

No. ____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2025

TRINA MAE JOHNSON,

PETITIONER,

vs.

UNITED STATES OF AMERICA,

RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

WHERE THE TRIAL COURT PERSONALLY IDENTIFIED WITH PETITIONER'S VICTIM, EXPERIENCE AND SUFFERING AND EXPRESSED A DEEP SEATED FAVORITISM FOR HIM, WAS PETITIONER DENIED HER DUE PROCESS RIGHT TO BE SENTENCING BY A NEUTRAL TRIBUNAL?

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The Petitioner, Trina Mae Johnson, respectfully prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit.

LIST OF PARTIES

Trina Mae Johnson, Petitioner

United States of America, Respondent

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STATEMENT OF JURISDICTION

The Eighth Circuit Court of Appeals handed down its opinion on January 5, 2026. Judgment was entered January 5, 2026. The Circuit's Mandate was filed January 27, 2026. This petition is timely, 28 U.S.C. 1254 (1) and Rule 13.1, Rules of the Supreme Court of the United States.

CONSTITUTIONAL PROVISION

The Fifth Amendment provides: "No person shall be . . . deprived of life, liberty, or property, without due process of law. . ."

STATUTE

18 U.S.C. 1153 (a) provides:

Any Indian who commits against the person or property of another Indian or other person any of the following offenses . . . (b) any offense referred to in subsection (a) of this section that is not defined and punished by Federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense.

Minn. Stat. 609.775, Subd. 2 provides: "A person who

tortures a child is guilty of a felony and may be sentenced to imprisonment for not more than 25 years or to payment of a fine of not more than \$35,000, or both.”

STATEMENT OF THE CASE

Ms. Johnson was indicted for the offenses of child torture, in violation of 18 U.S.C. 1151, 1153, with reference to Minn. Stat. 609.3775 (Count 1), with additional charges of Child Neglect Deprivation of Food and Health Care (Count 2), Child Endangerment (Count 3), and Assault with a Dangerous Weapon (Count 4). Her co-defendants, charged in Counts 3 and 4, were three of her sisters, Bobbi Jo Johnson, Ellie Mae Johnson, Patricia Ann Johnson, and her common law husband, Bertram Lussier. The latter three entered guilty pleas to Count 3.

After lengthy pretrial motions concerning the relevance and impact of McGirt v. Oklahoma, 591 U.S. 894 (2020) and Oklahoma v. Castro-Huerta, 597 U.S. 629 (2022) with respect to the Minnesota Red Lake Reservation prosecutions, the Government offered to Ms. Johnson a contingent plea agreement. If Ms. Johnson’s sister, Bobbie Jo, would plead guilty to the Child Neglect or Endangerment charges (referencing Counts 2 and 3), the Government would agree to recommend a range of ten to twelve years. Change of Plea (T. at p. 25).

When her sister declined the Government's offer, Ms. Johnson could not receive the benefit of any bargain through no fault of her own. Faced with the choice of standing trial (and forfeiting three points for acceptance of responsibility, U.S.S.G. Sec. 2E1.1) or entering a straight plea to all counts, Ms. Johnson chose the latter.

For a factual basis, Ms. Johnson acknowledged she was the foster care mother for L.D. from January 1, 2021 through April 29, 2022. (T. at p. 26). He was then between the ages 11 and 13. (T. at p. 40). The conduct occurred on the Red Lake Indian Reservation, where Ms. Johnson and L.D. are members of the Tribe. (T. at pp. 26-27).

While in her care, Ms. Johnson found L.D. difficult to discipline, her time and relationship with him described as "fraught." (T. at p. 28). She admitted to withholding food and observing his loss of weight, nearly 100 pounds. (T. at pp. 28-29). Ms. Johnson had L.D. stand in uncomfortable positions for long periods of time. L.D.'s arms, at times, would be bound by tape. At other times, he was hit with brooms and other objects. Medical care was not provided. Id. at p. 30. As a result of her conduct (and the conduct of her sisters and Mr. Lussier), Ms. Johnson acknowledged L.D. had suffered serious and substantial harm

to his physical, mental and emotional health. T. p. 31; see also Slip Op. at p. 2 -3 (describing the child's injuries).

At sentencing, L.D.'s statement was read into the record, indicating that he remained physically impaired, had difficulties getting in and out of cars and climbing stairs, and that the scars from his abuse remain. T. at pp. 10-11. "I really hope you have a hard time in jail," he wrote to Ms. Johnson, "for what you did to me." T. at p. 11. L.D. was asked if he wanted to make an oral statement. He replied, "No, thank you." Id. at p. 25.

This critical exchange followed:

THE COURT: I know you put thought into your written statement. Okay. There is something I want to say to you, and it is that I think you might be the strongest person I have ever come across. And I have been involved in the criminal justice system for a really long time, so I've seen some tough people. But it takes extraordinary strength to survive what you survived, and it takes a lot of strength to keep on surviving. And I am so, so glad that you did. I'm so glad that you held on.

And I'm really grateful to your foster family, that you landed somewhere wonderful, because I think we are going to see every day a little bit more the kind of sweet kid that is inside of you that's already come out.

One of things that I am most struck by in the things that I've learned about you, and I've learned a lot, is the compassion that you show to other people. It's something

they talked about at Evergreen. It's something that the FBI agent talked about. It's something that your family talked about. And it's something that's clear to me when you talk about how much you worry about your niece and nephew.

One of the things that I've thought a lot about is that you weren't just fragile when you got to Evergreen. You were fragile when you got to Trina's house too. You had already been through more in your almost 12 years than anybody should, and that child deserved love and care and protection. That child already was struggling with a lot of stuff and you'd already been through. And it's heartbreaking that that didn't happen for you until now.

And the last thing I want to say is that I think I understand that your sister has passed away also?

L.D.: (Nods head.)

THE COURT: And I'm really sorry about that. But I know that – I know that she and everybody else in your family, whether they're here or not, is proud of you today. And I just wanted you to hear that from me.

T. pp. 25-27.

The AUSA's comments regarding the proposed plea agreement – the ten to twelve year window offered to Ms. Johnson if her sister would plead out guilty – was “really just how the government priced it, I guess.” Id. at p . 20. The Government requested, twenty-years, this after her sister's trial Ms. Johnson has sought to avoid. T. at p. 21.

Ms. Johnson apologized for her conduct. “I am truly sorry from

the bottom of my heart,” she said. T. at p. 28. “I wish I could start over,” she said to the probation officer. PSR at p. 7.

With respect to the contingent plea agreement offer, the Court said, “I share Mr. Engh’s feeling that there’s something kind of unfair about that.” Id. at 29. But the Court added, that had there not been Bobbie Jo Johnson’s trial, photographs of L.D.’s physical condition would still have been reviewed; those “images haunt me.” T. at p. 30.

The Court found aggravating circumstances “difficult to put into words.” T. at p. 34. Noting “the positional holds,” the Court said “[i]t sounds to me like Lonny spent the better part of the 485 days standing with his arms out. I used to say, when I had something difficult in front of me, a difficult case when I was a public defender or a difficult brief to write, oh, I can do anything; I can do anything for 30 days; I can do anything for a year. I could not do what Lonny did for 485 days.” T. at 35.

The Court imposed a sentence of 18 years. “It’s too much, and it’s not enough.” T. at 38. Less time “would not give adequate weight to the trauma that Trina has inflicted on such a long list of victims, the first of which is Lonny D, who I will quote again, saying, ‘I am a kid and

you're an adult, and you're supposed to take care of me.' And to picture the 11-year-old and 12-year-old body that he was enduring this for 18 months is hard to do." T. at 38. The remaining counts were "to be run concurrently to one another." T. at 39.

Affirming the sentencing, the Eighth Circuit rejected Ms. Johnson's claim that the District Court was unfairly biased, that an undo empathy was expressed toward the victim and that, as a result, she was denied due process of law. "Judge Mendendez's statements at sentencing fall far short of this high bar for establishing bias." Slip Op. at p. 8.

The Circuit Court nonetheless opined that "[a] judge must recuse if his impartiality might be reasonably questioned because of bias or prejudice." Slip Op. at p. 7 (quoting 28 U.S.C. Sec. 455). Noting, too, that recusal "is appropriate in 'various situations . . . in which experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable,'" Ms. Johnson's was not such a case. Slip Op. at p. 7 (quoting Withrow v. Larkin, 421 U.S. 35, 47 (1975)). The Circuit thus turned away Ms. Johnson's argument that Judge Menendez's "brief expression of

sympathy and empathy toward the child” had “influenced the court’s sentencing.” Slip Op. at pp. 8-9. We disagree.

REASONS WHY CERTIORARI SHOULD BE GRANTED

The District Court’s identification with the victim, how she stated, “I could not do what Lonny did for 485 days,” how she wouldn’t have had his kind of courage to survive what he did, “[a]nd I am so, so glad that you did. I’m so glad that you held on,” and how the images from the trial continued to “haunt” transformed Ms. Johnson’s sentencing hearing into an unfair empathy embrace.

It is axiomatic that “a fair tribunal is the basic requirement of due process.” In re Murchison, 349 U.S. 133, 136 (1955). The Due Process Clause entitles Ms. Johnson “to an impartial and disinterested” judge. Marshall v. Jerrico, Inc., 446 U.S. 238, 242 (1980). A disinterest rooted in the “requirement of neutrality.” Id. A neutrality that “safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decision making process.” Id.

As the Eighth Circuit had earlier observed, “the greatest virtue or

a fair and conscientious judge” is “impartiality.” Reserve Mining Company, v. Honorable Miles W. Lord, et al., 529 F.2d 181, 186 (8th Cir. 1976). To reach the height of that virtue, a judge must have “no actual bias against the defendant or interest in the outcome of his particular case.” Bracy v. Gramley, 520 U.S. 899, 904 (1997)(citing Rule 6(a), Rules Governing Sec. 2254 Cases).

The evaluation of bias is necessarily objective, requiring a “realistic appraisal of psychological tendencies and human weakness.” Withrow, 421 U.S. at 47. “A judge best serves the administration of justice by remaining detached from the conflict between the parties.” Reserve Mining Company, 529 F.2d at 186. “When a judge joins sides, the public as well as the litigants become overawed, frightened and confused.” Id. What has to be voided wasn’t here.

Liteky v. United States, 510 U.S. 540 (1994) cautioned that a Judge merely observing the trial and becoming “ill disposed towards the defendant, who has been shown to be a thoroughly reprehensible person,” is not necessarily evidence of bias. Id. at 550. Liteky nonetheless recognized the “idiosyncratic nature of bias,” Id. at 550. Indeed, the

probability of bias, as the Court has observed elsewhere, “cannot be defined with precision.” Aetna Life Ins. Co. v. Lavoie, 475 U.S. 813, 822 (1986). A reversible bias exists if a judge displays “a deep-seated favoritism or antagonism that would make fair judgement impossible.” Liteky, 510 U.S. at 555. “A favorable or unfavorable disposition can also deserve to be characterized as ‘bias’ or ‘prejudice’ because, even though it springs from the facts adduced or the events occurring at trial, it is so extreme as to display clear inability to render fair judgment.” Id. at 551. Our claim of “predisposition” must “go beyond what is normal and acceptable,” Id. at 552, to a place of “deep-seated favoritism or antagonism that would make fair judgment impossible.” Id. at 555. Where, for example, a judge has or develops a “personal” interest in a case. Caperton v. A.T. Massey Coal Col, Inc., 556 U.S. 868, 876 (2009)(quoting Tumey v. Ohio, 273 U.S. 510, 523 (1927)). The District Court was too close to L.D.

Chief Justice Roberts is often quoted for this ideal: “Judges and justices are servants of the law, not the other way around. Judges are like umpires. Umpires don’t make the rules, they apply them. The

role of the umpire and a judge is critical. They make sure everyone plays by the rules but it is a limited role. Nobody ever went to a ball game to see the umpire.” Confirmation Hearing on the Nomination of John G. Roberts, Jr. To Be Chief Justice of the United States: Hearing before the S. Comm. On the Judiciary, 109th Cong. 55 (2004).

By disappearing into the emotional rubric of “L. D.,” becoming thereby joined with the victim, an umpire this District Court refused to be. The Court’s sympathy and empathy fell over the hard edge of fairness, denying Ms. Johnson her process due.

The Eighth Circuit discounted the scholarship of empathy referenced in Ms. Johnson’s brief. Slip. Op. at p. 8. As if the scholarship describing appropriate sentencing practices should be ignored, even though it is often cited in sentencing appeals. See e.g., Graham v. Florida, 560 U.S. 48, 73-74 (2010)(citing law review articles and the attendant “scholarly debates regarding the effectiveness of rehabilitation” to support the ruling that life sentences for juveniles convicted of non-murder violate the Eighth Amendment).

The scholarship is persuasive in our setting. Empathy is “an imaginative reconstruction of another person’s experience.” Martha C.

Nussbaum, “Upheavals of Thought: the Intelligence of Emotions” (Cambridge University press 2001) at p. 302. The word empathy is commonly defined as “[t]he power of projecting one’s personality into and so fully comprehending the object of contemplation.” Oxford English Dictionary (2nd Ed. 1989).

The “three basis phenomena captured by [empathy]” are these:

(1) Feeling the emotion of another; (2) understanding the experience or situation of another both affectively and cognitively, often achieved by imagining one’s self to be in the position of the other; and (3) action brought about by experiencing the distress of another (hence the confusion of empathy with sympathy and compassion.). The first two forms are ways of knowing, the third form a catalyst for action.

Lynne N. Henderson, “Legality and Empathy,” 85 Mich. L. R. 1574, 1579 (1987).

The third form – the experiencing another’s distress – was the “catalyst” for Ms. Johnson’s enormous sentence, and proof of the Court’s impartiality. On one hand, “[t]he primary virtue of empathy is that it tells us not to assume that we are right, or objective, or impartial.” On the other, there is an attendant failure to be recognized once the Court “over-identifies with [her] own experiences that [s]he assumes them to

be universal. At that point, “[s]he cannot hear the experiences of others in any meaningful way, but [s]he also may be unable to hear the question actually being asked.” Mary Ann Franks, “Lies, Damned Lies and Judicial Empathy,” 51 *Wasburn L.J.* 61, 68, 71 (2011).

Ms. Johnson was made to feel as if her life was secondary, subsumed by the Court’s misplaced fondness for the victim, an over-identification found in these sentences:

“He was the “strongest person I have ever come across.”

The “images” of his abuse “haunt me”

“And to picture the 11-year-old and 12-year-old body that he was enduring this for 18 months is hard to do.”

“I could not do what Lonnie did for 485 days.” and

“I’m so glad you held on.”

The common assumption that a judge is free from bias, Professor Franks observes, is merely “aspirational.” *Id.* at p. 63. “[T]o refuse to recognize that the law is itself marked by bias,” she writes, “is to naturalize those biases and insulate them from critique or correction.” *Id.* at p. 64. That sentence is a description of the due process problem left unrecognized by the Eighth Circuit. Its opinion avoids critique,

refuses correction. The District Court's expressions of empathy, and the resulting "high degree of favoritism," made a fair and neutral sentence "impossible" reach. Liteky, 510 U.S. at 555.

The Eighth Circuit has "decided an important federal question that has departed from the accepted and usual course of judicial proceedings." Rule 10 (a), Rules of the Supreme Court of the United States.

CONCLUSION

Ms. Johnson requests her Petition be granted.

Dated: March 17, 2026

Respectfully submitted,

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APPENDIX

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