

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**

APPENDIX

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FILED: August 13, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25-2
(2:15-cr-00472-RMG-1)
(2:25-cv-03298-RMG)

In re: DYLANN STORM ROOF,
Petitioner.

O R D E R

Petitioner Dylann Storm Roof, a self-proclaimed white supremacist, murdered nine African Americans during a Bible study at Mother Emanuel Church in 2015. A jury convicted him and sentenced him to death. He appealed his conviction and sentence to this Court. We affirmed. *United States v. Roof*, 10 F.4th 314 (4th Cir. 2021). The United States Supreme Court denied his petition for a writ of certiorari. *Roof v. United States*, 143 S. Ct. 303 (2022).

In March 2025, less than a month before filing a motion to vacate his conviction and sentence under 28 U.S.C. § 2255, Roof moved to recuse District Judge Richard M. Gergel, who has presided over the case since July 23, 2015, the day after Roof was indicted. He claims that Judge Gergel “made known in 2015 that he wanted to preside over this case,” Pet. at 1, and further claims that Judge Gergel’s desire “raises serious and disturbing questions about [his] ability to remain impartial and unbiased.” *Id.* at 8. Roof now petitions

for mandamus from this Court, seeking to recuse Judge Gergel from hearing his § 2255 motion.

“Mandamus is a ‘drastic’ remedy that must be reserved for ‘extraordinary situations’ involving the performance of official acts or duties.” *Cumberland Cnty. Hosp. Sys., Inc. v. Burwell*, 816 F.3d 48, 52 (4th Cir. 2016) (quoting *Kerr v. U.S. Dist. Court for the N. Dist. of Cal.*, 426 U.S. 394, 402 (1976)); *Belue v. Leventhal*, 640 F.3d 567, 575 (4th Cir. 2011) (holding that recusal of the presiding judge is a “drastic remedy”). “Courts provide mandamus relief only when (1) petitioner has no other adequate means to attain the relief [he] desires; (2) petitioner has shown a clear and indisputable right to the requested relief; and (3) the court deems the writ appropriate under the circumstances.” *In re Murphy-Brown, LLC*, 907 F.3d 788, 795 (4th Cir. 2018) (cleaned up). “[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.” *In re Catawba Indian Tribe of S.C.*, 973 F.2d 1133, 1136 (4th Cir. 1992). The “proper test” is “whether another with knowledge of all of the circumstances might reasonably question the judge’s impartiality.” *Id.*

First, Roof has not shown a clear and indisputable right to the relief requested. His motion is based almost entirely on hearsay evidence that Judge Gergel desired to preside over the case. “[W]e do not say that hearsay may not in some circumstances constitute a basis for recusal.” *Hodgson v. Liquor Salesmen’s Union Local No. 2*, 444 F.2d 1344, 1349 (2d Cir. 1971). But even assuming, without deciding, that this allegation is true, this alone is insufficient to show a clear and indisputable right to recusal. Nothing, aside from Roof’s conclusory allegation, shows that this alleged interest resulted in any bias. *See United*

States v. Cherry, 330 F.3d 658, 665 (4th Cir. 2003) (“A presiding judge is not, however, required to recuse himself simply because of unsupported, irrational or highly tenuous speculation.”) (quotation marks and citations omitted); *Hodgson*, 444 F.2d at 1349 (“If mere rumor, gossip, or general conclusory opinions were sufficient, any party could reject a judge at will.”). And because Roof has failed to establish a prima facie case of bias, whatever “investigation” that Judge Gergel did or did not do is irrelevant.

Roof’s other allegations—that Judge Gergel referred to the victims once in non-jury hearings as “my victims” and rolled his eyes—are similarly insufficient to show bias. *See, e.g., United States v. Collier*, 932 F.3d 1067, 1079 (8th Cir. 2019) (holding that a judge’s comment that a defendant’s case was “stupid” did not show bias); *United States v. Perkins*, 787 F.3d 1329, 1337, 1342-43 (11th Cir. 2015) (holding that a judge’s comment to a criminal defendant that he should not resist because “we’re going to get you anyway” and “[it’s] the ones like you that I hate the most” did not show bias). Again, even assuming that Judge Gergel developed a negative view of Roof as alleged, such a view is not the type of bias or partiality that requires recusal. *See Liteky v. United States*, 510 U.S. 540, 550-51 (1994) (“The judge who presides at a trial may, upon completion of the evidence, be exceedingly ill disposed towards the defendant, who has been shown to be a thoroughly reprehensible person. But the judge is not thereby recusable for bias or prejudice, since his knowledge and the opinion it produced were properly and necessarily acquired in the course of the proceedings.”).

Second, Roof cannot show that he has no other means available for relief. In his § 2255 motion, he argues that Judge Gergel’s bias violates his due process rights and that

his attorneys were constitutionally ineffective for failing to move for recusal at trial. If the district court rejects these arguments, he may appeal to this Court for review. *See In re Catawba Indian Tribe of S.C.*, 973 F.2d at 1136 (making clear that mandamus “should not be used as a substitute for appeal”); *In re Cabezas*, No. 22-14054-A, 2023 WL 6784344, at *2 (11th Cir. Mar. 1, 2023) (denying a writ of mandamus because the § 2255 petitioner “has the adequate alternative remedy of attempting to raise the recusal issue in an appeal once a final judgment is entered in his § 2255 proceedings”).

Third, Roof has not shown that a writ of mandamus is appropriate even though this is a capital case. As the Supreme Court has observed, petitioners in post-conviction capital cases have a unique interest in delaying the resolution of their claims. *See Rhines v. Weber*, 544 U.S. 269, 277-78 (2005) (noting the reality that “capital petitioners” have an incentive to “deliberately engage in dilatory tactics to prolong their incarceration and avoid execution of the sentence of death”). Roof’s death sentence is not a sufficient reason alone to grant the petition. *See Nelson v. United States*, 297 F. App’x 563, 566 (8th Cir. 2008) (unpublished) (per curiam) (affirming denial of capital defendant’s motion to recuse judge).

In sum, Roof has not met the requirements for mandamus relief. The petition is therefore denied.

Entered at the direction of Judge Benton with the concurrence of Senior Judge Gilman and Senior Judge Chin.

For the Court

/s/ Nwamaka Anowi, Clerk

FILED: August 13, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25-2
(2:15-cr-00472-RMG-1)
(2:25-cv-03298-RMG)

In re: DYLANN STORM ROOF

Petitioner

J U D G M E N T

In accordance with the decision of this court, the petition for writ of mandamus is denied.

/s/ NWAMAKA ANOWI, CLERK

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

| | | |
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| United States of America, |) | |
| |) | |
| v. |) | Criminal No. 2:15-472-RMG |
| |) | |
| Dylann Storm Roof, |) | |
| |) | |
| Defendant. |) | ORDER |
| |) | |
| _____ |) | |

This matter comes before the Court on a motion to recuse on the basis that the undersigned allegedly “made known among judges that he wanted to preside” over the above captioned case and that a colleague, Judge David Norton, steered the case to the undersigned. (Dkt. No. 1049 at 1). For reasons set forth below, the motion to recuse is denied.

Factual Background

Defendant Dylann Storm Roof was indicted by a federal grand jury on July 22, 2015. (Dkt. No. 2). One day later, on July 23, 2015, the undersigned was assigned the case. (Dkt. No. 10). Under standard assignment procedures for criminal cases in the District of South Carolina, then Chief Judge Terry Wooten made the assignment. (Dkt. No. 1051). According to a statement submitted by Judge Wooten, the case of *United States v. Roof* (hereafter “the *Roof* case”) was “routinely assigned” by him and that “at no time did Judge Gergel request of me that Roof’s case be assigned to him.” (*Id.*) Judge Wooten further stated that Judge Gergel had “no role in the assignment of the Roof case” and “[n]o other judge had any role in the assignment of the Roof case.” (*Id.*) Additionally, Judge Wooten stated that “[a]ny assertion that Judge Gergel sought

assignment of the Dylann Roof case to himself is not accurate nor a credible assertion. No information has been provided to me to support that contention.” (*Id.*)

Judge Norton submitted a statement in response to Defendant’s allegation that “[b]ecause of Judge Gergel’s strong desire to preside over Mr. Roof’s case, Judge Norton ‘let him have’ the case.” (Dkt. No. 1052). Judge Norton stated that this allegation is “simply untrue. I never had *United States v. Roof* assigned to me. I played no role in the assignment of the case to Judge Gergel. I am unaware of any effort by Judge Gergel to have the case assigned to him.” (*Id.*) Judge Norton further explained that Defendant’s motion to recuse is based on “an erroneous premise that individual district judges participate in the assignment of criminal cases within the District of South Carolina.” (*Id.*). In fact, the “assignment of criminal cases is made under the direction and supervision of the Chief Judge,” who was at the time Judge Terry Wooten. Judge Norton stated that “I was not involved in any way in the assignment of the *Roof* case to Judge Gergel. I did not communicate with Chief Judge Wooten or Judge Gergel prior to the assignment of the case and am aware of no facts indicating that this assignment was not handled routinely by Judge Wooten.” (*Id.*) Additionally, Judge Norton stated that “[a]nyone who reached the conclusion that I played a role in the assignment of the *Roof* case to Judge Gergel based on a conversation with me misunderstood our discussion.” (*Id.*).

Legal Standard

28 U.S.C. § 455 provides that a judge should disqualify himself in any proceeding in which “his impartiality might reasonably be questioned.” This is an objective standard based on a reasonable person fully informed of all of the “surrounding facts and circumstances.” *Microsoft v. United States*, 530 U.S. 1301, 1302 (Rhenquist, CJ).

Discussion

Nearly ten years after the undersigned was appointed to preside over this case and after the case was tried to verdict, affirmed on appeal, and denied certiorari before the United States Supreme Court, Defendant moves to disqualify the presiding judge on the basis that he allegedly sought the assignment and had his colleague, Judge David Norton, steer the case to him. The record before the Court establishes that no reasonable person could question the impartiality of the undersigned when fully informed of all surrounding facts and circumstances.

The record demonstrates that on July 22, 2015, the Defendant was indicted by a federal grand jury. (Dkt. No. 2). Within 24 hours, the case was assigned to the undersigned. (Dkt. No. 10). Under established procedures within the District of South Carolina for the assignment of criminal cases, Chief Judge Terry Wooten assigned the case to the undersigned. Judge Wooten stated in his declaration unequivocally that he, and he alone, made the assignment decision. No one—not the undersigned, not Judge Norton, and not any other judge, made a request to Judge Wooten that the undersigned be assigned the case. (Dkt. No. 1051). Judge Wooten stated that he handled the assignment routinely, based on well established District of South Carolina practices. Judge Wooten also noted that in his six years as Chief Judge, “no district judge sought to have a particular case assigned to him or her.” (*Id.*).

Judge Norton, who was alleged in Defendant’s motion to recuse to have steered the assignment of the *Roof* case to the undersigned, stated that this allegation is “simply untrue . . . I played no role, in the assignment of the case to Judge Gergel. I am unaware of any effort by Judge Gergel to have the case assigned to him.” (Dkt. No. 1052). Judge Norton stated in his declaration that the Defendant’s motion is based on an “erroneous premise” that individual district judges can steer a case to a particular judge. He explained that within the District of South Carolina, the Chief

Judge makes the assignment of criminal cases. Judge Norton stated that he did not communicate with Judge Wooten or the undersigned prior to the assignment of the *Roof* case and he was aware of no information which indicated that “the assignment was not routinely handled by Chief Judge Wooten.” (*Id.*). Judge Norton further stated that anyone who reached the conclusion that he had steered the case to the undersigned from a discussion with him “misunderstood our discussion.” (*Id.*).

In sum, the person who actually made the assignment of the *Roof* case, Judge Wooten, and the person who the Defendant alleged steered the *Roof* case assignment to the undersigned, Judge Norton, both plainly and unambiguously state there is no truth to this allegation. No reasonable person fully aware of all facts and circumstances surrounding this matter could conclude that the undersigned’s impartiality could “reasonably be questioned.” 28 U.S.C. § 455. The motion to recuse (Dkt. No. 1049) is **DENIED**.

AND IT IS SO ORDERED.

s/ Richard Mark Gergel
Richard Mark Gergel
United States District Judge

April 4, 2025
Charleston, South Carolina

FILED: November 13, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25-2
(2:15-cr-00472-RMG-1)
(2:25-cv-03298-RMG)

In re: DYLANN STORM ROOF

Petitioner

O R D E R

The judges of the Fourth Circuit having recused themselves in this case, Chief Justice Roberts designated and assigned Eighth Circuit Judge Duane Benton, Sixth Circuit Senior Judge Ronald Lee Gilman, and Second Circuit Senior Judge Denny Chin to perform judicial duties in this case.

On August 13, 2025, the designated panel denied petitioner's petition for writ of mandamus. Petitioner filed a timely petition for rehearing and rehearing en banc. Judge Benton, Senior Judge Gilman, and Senior Judge Chin have denied petitioner's petition for panel rehearing.

The court declines to take the unprecedented step of using 28 U.S.C. § 291

or 292 to seek a substitute en banc court for the purpose of considering appellant's petition for rehearing en banc. "[U]nder the wording of 28 U.S.C. § 46(c) and the Supreme Court's holding in *Moody v. Albemarle Paper Co.*, 417 U.S. 622, 94 S.Ct. 2513, 41 L.Ed.2d 358 (1974), only judges of the Circuit who are in regular active service may make the determination to rehear a case en banc." *United States v. Nixon*, 827 F.2d 1019, 1021 (5th Cir. 1987). Designation of a visiting judge for this purpose is "an inappropriate procedure, unrelated to providing a quorum for the en banc court of a circuit." *Comer v. Murphy Oil USA*, 607 F.3d 1049, 1054 (5th Cir. 2010).

Accordingly, the petition for en banc rehearing is denied due to the lack of a quorum for en banc review.

Entered at the direction of Chief Judge Diaz.

For the Court

/s/ Nwamaka Anowi, Clerk

FILED: September 30, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25-2
(2:15-cr-00472-RMG-1)
(2:25-cv-03298-RMG)

In re: DYLANN STORM ROOF

Petitioner

ORDER

The court denies the petition for panel rehearing.

Entered at the direction of the panel: Judge Benton, Senior Judge Gilman,
and Senior Judge Chin.

For the Court

/s/ Nwamaka Anowi, Clerk

DECLARATION OF MICHAEL P. O'CONNELL

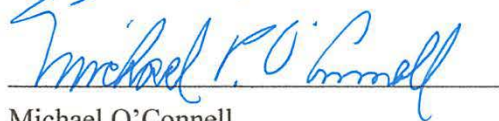
I, Michael O'Connell, state as follows:

1. My name is Michael O'Connell.
2. During the summer of 2015 I received a call from David Bruck. He called because he was recruiting counsel to represent Dylann Roof. He had an idea of another lawyer that would be my cocounsel. I declined to work on the case at that time.
3. A week or two later, David Bruck called me back. He had agreed to be lead counsel in the federal case of Dylann Roof. He asked me to be his co-counsel. I immediately agreed. I have great respect for David Bruck. We were law school classmates and we worked together as Assistant Public Defenders in Columbia, South Carolina at the beginning of our careers.
4. By this time, I had not been keeping up with advances in capital work. I left the Charleston Federal Public Defender's office in 1996. After that I practiced with my wife, doing family law and criminal law.
5. I realized that I was not up to working on the Roof case. I did work on the case around CJA billing and more administrative tasks. But I was not really functioning as co-counsel to David Bruck. I wasn't pulling my weight. I withdrew from the case in the Spring of 2016.
6. Judge David Norton was also a law school classmate. I spoke by phone with him in the summer of 2015 after I told David Bruck I would be his co-counsel for Dylann Roof. I think Judge Norton called me to find out if I had agreed to be one of Dylann Roof's lawyers. I asked Judge Norton what Judge was getting the Roof case. Judge Norton told me, "Gergel really wants to do it, so I'm gonna let him have it."
7. I think I told my wife about this conversation. I don't recall sharing it with anyone else until this month.
8. I told this to Mr. Roof's post-conviction counsel Angela Elleman by telephone on March 12, 2025.

This declaration is based on my first-hand experiences and observations. I am over 18 years of age and am competent to make this declaration.

I, Michael O'Connell, declare under penalty of perjury under the laws of the United States that the forgoing is true and correct.

Executed on MARCH 20, 2025, in CHARLESTON, S.C.



Michael O'Connell

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

| | | |
|---------------------------|---|---------------------------|
| United States of America, |) | |
| |) | |
| v. |) | Criminal No. 2:15-472-RMG |
| |) | |
| Dylann Storm Roof |) | |
| |) | |
| Defendant. |) | |
| |) | |
| _____ |) | |

I submit this statement in response to a motion filed in the above captioned case which inaccurately contends that I played a role in the assignment of *United States v. Roof* to United States District Judge Richard Gergel.

1. The Defendant’s motion contends that I “let [Judge Gergel] have” the case because he allegedly indicated an interest in wanting to preside over the case. (Dkt. No. 1049 at 1). This is simply untrue. I never had *United States v. Roof* assigned to me. I played no role in the assignment of the case to Judge Gergel. I am unaware of any effort by Judge Gergel to have the case assigned to him.

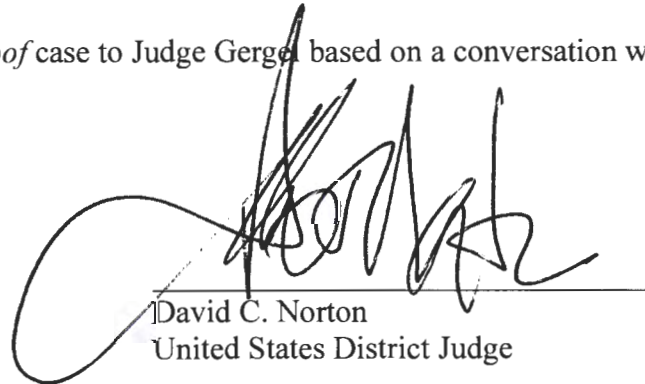
2. The docket in *United States v. Roof* sets forth the official record of the case. The docket documents that the Defendant was indicted on July 22, 2015, and Judge Gergel was assigned the case the next day, July 23, 2023. (Dkt. Nos. 2, 10). The case went from “unassigned” to Judge Gergel. No other judge, including myself was assigned the case. Until the case was indicted, there was no case to be assigned.

3. The Defendant’s motion is based upon an erroneous premise that individual district

judges participate in the assignment of criminal cases to them within the District of South Carolina. This is simply not the case. The assignment of criminal cases is made under the direction and supervision of the Chief Judge. Judge Terry Wooten was the chief judge at the time of the indictment of the Defendant Roof.

4. I was not involved in any way in the assignment of the *Roof* case to Judge Gergel. I did not communicate with Chief Judge Wooten or Judge Gergel prior to the assignment of the case and am aware of no facts indicating that this assignment was not handled routinely by Chief Judge Wooten.

5. This is the first occasion in the nearly ten years since the *Roof* case was assigned to Judge Gergel that I have been aware of any claim that I played any role in steering the *Roof* case assignment to Judge Gergel. This did not happen. Anyone who reached the conclusion that I played a role in the assignment of the *Roof* case to Judge Gergel based on a conversation with me misunderstood our discussion.



David C. Norton
United States District Judge

April 3 2025

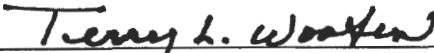
AFFIDAVIT OF
SENIOR UNITED STATES DISTRICT JUDGE TERRY L. WOOTEN

I, Terry L. Wooten, Senior United States District Court Judge, swear and affirm:

1. Dylann Roof was convicted of capital murder in the District of South Carolina and sentenced to death.
2. Roof now asserts that the presiding judge in his case, Richard M. Gergel, sitting in Charleston, South Carolina, sought to have Roof's case assigned to him.
3. I was the Chief Judge for the District of South Carolina when charges were brought against Dylann Roof.
4. As the Chief Judge at that time, the assignment of criminal cases was at the discretion of and under my supervision. All criminal cases, including the Roof case, were routinely assigned based on: (i) caseloads that each district judge carried; and (ii) related cases. This process was followed in the Roof case. Judge Gergel was assigned the case by me in light of those criteria.
5. At no time did Judge Gergel request of me that Roof's case be assigned to him. He had no role in the assignment of the Roof case. No other judge had any role in the assignment of the Roof case other than me, acting in my role as Chief Judge. Again, the Roof case was assigned to Judge Gergel in the routine process as previously outlined.
6. In the six years I was Chief Judge, no district judge sought to have a particular case assigned to him or her. All district judges are well aware of the routine assignment of criminal cases as outlined to ensure a balance of work among judges. This is the standard operating procedure in the District of South Carolina.
7. Any assertion that Judge Gergel sought assignment of the Dylann Roof case to himself is not accurate nor a credible assertion. No information has been provided to me to support that contention.

I SO SWEAR.

April 1, 2025
Columbia, SC



Terry L. Wooten,
Senior United States District Judge