of chance happenstance.

2. DNJ Officials Tampering with the Record and Mischaracterizing Filings by Petitioner to Cause him Prejudice

Before acceding to the federal bench, Judge Kirsch deleted the state court record prior to 2016 in the criminal case underlying Petitioner's Habeas Case; See Exhibit O to Appendix, Pa135; as well as all of Petitioner's briefs filed in support of his motion to self-represent and to dismiss the indictment for destruction of exculpatory evidence; See Id. at Pa138-139. Petitioner's urgent motion for extension in the Scutari Case was filed instead in the Habeas Case on September 10, 2024. See DNJ CM/ECF no. 49, 50. His letter to the out of district

Judge, Hon. John Milton Younge, U.S.D.J.; complaining that the Clerk was refusing to file his Brief in Opposition to State Defendants; was mischaracterized by the Clerk as a Letter Brief in Opposition. See DNJ CM/ECF 49; see also In re Caleb L. McGillvary, App. No. 24-3327 at CM/ECF 8 (CA3 2025) (Opinion disposing of mandamus petition requesting 3rd Circuit to direct DNJ to file brief in opposition, finding that letter to the judge was indeed mischaracterized). Even if one or two gaffes might be a fluke, all of this together couldn't be the work of chance.

3. Undue Delay by Federal Judges in New Jersey

Judge Arleo delayed the show cause order in the instant habeas case for a whopping 6 months from June to December 2022, and only issued one after he petitioned for writ of mandamus. Compare DNJ CM/ECF no. 1 (June 22, 2022); with DNJ CM/ECF no. 6 (Dec. 2, 2022); see also In re Caleb L. McGillvary, App. No. 22-3068 at CM/ECF no. 1 (CA3 2022) (Mandamus petition requesting the 3rd Circuit to direct the DNJ to issue show cause order). Judge Arleo obstructed his Rule 27(b) motion, seeking to depose the alleged victim in this case's brother regarding use of the estate of the alleged victim to bribe

witnesses, in the related Galfy Case for over two years: from March of 2023 until the present. See McGillvary v. Galfy, Dkt. No. 1:21-cv-17121-JMY, CM/ECF no. 74 (Petition under Rule 27(b). This delay took 7 months for the magistrate's order in October 2024; See Id. at CM/ECF no. 85; then 7 months until an administrative termination in May 2025 stymied it indefinitely; See Id. at CM/ECF no. 99. Petitioner filed a motion for Arleo to be recused, which she also stymied, and his mandamus petition also requested her recusal; See In re Caleb L. McGillvary, App. No. 24-3031 at CM/ECF no. 1 (CA3 2025); but that too was stymied by the panel's refusal to give the petition precedence required by F.R.A.P. 21(b)(6). That petition has languished through a whole term since October 2024, as ordinary civil cases were advanced on the 3rd Circuit docket ahead of it, F.R.A.P. 21(b)(6) notwithstanding. See In re Caleb L. McGillvary, App. No. 24-3031 at CM/ECF no. 14 (CA3 2025) (Motion to single judge requesting to advance the cause pursuant to F.R.A.P. 21(b)(6)); Id. at CM/ECF no. 15 (Order denying said motion without consideration, stating that F.R.A.P. 27(c) does not allow motions to be directed at specific judges). As of August 14, 2025, the Galfy Case has been reassigned to an out of district judge, yet no

explanation has pierced the opacity of that decision. See Galfy Case at CM/ECF no. 111 (Designating out of district judge to take over Galfy Case under 28 U.S.C. 292(b)).

Judge O'Hearn administratively terminated the instant case and suspended the writ of habeas corpus rather than recuse herself in January of 2024; See DNJ EM/ECF no. 36. Petitioner's mandamus petition regarding the suspension of the writ was filed the next day, and promptly languished for the entire term, in violation of F.R.A.P. 21(b)(6) and 28 U.S.C. 1657(a). See In re Caleb L. McGillvary, App. No. 24-1129 at CM/ECF no.1 (CA3 2024) (Mandamus petition requesting the 3rd Circuit to reopen the instant habeas case and unsuspend the writ of habeas corpus). He wrote single judge motions to every judge in the Third Circuit, and a week later Judges Chagares issued an order; See DNJ CM/ECF 40.

The objective chances of all the foregoing happening randomly are astronomical, this is a pattern of deliberate obstruction by Federal Judges located in New Jersey and by Federal Judges recommended for appointment by Bob Menendez.

4. Gamesmanship in Assignments and Orders

Judge Arleo timed her decision on the Rule 59 motion in the Galffy Case to coincide with the due date for Respondent's Answer in the Habeas Case. Compare Galffy Case at CM/ECF no. 72, 73 (May 29, 2023); with DNJ CM/ECF no. 12 (May 30, 2023). This was gamesmanship to force Petitioner to choose between his appeal of the Rule 59 order and his Habeas Reply, considering his motion for extension of time in the Habeas Case was denied. Judge Bumb reassigned the case to Judge Farbiarz the day after Petitioner's motion to withdraw the motion for recusal of Judge Kirsch was delivered to the Newark vicinage. Compare Exhibit J to Appendix (May 23, 2023); with DNJ CM/ECF no. 17 (May 24, 2023). That motion and a motion to withdraw Petitioner's IFP application went missing, which appears to be gamesmanship to prevent Petitioner from representing himself on appeal to the 3rd Circuit under 3rd Circuit I.O.P 10.3.2. Shortly thereafter, Judge Bumb reassigned the case again to Judge O'Hearn, who denied the pending motion for summary judgment a little over 21 hours after the reassignment. Compare DNJ CM/ECF no. 24 (Aug. 14, 2023); with DNJ CM/ECF no. 25 (Aug. 15, 2023). There's no humanly

possible way for O'Hearn to have read through the motion before denying it, so the reassignment seems gamesmanship designed to achieve that result. After the Habeas Case was reassigned to out of district Judge Hon. Mark R. Hornak, U.S.D.J. because of O'Hearn's suspension of the writ, Judge Bumb, her recusal notwithstanding, designated Magistrate Hon. Judge Lanzillo, U.S.M.J. to preside over the Habeas Case. See DNJ CM/ECF 41. Exactly 7 days after Bob Menendez and Judges Bumb and Arleo filed their motion to dismiss in the Scutari Case, Judge Lanzillo issued a slapdash R&R that did little more than rewrite the Respondent's Answer. Compare Scutari Case at CM/ECF no. 271 (Oct. 29, 2024); with DNJ CM/ECF no. 55 (Nov. 5, 2024). Six months later, Menendez and Judges Bumb and Arleo filed an opposition to Petitioner's motion for final appealable order in the Scutari Case. Yet again, exactly 7 days later, Judge Lanzillo issued a nearly-identical R&R that threatened to deny the habeas petition and forfeit any appeal if not objected to within 14 days. Compare Scutari Case at CM/ECF no. 355, 356 (May 8, 2025); with DNJ CM/ECF no. 62 (May 15, 2025). This evident gamesmanship by Judge Lanzillo, on behalf of Judge Bumb, disrupted Petitioner's briefing schedule for

responding to Menendez and Judges Bumb and Arleo both times. Perhaps one or another of these instances of timing might have been coincidence, but the repeated pattern defies objective chances.

5. It Has Already Been Found to be in the Public Interest for the instant case, the Scutari Case, the Galfy Case, and the Long Case to be Heard by a Judge from Outside the DNJ

It is required under 28 U.S.C. 292(b) for the Chief Judge of the Circuit of Appeals to make findings of it being in the public interest to designate an out-of-district judge to hold a district court for a matter. This implicit finding has been made in the Habeas Case, the Scutari Case, the Galfy Case, and the Long Case; and so it must be in the public interest for the appeals of each of those cases to be heard by Circuit Judges who are both outside of New Jersey, and not recommended for appointment by unregistered foreign agent Bob Menendez, as well.

6. The Routine Organizational Practice of DNJ-Located Judicial Officials Creates the Appearance of Impropriety

All of the foregoing facts show evidence of a routine organizational practice of federal judicial officers located in New Jersey, in obstructing the instant case: which gives rise to the

appearance of impropriety, and requires their recusal pursuant to 28 U.S.C. 455(a).

C. RELEVANT PROCEDURAL HISTORY

On June 22, 2025, Petitioner filed his petition for writ of habeas corpus in the District of New Jersey. See DNJ CM/ECF no. 1.

On May 17, 2023 the instant case was reassigned from Judge Arleo to Judge Farbiarz. See DNJ CM/ECF no. 17.

On August 14, 2023 the instant case was reassigned from Judge Farbiarz to Judge O'Hearn. See DNJ CM/ECF no. 24.

On January 9, 2024, the instant case was administratively terminated, and the writ of habeas corpus was effectively suspended. See DNJ CM/ECF no. 36.

On July 26, 2024, Judge Chagares designated out of district judge Hon. Mark R. Hornak and reassigned this case to him. See DNJ CM/ECF no. 40.

On August 21, 2024, the instant case was reopened and the writ of habeas corpus was unsuspended. See DNJ CM/ECF no. 45.

On June 6, 2025 the district court entered judgment denying the writ of habeas corpus. See DNJ CM/ECF no. 66.

On June 18, 2025 Petitioner filed his timely notice of appeal of the final judgment in this matter. See DNJ CM/ECF no. 67; 3rd Cir. CM/ECF no. 1.

On June 24, 2025, Petitioner filed a motion to recuse Judges Chagares, Matey, Shwartz, Cowen, and Fuentes in the instant matter. See 3rd Cir. CM/ECF no. 7.

On July 10, 2025, the Clerk for the U.S. Court of Appeals for the 3rd Circuit entered an order requiring Petitioner to file a supplement to the motion to recuse Judges Chagares, Matey, Shwartz, Cowen, and Fuentes. See 3rd Cir. CM/ECF no. 10.

On July 11, 2025, Petitioner filed the supplement ordered by the Clerk for the U.S. Court of Appeals for the 3rd Circuit. See 3rd Cir. CM/ECF no. 11.

On August 15, 2025, the Clerk for the U.S. Court of Appeals for the 3rd Circuit entered an order "At the direction of the Court"; denying Petitioner's motion for Judges Chagares, Matey, Shwartz, Cowen, and Fuentes to recuse themselves. See 3rd Cir. CM/ECF no. 22.

On today's date, this Petition for Writ of Mandamus is filed with this Court.

ARGUMENT

POINT I: THE MEDICAL EXAMINER IN THE INSTANT CASE STATED TO INVESTIGATORS THAT HE SAW CIRCUIT JUDGES FROM NEW JERSEY STANDING OUTSIDE THE CRIME SCENE; AND THE CHIEF CIRCUIT JUDGE WAS PERSONALLY ACQUAINTED WITH THE ALLEGED VICTIM; AND THERE EXISTS A PATTERN OF OBSTRUCTION IN THIS CASE STRONGLY INDICATING OFFICIAL ANIMUS; WHICH CUMULATIVELY CREATES THE APPEARANCE OF IMPROPRIETY THAT THESE JUDGES SHOULD PRESIDE OVER THIS CASE, AND REQUIRES MANDAMUS TO ISSUE DIRECTING THESE JUDGES TO RECUSE THEMSELVES WHERE THEY HAVE REFUSED TO EVEN AFTER MOTIONS REQUESTING THEM TO DO SO

A. STANDARD OF REVIEW

1. RECUSAL UNDER 28 U.S.C. 455

Whenever a judge's impartiality 'might reasonably be questioned' in a proceeding, 28 U.S.C. 455(a) commands the judge to disqualify himself sua sponte in that proceeding. For purposes of 455(a) disqualification, it does not matter whether the circuit judge actually harbors any bias against a party or that party's counsel. This is so because 455(a) concerns not only fairness to individual litigants, but equally important, it concerns the public's confidence in the judiciary, which may be irreparably harmed if a case is allowed to proceed before a judge who appears to be tainted. Liljeberg v. Health Servs.

Acquisition Corp., 486 U.S. 847, 859-60 (1988); H.R. Rep. No. 93-1453, 93d Cong., 2s Sess. 5 (1974), reprinted in 1974 U.S.C.C.A.N. 6351, 6355. To achieve its highest function, "justice must satisfy the appearance of justice." In re Murchison, 349 U.S. 133, 136 (1955).

2. ISSUANCE OF MANDAMUS UNDER 28 U.S.C. 1651

The writ of mandamus is an extraordinary remedy, available only on a petitioner's showing that "(1) No other adequate means exist to attain the relief he desires, (2) The party's right to issuance of the writ is clear & indisputable, and (3) The writ is appropriate under the circumstances." Hollingsworth v. Perry, 558 U.S. 183, 190 (2010). The "traditional use of the writ in aid of appellate jurisdiction both at common law and in the federal courts has been to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." Roche v. Evaporated Milk Assn., 319 U.S. 21, 26 (1943).

"To justify the granting of any such writ, the petition must show that the writ will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court." Supreme Court Rule 20(1).

"A petition seeking a ... writ of mandamus ... shall state the name and function of every person against whom relief is

sought, and shall set out with particularity why the relief sought is not available in any other court." Supreme Court Rule 20(3)(b).

B. ANALYSIS

1. The Writ Will Be In Aid of the Court's Appellate Jurisdiction

Section 455 of Title 28 of the U.S. Code reflects Congress's view that the adjudication of a case by a judge with an actual or apparent bias is an "abuse of judicial power," *Roche*, 319 U.S. at 31, because it is a threat to the integrity of the judicial system. Interlocutory review of disqualification issues on petitions for mandamus is both necessary and appropriate to ensure that judges do not adjudicate cases that they have no statutory power to hear, and virtually every circuit has so held. See, for example, *In Re United States*, 666 F.2d 690, 694 (CA1 1981); *In re IBM Corp.*, 618 F.2d 923, 926-27 (CA2 1980); *In re School Asbestos Litig.*, 977 F.2d 764, 778 (CA3 1992); *In re Rodgers*, 537 F.2d 1196, 1197 n.1 (CA4 1976) (per curiam); *In re Corrugated Container Antitrust Litig.*, 614 F.2d 958, 961 n.4 (CA5 1980); *In re Aetna Casualty and Surety Co.*, 919 F.2d 1136, 1139-43 (CA6 1990) (en banc); *SCA Services, Inc. v. Morgan*, 557 F.2d 110, 117 (CA7 1977); *Liddell v. Board of Education*, 677 F.2d 626, 643 (CA8 1982); *In re Cement Antitrust Litig.*,

673 F.2d 1020, 1025 (CA9 1982); Bell v. Chandler, 569 F.2d 556, 559 (CA10 1978). It will therefore aid in this Court's appellate jurisdiction to preserve public confidence in the judiciary, by addressing an erroneous refusal to recuse where it would otherwise erode that confidence if left until after the mandate has issued.

2. Exceptional Circumstances Warrant The Exercise of the Court's Discretionary Powers, Which Circumstances Show Petitioner's Clear and Indisputable Right to Issuance of the Writ

The Medical Examiner in the criminal homicide case underlying the instant habeas appeal indicated having seen numerous circuit judges standing outside the crime scene. See DNJ CM/ECF no. 12.32, page 9 lines 8 to 18; Exhibit F to Appendix, page 9 lines 8 to 18. Petitioner's petition under Fed. R. Civ. P. 27(a) Seeking to depose this M.E. has been stymied by federal judicial officers in New Jersey for almost 2 years; See In re Caleb L. McGillvary, Dkt. No. 25-2096 (CA3 2025); Exhibits K, L, and M to Appendix; so Petitioner has been unable to obtain further testimony from the M.E. clarifying which judges these were or how they were involved in the crime scene at issue in the claims of the investigators' destruction of exculpatory evidence raised in the instant appeal under Brady v. Maryland, 373 U.S. 83 (1963).

Because of this obstruction by New Jersey federal judicial officers, and the resulting uncertainty of which circuit judges were at the scene and how they were involved, there exists an appearance of impropriety that circuit judges located in New Jersey may have "personal knowledge of disputed evidentiary facts concerning the proceedings"; 28 U.S.C. 455(b)(1); to wit: who accessed the crime scene during the time period in which exculpatory evidence was lost or destroyed.

There exists corroborating evidence for this, in that two of the Circuit Judges were personally acquainted with the alleged victim in the underlying proceeding, through their law school and the charity functions thereat. Judge Chagares was an adjunct professor at Seton Hall University School of Law for the period from 1991 until 2006; during which time he regularly interacted with the alleged victim in the underlying proceeding, at charity functions which he was required to attend as a faculty member. Judge Matey graduated Seton Hall University School of Law in 2001, and spent 3 years under the tutelage of Judge Chagares; during which time he attended charity events, in which he personally interacted with the alleged victim in the underlying proceeding. Both of these Circuit Judges are part of the

Seton Hall University Alumni Association, which distributes regular newsletters to its members about substantial donations to the University. These Judges presumably received these newsletters, and were thusly made aware of the alleged victim's \$50,000 donation to Seton Hall University School of Law: specifically earmarked to advance advocacy of "gender identity."

An order under 28 U.S.C. 292(b) designating a judge outside the district for service requires exceptional circumstances, giving rise to a finding that such designation is in the public interest. This finding has already been made in the Habeas Case, the Long Case, the Scutari Case, and the Galfy Case, so it follows that the public interest requires Circuit Judges who preside over those cases to similarly be from outside of New Jersey. The numerous instances of prejudicial conduct towards Petitioner by federal judicial officials located in New Jersey might have been plausibly attributed to chance if considered individually, maybe once or twice in a blue moon. But the sheer number of these tamperings with the record, refusal to file his documents, undue delay, and blatant gamesmanship with assignments and timing of orders; is so voluminous and recurrent as to invoke the doctrine of

objective chances. In fact, the longstanding recurrence of these instances is evidence of official animus, of a routine organizational practice of judicial officers in New Jersey obstructing Petitioner's cases. See Fed. R. Evid. 406.

For all these reasons, exceptional circumstances exist, and Petitioner has shown that the appearance of impropriety exists for any Circuit Judges from New Jersey to preside over the instant appeal, which creates a clear and indisputable right under 28 U.S.C. 455 for the writ of mandamus to issue pursuant to 28 U.S.C. 1651(a).

3. Adequate Relief Cannot be Obtained in Any Other Form or From Any Other Court

The relief requested is distinguished from recusal under 28 U.S.C. 144. Section 144 concerns the interests of the individual litigant. Section 455, in contrast, concerns a wider range of interests. In addressing the mere appearance of partiality, section 455 addresses not only fairness to the litigants but also the public's confidence in the judiciary, which may be irreparably harmed if a case is allowed to proceed before a judge who appears to be tainted. See Liljeberg, 486 U.S. at 859-60. While review after the mandate has issued can cure the

harm to a litigant, it cannot cure the additional, separable harm to public confidence that Section 455 is designed to prevent.

Petitioner has moved below for the Circuit Judges at issue in this petition to recuse themselves. At the direction of the Court, the Clerk of the 3rd Circuit issued an order denying that motion. There is no possibility of petitioning for rehearing of the appeal until after the harm to public confidence has already been occasioned by the deciding of this appeal by personal acquaintances of the alleged victim, who have personal knowledge of the disputed crime scene from having been present at that scene while it was active. Adequate relief to prevent that imminent and irreparable injury is not available in any other form, or from any other Court, than by this Court's issuance of the writ of mandamus requiring those Circuit Judges to recuse themselves.

4. STATEMENT OF THE OFFICE OR FUNCTION OF EVERY PERSON AGAINST WHOM RELIEF IS SOUGHT

Petitioner seeks mandamus relief against the following persons, specifically directing them to recuse themselves from further proceedings below pursuant to 28 U.S.C. 455:

- 1.) Hon. Michael A. Chagares, Chief Circuit Judge of the U.S. Court of Appeals for the 3rd Circuit

2.) Hon. Paul Brian Matey, Circuit Judge of the U.S. Court of Appeals
for the 3rd Circuit

3.) Hon. Patty Shwartz, Circuit Judge of the U.S. Court of Appeals for
the 3rd Circuit

4.) Hon. Robert E. Cowen, Circuit Judge of the U.S. Court of Appeals
for the 3rd Circuit

5.) Hon. Julio M. Fuentes, Circuit Judge of the U.S. Court of Appeals
for the 3rd Circuit

CONCLUSION

The refusal of the Circuit Judges at issue to recuse themselves, in the face of overwhelming evidence of the appearance of their partiality, threatens to erode public confidence in the judiciary. There exists no adequate remedy to redress this imminent and irreparable injury to said confidence, except for this Court to issue the writ of mandamus. A showing of exceptional circumstances, Petitioner's clear & indisputable right to the writ, and the appropriateness of mandamus has been made, both legally and factually, by this petition. For all the foregoing reasons, Petitioner respectfully prays the Court to issue the writ of mandamus as requested herein, directing Judges Chagares, Matey, Shwartz, Cowen, and Fuentes to recuse themselves from further proceedings in this matter.

DATE: AUGUST 27, 2025

Respectfully Submitted,



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