

No. _____

CAPITAL CASE

In the Supreme Court of the United States

In re DYLANN ROOF,

Petitioner.

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

PETITION FOR WRIT OF CERTIORARI

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Capital Case Question Presented

Whether the constitutional requirement that a judge appear impartial can be satisfied when a district court improperly seeks to preside over a capital trial and then undertakes its own fact-gathering mission to deny a motion for recusal?

Parties to the Proceedings

Petitioner is Dylann Roof, defendant-appellant below. The United States of America is respondent on review.

Statement of Related Proceedings

In re Roof, No. 25-2, United States Court of Appeals for the Fourth Circuit
(August 13, 2025)

United States v. Roof, No. 17-3, United States Court of Appeals for the Fourth
Circuit (August 25, 2021)

United States v. Roof, No. 2:15-472-RMG, United States District Court for the
District of South Carolina (January 23, 2017)

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Opinions Below

The opinion issued by the Fourth Circuit Court of Appeals is available at *In re Roof*, No. 25-2, 2025 WL 2335967 (4th Cir. Aug. 13, 2025). App. 1a. The district court's related opinion is set forth at pages 6a-9a of the Appendix.

Jurisdiction

The Court of Appeals issued its judgment on August 13, 2025. App. 5a. Mr. Roof's timely petition for panel rehearing was denied on September 30, 2025, App. 12a, and his timely petition for rehearing en banc was denied on November 13, 2025, for lack of quorum, App. 10a. On February 5, 2026, this Court extended the deadline to file a petition for writ of certiorari by 60 days, to April 12, 2026. The Court's jurisdiction to review this matter rests on 28 U.S.C. §§ 1254, 1651.

Constitutional and Statutory Provisions

The Fifth Amendment to the United States Constitution provides, in relevant part: "No person shall . . . be deprived of life, liberty, or property, without due process of law."

The Eighth Amendment to the United States Constitution provides, in relevant part: "cruel and unusual punishments [shall not be] inflicted."

28 U.S.C. § 455(a) provides: "Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." § 455(b)(1) provides: "He shall also disqualify . . . [w]here he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding."

Statement

“In no proceeding is the need for an impartial judge more acute than one that may end in death.” *In re Al-Nashiri*, 921 F.3d 224, 239 (D.C. Cir. 2019). Yet this simple, but critical, constitutional mandate continues to evade Mr. Roof.

In June 2015, Mr. Roof was arrested and charged with the murder of nine African American parishioners at the Mother Emmanuel AME Church in Charleston, South Carolina. Given the gravity of the crime, the case gained immediate notoriety and received expansive attention. It was clear that Mr. Roof’s eventual trial would consume the entire nation and especially the local Charleston community. Mr. Roof was subsequently convicted and sentenced to death.

During the summer of 2015, Michael O’Connell, one of Mr. Roof’s initial attorneys, had a conversation with a law school classmate, the Honorable David C. Norton, U.S. District Judge for the District of South Carolina. According to a sworn declaration, Mr. O’Connell inquired about the judicial assignment of Mr. Roof’s case. Judge Norton, in response, stated: “[Judge] Gergel really wants to do it, so I’m [going to] let him have it.” App. 13a. Judge Norton was referring to the Honorable Richard M. Gergel, U.S. District Judge for the District of South Carolina, the judge who presided over Mr. Roof’s trial.

Mr. O’Connell, who withdrew from Mr. Roof’s case prior to trial, revealed this information to post-conviction counsel in 2025. Based on the troubling questions raised by a judge’s eagerness to sit on a case coupled with concerns that the district court did not appear unbiased during the proceedings, Mr. Roof filed a motion to

recuse the district court or, alternatively, be assigned to a separate court to evaluate the problematic issues that were raised.

Approximately a week after Mr. Roof filed his recusal motion, on April 4, 2025, two unsworn statements appeared on the docket: one from Judge Norton and another from the Honorable Terry L. Wooten, Senior U.S. District Judge for the District of South Carolina. The statements were not filed by any party, nor were they attached to any motion, response, order, or other document. Twenty-three minutes after these statements appeared on the docket, the district court denied the motion for recusal, relying on the statements.

It appeared the district court went on a fact-finding mission of its own without the involvement of Mr. Roof or the government in order to deny the motion. Apparently solicited by the district court and intended to dispute Mr. O'Connell's sworn declaration, the statements did not fully address all the concerns raised by Mr. O'Connell's declaration. The statements did, however, raise factual disputes that, to this day, have gone completely unchallenged.

After the motion was denied, Mr. Roof petitioned the Fourth Circuit Court of Appeals for a writ of mandamus seeking the district court's recusal from all further proceedings in this case, including deciding the pending § 2255 Motion. In denying the writ, the Fourth Circuit dismissed the district court's wholly inappropriate and disturbing fact-finding investigation as "irrelevant." *Roof*, 2025 WL 2335967, at *1.

Reasons for Granting the Petition

This Court should grant the petition for two reasons. First, the appearance of a neutral and fair judge is a matter of critical importance. Indeed, a bedrock principle underlying the public's confidence in the judicial system is the understanding that if a person is brought before the legal system, an impartial judge will adjudicate their matter. Here, that appearance and understanding have been violated. And they have been violated not in a case where there are pecuniary interests on the line or even years of imprisonment, but rather a case that involves the ultimate punishment that our judicial system can mete out: death.

Mr. O'Connell's sworn declaration and the subsequent actions taken by the district court in conducting its own fact-finding investigation simply cannot be squared with this Court's clear mandate that judges "not only must be unbiased but also must avoid even the *appearance* of bias." *Commonwealth Coatings Corp. v. Cont'l Cas. Co.*, 393 U.S. 145, 150 (1968) (emphasis added). Particularly because Mr. Roof's life hangs in the balance, the need for certainty and confidence are of the utmost importance. Given the constitutionally unacceptable appearance of bias in this matter, the Fourth Circuit's dismissal of the Mandamus Petition cannot stand.

Second, the Court should grant the petition and address the entrenched split among the circuits regarding the standard of review for a writ of mandamus when a litigant is seeking recusal. Currently there is a three-way split: the Seventh Circuit applies a *de novo* standard; the Third Circuit effectively combines the abuse of discretion standard with the requirement that "issuance of the writ is clear and

indisputable” into a single inquiry; and the Fourth and Ninth Circuits apply two separate layers of deference to the lower court. To prevail in the latter circuits, not only is it required to show an abuse of discretion, but also that the abuse is “clear and indisputable.” This Court should not allow this three-way split to deepen and should clarify the standard that lower courts must apply when confronting such an important question.

As this is a federal criminal case, Mr. Roof, who is facing death, has no other recourse and no other venue where he can seek to rectify this issue and clarify this important question. Absent this Court’s intervention, this case will continue with the specter of bias looming over every aspect of it, while the circuit courts continue applying varying standards on when a writ of mandamus should issue ordering a judge’s recusal.

I. The Writ of Mandamus Was Warranted.

Three conditions must be met for a writ of mandamus: (1) the petitioner must have “no other adequate means to attain the relief he desires,” (2) the petitioner demonstrates his “right to issuance of the writ is clear and indisputable,” and (3) mandamus relief is otherwise “appropriate under the circumstances.” *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380-81 (2004). This Court has been clear that while these conditions are “demanding,” they “are not insuperable.” *Id.* at 381. As discussed below, Mr. Roof satisfies all three requirements.

A. Mr. Roof has no other adequate means of relief.

Given the nature of a writ of mandamus, courts generally require petitioners to show “some irreparable injury that will go unredressed if [the petitioner] does not secure mandamus relief” to satisfy the first factor. *In re Al-Nashiri*, 921 F.3d at 237 (internal quotation marks omitted). Courts have determined that “when the relief sought is recusal of a disqualified judicial officer, . . . the injury suffered by a party required to complete judicial proceedings overseen by that officer is by its nature irreparable.” *Id* at 238. (citation modified) (omission in original). This is because “no amount of appellate review can remove completely the stain of judicial bias, both because it is too difficult to detect all of the ways that bias can influence a proceeding and because public confidence . . . is irreparably dampened once a case is allowed to proceed before a judge who appears to be tainted.” *Id.* (internal quotation marks omitted) (omission in original).

Accordingly, courts have determined that orders declining to recuse should be considered promptly by appellate courts, through mandamus, to prevent potentially biased judges from continuing to make substantial decisions in the case. *See, e.g., In re Bulger*, 710 F.3d 42, 49 (1st Cir. 2013); *In re Sch. Asbestos Litig.*, 977 F.2d 764, 785 (3d Cir. 1992); *Nichols v. Alley*, 71 F.3d 347, 351-52 (10th Cir. 1995). Here, Mr. Roof is facing the ultimate punishment: death. The consequences stemming from the presiding judge’s decisions will, in no uncertain terms, be of tremendous importance. As for Mr. Roof’s pending § 2255 motion, the presiding judge will make substantial decisions regarding discovery and whether there should be an evidentiary hearing, will rule on procedural matters of great importance, and,

ultimately, will make factual and legal determinations regarding the merits of the § 2255 itself. All of these decisions will have a significant impact on whether Mr. Roof lives or dies. To maintain public confidence in the outcome, especially given the gravity of this case, these decisions must be made by a judge who is unbiased and who appears unbiased.

The Fourth Circuit indicated that Mr. Roof did have other means of obtaining relief, namely his pending § 2255 motion, where the district court's potential bias is raised as a substantive issue. The court found that Mr. Roof may appeal any rejection of this claim by the district court. *Roof*, 2025 WL 2335967, at 2. The appellate court, however, misapprehends a key distinction between ineffective assistance of counsel claims in a § 2255 proceeding and a motion for recusal. Whether trial counsel was ineffective for failing to move to recuse Judge Gergel in 2015 is a separate and distinct issue from whether Judge Gergel can and should be recused *now*.

Ineffective assistance claims in § 2255 motions and recusal motions are different. An ineffective assistance claim is backward-looking, asking a court to assess whether the result of a trial is reliable. If the court determines that an ineffective assistance claim is meritorious, the remedy is a new trial (or penalty phase). *See* 28 U.S.C. § 2255(b). By contrast, a recusal motion is forward-looking. The motion asks for a new judge to rule on future questions in the case—including ineffective assistance claims in a § 2255. If the court determines that a recusal

motion is meritorious, the remedy is appointment of a new judge to preside over the case going forward. *See* 28 U.S.C. § 455.

In other words, the issue in Mr. Roof's recusal motion is who should decide the claims raised in Mr. Roof's § 2255—including, of course, the ineffective assistance claim about the judicial assignment. As such, a § 2255 claim cannot replace this recusal motion because § 2255 claims cannot resolve whether the district court can fairly rule on claims raised in the § 2255 proceeding. Trial counsel's ineffectiveness says nothing about whether the district court can fairly preside over § 2255 proceedings, particularly considering the disturbing response to the recusal motion. Certainly, counsel's ineffectiveness does not obviate the necessity of a hearing on the recusal motion.

Additionally, the appellate court failed to recognize the damage that can be inflicted by allowing the district court to continue to sit on this case—both to the public's confidence in a fair and impartial proceeding and to Mr. Roof's actual ability to be fairly heard on the significant issues raised in his § 2255 Motion. *See In re Creech*, 119 F.4th 1114, 1125 (9th Cir. 2024); *see also In re al-Nashiri*, 791 F.3d 71, 79 (D.C. Cir. 2015) (“Public confidence in the courts requires that [bias] question[s] be disposed of at the earliest possible opportunity.” (alterations in original) (citation omitted)).

At this point, there are simply too many irregularities to ignore. Paramount among them is the district court's decision to carry out an independent, opaque, and improper investigation of the facts, and then to base its ruling on the recusal motion

on this independent fact-finding mission. Allowing the district court to remain on this matter will only make the § 2255 proceedings less reliable. Considering that the very judge whose recusal is sought will have compiled the record that will be reviewed on appeal, the proceedings themselves will have an inescapable taint. *See In re al-Nashiri*, 921 F.3d. at 233 (“mandamus provides an appropriate vehicle for seeking recusal of a judicial officer during the pendency of a case, as ordinary appellate review following a final judgment is insufficient to remove the insidious taint of judicial bias” (citation and internal quotation marks omitted); *Gladstein v. McLaughlin*, 230 F.2d 762, 763 (9th Cir. 1955).

Confidence in subsequent appellate proceedings requires confidence in the record on appeal. Therefore, to mitigate questions concerning his judgment, a judge who must recuse should do so sooner rather than later. Judicial economy and the need for faith in the judicial system requires the district court’s recusal now.

B. Mr. Roof’s right to issuance of the writ is clear and indisputable.

Given that the brief litigation of Mr. Roof’s motion to recuse has only provided new grounds for disqualification, it is “clear and indisputable” that recusal should be mandated. After receiving Mr. Roof’s initial motion to recuse, rather than issue a deadline for the opposing party to file a response, hold a hearing or, at the very least, allow a disinterested court to assess the merits of the motion, the district court went on its own fact-finding mission to discredit the sworn statement that supports the motion. Apparently satisfied with the statements that appear to have been made at its direction, the district court denied the motion without any input

from the parties. This course of action was not only highly unusual, but it also complicated matters further. The district court's apparent independent questioning and investigation of potential witnesses has only further tainted the ability of the parties or any other court to resolve the matter of its recusal.

1. The district court should be disqualified under 28 U.S.C. § 455(a).

Section 455(a) provides: "Any justice, judge, or magistrate judge of the United States *shall* disqualify himself in any proceeding in which *his impartiality might reasonably be questioned.*" 28 U.S.C. § 455 (a) (emphasis added). This impartiality is "evaluated on an *objective* basis, so that what matters is not the reality of bias or prejudice but its appearance." *Liteky v. United States*, 510 U.S. 540, 548 (1994). "This general standard is designed to promote public confidence in the impartiality of the judicial process by saying, in effect, if there is a reasonable factual basis for doubting the judge's impartiality, he should disqualify himself and let another judge preside over the case." 1974 U.S.C.C.A.N. 6351, 6355.

The question under § 455 (a) is simply "whether another, not knowing whether the judge is actually impartial, might reasonably question his impartiality on the basis of all of the circumstances." *Rice v. McKenzie*, 581 F.2d 1114 (4th Cir. 1978). The Fifth Amendment requires not just actual impartiality but also the appearance of impartiality. *See Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 825 (1986). Indeed, "the Due Process Clause 'may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best

way, justice must satisfy the appearance of justice.” *Id.* (quoting *In re Murchison*, 349 U.S. 133, 136 (1955)).

The Eighth Amendment applies this constitutional command with particular rigor to capital cases. *See, e.g., Rippo v. Baker*, 580 U.S. 285, 287 (2017) (per curiam) (in capital cases, “the Due Process Clause may sometimes demand recusal even when a judge ‘ha[s] no actual bias” (quoting *Aetna*, 475 U.S. at 825) (alteration in original)); *Williams v. Pennsylvania*, 579 U.S. 1, 14 (2016) (judge’s role as prosecutor in earlier stage of capital case “gave rise to an unacceptable risk of actual bias” that “so endangered the appearance of neutrality that his participation in the case ‘must be forbidden if the guarantee of due process is to be adequately implemented” (quoting *Withrow v. Larkin*, 421 U.S. 35, 47 (1975))).

Mr. Roof has made credible allegations that the district court improperly sought assignment to his case. If the allegation is true then, at the very least, there is an appearance of partiality. Most federal courts have procedures in place to ensure the random assignment of cases to avoid this very issue.¹ The District of South Carolina apparently has no such written case assignment plan. A lack of any written plan for random appointments of judges is ripe for abuse and manipulation, which is what appears to have happened here. When confronted with this claim, that it inappropriately conveyed its desire for the case, the district court enhanced

¹ “By statute, the chief judge of each district court has the responsibility to enforce the court’s rules and orders on case assignments. Each court has a written plan or system for assigning cases. The majority of courts use some variation of a random drawing.” United States Courts, *FAQs: Filing a Case*, <https://www.uscourts.gov/faqs-filing-a-case#:~:text=The%20majority%20of%20courts%20use,related%20cases%2C%20or%20prisoner%20cases.>

that appearance of partiality when it apparently sought out statements from its own colleagues disputing the allegations in this case and attempting to defend the case assignment. The district court's choice to issue its denial of the recusal motion just twenty-three minutes after posting the statements—without giving either party the opportunity to respond to the statements—reinforced the appearance of bias.

While an individual “has no right to any particular procedure for the selection of the judge . . . he is entitled to have that decision made in a manner free from bias or the desire to influence the outcome of the proceedings.” *Cruz v. Abbate*, 812 F.2d 571, 574 (9th Cir. 1987). Assigning a case to a particular judge “for an impermissible reason” is unequivocally prohibited. *Id.* Such improper manipulation of case assignments “raises not only constitutional issues, but also significant questions regarding the fair administration of justice.” *United States v. Pearson*, 203 F.3d 1243, 1255 (10th Cir. 2000). There is nothing fair or impartial about steering a high-profile case to a judge because he “really wants to do it.” App. 13a.

The district court's unexplained desire to preside over Mr. Roof's trial creates a reasonable question about its impartiality at trial—and certainly its ability to impartially resolve this issue during the current § 2255 proceedings.

The district court's more recent actions, however, have created an even more alarming risk of bias. Rather than permitting the adversarial process to occur, or requesting the assignment of a neutral district judge to resolve the motion, it appears that the court engaged in its own fact-finding investigation to defend what happened here. The court then, relying extensively on its own investigation, made

findings of fact, without giving the parties an opportunity to respond to, let alone confront, the conflicting statements.

This lack of an adversarial process for fact-finding violates Mr. Roof's Due Process rights under the Fifth Amendment and provides a sufficient basis for ordering the district court's recusal. In the alternative, this Court should remand this matter for a hearing in front of a neutral judge to consider the disputed facts.

Recusal motions are always sensitive to file and to decide. Rather than proceeding with the transparency and respect for the process required in such situations, the district court violated the very foundations of our adversarial legal system by conducting its own factual investigation into the question of recusal, making himself a witness in this matter. *McNeil v. Wisconsin*, 501 U.S. 171, 181, n.2 (1991) ("What makes a system adversarial rather than inquisitorial is . . . the presence of a judge who does not (as an inquisitor does) conduct the factual and legal investigation himself, but instead decides on the basis of facts and arguments pro and con adduced by the parties."). Public confidence is lost by allowing him to continue presiding over these proceedings. The district court should be recused.

2. The district court should be disqualified under 28 U.S.C. § 455(b).

The district court should be recused from this case based on its personal knowledge of the factual dispute at issue. 28 U.S.C. § 455 (b)(1) states that a judge "shall also disqualify himself in the following circumstances: (1) [w]here he has a personal bias or prejudice concerning a party, or *personal knowledge of disputed evidentiary facts* concerning the proceeding." (emphasis added). Such knowledge

must stem from “a source outside the judicial proceeding at hand” in order to disqualify a judge. *Liteky*, 510 U.S. at 545; *McClain v. Warden, Turbeville Corr. Inst.*, 805 F. App’x 221 (4th Cir. 2020).

The district court has extra-judicial knowledge with respect to the basis of the initial recusal motion— *i.e.*, its conversations with Judge Norton and Judge Wooten in 2015 regarding the assignment of this case, the core disputed fact. This knowledge precludes it from also being the arbiter of this matter. The court’s personal knowledge, and thus, appearance of partiality, has only increased through its gathering of judicial declarations and *sub rosa* factfinding that led to the denial of the initial motion.

The court’s apparent independent investigation has led to a quagmire of disputed facts between the sworn statements made by attorney Michael O’Connell and the statements made by Judge Norton and Judge Wooten. App. 14a-16a. Accordingly, the district court’s personal knowledge of not only the underlying facts of the initial motion to recuse, but also of how its colleagues’ statements came about require recusal. *See* 28 U.S.C. § 455 (b)(1) (“he *shall* . . . disqualify himself.”) (emphasis added).

C. Mandamus relief is appropriate under the circumstances.

Lastly, mandamus relief in this matter is “appropriate under the circumstances.” *Cheney*, 542 U.S. at 381. Certainly, it cannot be overstated that this is a case where the government is seeking to carry out the *ultimate penalty* against Mr. Roof. Because “death is different,” *Ford v. Wainwright*, 477 U.S. 399, 411

(1986), this Court “has been particularly sensitive to ensure that every safeguard is observed.” *Gregg v. Georgia*, 428 U.S. 153, 187 (1976); *see also Woodson v. North Carolina*, 428 U.S. 280, 305 (1976) (explaining the heightened need “for reliability in the determination that death is the appropriate punishment in a specific case”). Simply put, there is no proceeding where the need for an impartial judge is more important than one where a person’s life hangs in the balance. *See In re Al-Nashiri*, 921 F.3d at 239.

Additionally, the district court’s recusal “may prevent a substantive injustice in . . . future case[s] by encouraging a judge or litigant to more carefully examine possible grounds for disqualification and to promptly disclose them when discovered.” *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 868 (1988).

Finally, the district court’s refusal to give meaningful consideration to the recusal motion and its decision to instead engage in a secret investigation of potential witnesses is an extraordinary breach of the adversarial process, making relief more than appropriate.

II. The Standard of Review for a Writ of Mandamus Seeking Judicial Recusal.

This Court should resolve the question as to the appropriate standard to apply when a writ of mandamus is sought to recuse a lower court. As explained above, there is an entrenched three-way split between the circuit courts. The Seventh Circuit gives no deference to the district court, whereas the Fourth Circuit, along with most other circuits, imposes an extraordinarily high standard. The Third

Circuit is somewhere in the middle. See *In re Gibson*, 950 F.3d 919, 924 n.2 (7th Cir. 2019) (noting the three-way split).

To prevail in the Fourth Circuit, a petitioner must “show not only that 28 U.S.C. § 455 requires a judge’s immediate recusal . . . but also that he has a clear and indisputable right to that relief. *In re Moore*, 955 F.3d 384, 388 (4th Cir. 2020) (internal quotation marks omitted). Indeed, the Fourth Circuit made that clear in the instant matter, explaining that “[w]hen mandamus is sought to compel an act normally committed to the discretion of the district court, the petitioner faces an even more rigorous standard.” *Roof*, 2025 WL 2335967, at *1 (citation modified). This standard is so high that the Fourth Circuit has denied mandamus even when there is no doubt that foreseeable events would require recusal in the future. In *Moore*, the judge presiding over the defendant’s criminal case personally prosecuted the defendant for an earlier crime. *Moore*, 955 F.3d at 387-88. There was no dispute that the judge would have to recuse from the defendant’s sentencing, because the facts surrounding the prior crime would be relevant to the sentencing proceeding. *Id.* at 388. Nevertheless, the Fourth Circuit did not require recusal pre-trial, even though there was no doubt recusal would be required at sentencing, because there was no “clear and indisputable” right to *immediate* relief. *Id.* at 388. This standard is in line with the Ninth Circuit. See *Creech*, 119 F.4th at 1120-21.

In contrast to this extremely deferential standard, the Seventh Circuit applies *de novo* reviewing—giving no deference to the lower court when resolving a mandamus petition seeking a judge’s recusal. *In re Sherwin-Williams Co.*, 607 F.3d

474, 477 (7th Cir. 2010). Applying the de novo standard, the Seventh Circuit has granted mandamus to order recusal of a judge who called a meeting regarding plea bargaining, which was off-the-record but not *ex parte*. See *In re United States*, 572 F.3d 301, 310 (7th Cir. 2009). Counsel for the government and defendant both participated in the meeting, yet it was sufficient under the de novo standard to order recusal. *Id.* at 310-11. Although the Seventh Circuit has recently questioned whether it should continue to apply a *de novo* standard to petitioners seeking judicial recusal through mandamus, it has not overruled itself and that continues to be the applicable standard. See *Gibson*, 950 F.3d at 924 (“We do not need to resolve this tension over standards of review in this case. Our decision would be the same whether we applied the *de novo* standard or the more traditional ‘clear and indisputable right’ standard that dominates mandamus jurisprudence.”).

The Third Circuit effectively combines the abuse of discretion standard with the “clear and indisputable” standard collapsing the issue into a single inquiry. Accordingly, that court has held that “[w]hen the need for a writ of mandamus is determined by [the] court to be clear and indisputable, a district judge’s decision not to recuse himself or herself necessarily also will have been an abuse of discretion or a clear legal error.” *In re Kensington Int’l Ltd.*, 368 F.3d 289, 301 (3d Cir. 2004).

In the context of recusal, a fact-intensive inquiry, the standard of review is important, and in many cases outcome determinative. Given the significance of any issue related to the impartiality of a judge and the public’s need for confidence in judicial proceedings, this Court should resolve the current tension between the

circuits and clarify what the applicable standard should be when a person seeks to recuse a judge through a writ of mandamus.

Conclusion

In granting the petition, this Court will not disturb the underlying convictions or sentence, but rather ensure confidence in our judiciary and the resolution of the claims in this case with no appearance of partiality. A case like this one, which remains under scrutiny of the victims and the public, demands no less.

The gravity of the concerns raised “take[s] this case out of the category of the heckler’s veto.” *In re Bulger*, 710 F.3d at 49. Mr. Roof is not filing this petition to seek delay. After learning of facts suggesting impropriety in the assignment of this case, Mr. Roof promptly developed the factual basis by obtaining a sworn declaration from Mr. O’Connell and filing a Motion to Recuse.² Absent relief from this Court, the allegations and concerns in this matter will only fester, and a cloud of doubt regarding impartiality will continue to hover over this case.

Accordingly, this Court should remand this case for the district court to be recused, or should this Court find that further factual development is necessary based on the factual disputes that developed in the proceedings below, this Court should remand the recusal matter to the district court before a different, impartial,

² While Mr. O’Connell did represent Mr. Roof while in a pre-trial posture, he did not reveal this information to Mr. Roof, who proceeded *pro se* during most of his trial. Mr. Roof had no personal knowledge of any allegations of irregularities in Judge Gergel’s assignment of this case until March 2025 when Mr. O’Connell finally revealed this information to Mr. Roof’s § 2255 counsel. The § 2255 motion raises Mr. O’Connell’s ineffectiveness for his failure to address this issue at the time.

judge for an evidentiary hearing. Alternatively, this Court can address the standard of review and remand this case to the Fourth Circuit for further review in light of the Court's clarification.

Respectfully submitted,

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Date: April 10, 2026