

IN THE SUPREME COURT OF THE UNITED STATES

DYLANN STORM ROOF, PETITIONER

v.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA

(CAPITAL CASE)

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

D. JOHN SAUER
Solicitor General
Counsel of Record

HARMEET K. DHILLON
A. TYSEN DUVA
Assistant Attorneys General

JESUS A. OSETE
Principal Deputy Assistant
Attorney General

ANN O'CONNELL ADAMS
KATHERINE McCALLISTER
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

CAPITAL CASE

QUESTION PRESENTED

Whether petitioner is entitled to mandamus relief to recuse the district judge, who has presided over petitioner's case since the day after petitioner's indictment, from addressing the postconviction claims that petitioner has raised under 28 U.S.C. 2255, based on a recent and disputed assertion by petitioner's former counsel that the district judge had expressed interest to another district judge in being assigned the case.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (D.S.C.):

United States v. Roof, No. 2:15-cr-00472-RMG (Apr. 4, 2025)

United States v. Roof, No. 2:15-cr-00472-RMG (Jan. 23, 2017)

United States Court of Appeals (4th Cir.):

United States v. Roof, No. 25-2 (Aug. 13, 2025)

United States v. Roof, No. 17-3 (Aug. 25, 2021)

Supreme Court of the United States (S. Ct.):

Roof v. United States, No. 22-7871 (Feb. 20, 2024)

IN THE SUPREME COURT OF THE UNITED STATES

No. 25-7203

DYLANN STORM ROOF, PETITIONER

v.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA

(CAPITAL CASE)

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The order of the court of appeals denying mandamus (Pet. App. 1a-4a) is available at 2025 WL 2335967. The order of the district court (Pet. App. 6a-9a) is unreported. A prior decision of the court of appeals in petitioner's case is reported at 10 F.4th 314.

JURISDICTION

The judgment of the court of appeals was entered on August 13, 2025. A petition for rehearing was denied on November 13, 2025 (Pet. App. 10a-11a). On February 5, 2026, the Chief Justice extended the time within which to file a petition for a writ of

certiorari to and including April 12, 2026, and the petition was filed on April 10, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and 1651.

STATEMENT

Following a jury trial in the United States District Court for the District of South Carolina, petitioner was convicted on nine counts of racially motivated hate crimes resulting in death, in violation of 18 U.S.C. 249(a)(1); three counts of racially motivated hate crimes involving an attempt to kill, in violation of 18 U.S.C. 249(a)(1); nine counts of obstructing religious exercise resulting in death, in violation of 18 U.S.C. 247(a)(2) (2012) and 18 U.S.C. 247(d)(1); three counts of obstructing religious exercise, involving an attempt to kill and use of a dangerous weapon, in violation of 18 U.S.C. 247(a)(2) (2012), 18 U.S.C. 247(d)(1), and (d)(3); and nine counts of causing death by murder by using a firearm to commit murder during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A), (j)(1), and 18 U.S.C. 924(c)(1)(C) (2012 & Supp. II 2015). Indictment 4-10; Judgment 1.

The district court imposed a capital sentence for each violation of Section 247 resulting in death and for each violation of Section 924 resulting in death, and life imprisonment on all other counts. Judgment 2-3. The court of appeals affirmed,

10 F.4th 314, and this Court denied certiorari, 143 S. Ct. 330 (2022).

1. On June 17, 2015, 12 black parishioners and church leaders of the historic Emanuel African Methodist Episcopal Church (Mother Emanuel) in Charleston, South Carolina, gathered in the church's Fellowship Hall for their weekly Bible study. 10 F.4th at 331-332. At 8:16 p.m., petitioner entered the church carrying a small bag that concealed a Glock .45 semiautomatic handgun and eight loaded magazines. Id. at 332. The parishioners welcomed petitioner, handing him a Bible and a study sheet. Ibid.

Petitioner sat with the parishioners for about 45 minutes. 10 F.4th at 332. Then, as the parishioners rose and shut their eyes for a closing prayer, petitioner took out his gun and started shooting them. Ibid. He reloaded multiple times as the parishioners dove under tables to avoid the gunfire. Ibid. After firing approximately 74 bullets, petitioner approached Polly Sheppard, who was praying aloud. Ibid.; No. 17-3 C.A. App. 5017. Petitioner told her to "shut up" and asked if he had shot her yet. 10 F.4th at 332. When she responded "no," petitioner said, "I'm going to leave you here to tell the story." Ibid.

Petitioner left Mother Emanuel around 9:06 p.m. 10 F.4th at 332. Seven of the parishioners were dead when police arrived, and another two victims died soon after. Ibid. Reverend Sharonda Coleman-Singleton, Cynthia Hurd, Susie Jackson, Ethel Lee Lance,

Reverend DePayne Middleton-Doctor, Reverend Clementa Pinckney, Tywanza Sanders, Reverend Daniel Simmons, Sr., and Reverend Myra Thompson were all killed by petitioner's shooting spree. Ibid. Sheppard survived, as did Felicia Sanders and her granddaughter K.M., both of whom had played dead under a table. No. 17-3 C.A. App. 3700-3701, 3751-3752, 3761-3763, 5017; 10 F.4th at 332; 225 F. Supp. 3d at 441.

Officers stopped petitioner's car the next morning in Shelby, North Carolina. 10 F.4th at 332. He agreed to an interview with FBI agents and confessed. Ibid. Petitioner referred to himself as a "white nationalist" and told agents he committed the crime because "black people are killing white people every day" and "rap[ing] white women." Ibid. (citation omitted; brackets in original). He admitted that he was trying to agitate race relations, in the hope that it could potentially lead to a race war. Ibid.

2. A grand jury in the District of South Carolina charged petitioner with nine counts of racially motivated hate crimes resulting in death, in violation of 18 U.S.C. 249(a)(1); three counts of racially motivated hate crimes involving an attempt to kill, in violation of 18 U.S.C. 249(a)(1); nine counts of obstructing religious exercise resulting in death, in violation of 18 U.S.C. 247(a)(2) (2012) and 18 U.S.C. 247(d)(1); three counts of obstructing religious exercise, involving an attempt to kill

and use of a dangerous weapon, in violation of 18 U.S.C. 247(a)(2) (2012), 18 U.S.C. 247(d)(1), and (d)(3); and nine counts of causing death by murder by using a firearm to commit murder during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A), (j)(1), and 18 U.S.C. 924(c)(1)(C) (2012 & Supp. II 2015). Indictment 4-10. The government gave notice of its intent to seek the death penalty. 10 F.4th at 333.

The jury found petitioner guilty on all counts. Judgment 1. At the penalty phase, the jury found four independent gateway factors that each made petitioner eligible for the death penalty, found that aggravating factors outweighed mitigating factors, and voted unanimously for the death penalty on each relevant count. 10 F.4th at 365, 368. The district court then imposed capital sentences for the violations of Sections 247 and 924(c) resulting in death, and imposed sentences of life imprisonment for the Section 249(a)(1) violations and the Section 247 violations involving an attempted killing. Id. at 368; Judgment 2-3. The court of appeals affirmed, 10 F.4th 314, and this Court denied a petition for a writ of certiorari, 143 S. Ct. 303.

3. a. In March 2025, shortly before filing a collateral attack on his conviction and sentence under Section 2255, petitioner filed a motion to recuse Judge Gergel, the district judge who had presided over the case since the day after the indictment and who would, in the normal course, preside over the

postconviction proceedings as well. D. Ct. Doc. 1049 (Mar. 26, 2025); see D. Ct. Doc. 2 (July 22, 2015) (Indictment); D. Ct. Doc. 10 (July 23, 2015) (docket entry assigning case); see also 28 U.S.C. 2255 (postconviction motion directed to "the court which imposed the sentence"). The basis for the recusal motion was petitioner's allegation that his counsel had recently asserted that when the government initiated the case against petitioner, Judge Gergel had "made known among judges that he wanted to preside over the case." D. Ct. Doc. 1049, at 1. Petitioner contended that Judge Gergel's asserted desire to preside over the case affected his ability to remain impartial and unbiased, and that recusal was thus required under 28 U.S.C. 455(a) and the Due Process Clause. D. Ct. Doc. 1049, at 2-4.

Along with the recusal motion, petitioner attached a declaration from one of his former attorneys, Michael O'Connell. See Pet. App. 13a. O'Connell claimed that after he had agreed to represent petitioner in the summer of 2015, he had a telephone conversation with District Judge David Norton -- a law school classmate of O'Connell. Ibid. O'Connell further claimed that he asked Judge Norton "what judge was getting the Roof case" and was told, "'Gergel really wants to do it, so I'm going to let him have it.'" Ibid. O'Connell stated that he did not recall sharing the substance of the conversation with anyone except maybe his wife until March 2025. Ibid.

b. On April 4, 2025, two declarations were entered on the district court docket. See Pet. App. 14a-16a. One was an affidavit from Judge Norton, in which he stated that he “never had United States v. Roof assigned to [him],” he “played no role in the assignment of the case to Judge Gergel,” and he was “unaware of any effort by Judge Gergel to have the case assigned to him.” Id. at 14a. Judge Norton further stated that he “did not communicate with Chief Judge Wooten or Judge Gergel prior to the assignment of the case” and was “aware of no facts indicating that this assignment was not handled routinely by Chief Judge Wooten.” Id. at 15a.

The second affidavit was from Senior District Judge Terry Wooten. Pet. App. 16a. Judge Wooten’s affidavit explained that he had been “the Chief Judge for the District of South Carolina when charges were brought against [petitioner],” and that he was responsible for assigning criminal cases, including petitioner’s case, which he did “based on the caseloads that each district judge carried” and “related cases.” Ibid. Judge Wooten stated that no other judge had any role in the assignment of [petitioner’s] case, and that “[a]t no time did Judge Gergel request of me that [petitioner’s] case be assigned to him.” Ibid.

c. On the same day the affidavits were entered on the docket, the district court issued an order denying petitioner’s recusal motion. Pet. App. 6a-9a. The court stated that the case

had been assigned “[u]nder standard assignment procedures for criminal cases in the District of South Carolina,” by “then Chief Judge Terry Wooten.” Id. at 6a. The court observed that Judges Norton and Wooten had stated there was no truth to the allegation that Judge Norton steered the Roof case to Judge Gergel or that the assignment was anything other than routine. Id. at 9a. The court determined that “no reasonable person fully aware of all facts and circumstances surrounding this matter could conclude that the [court’s] impartiality could ‘reasonably be questioned.’” Ibid. (citing 28 U.S.C. 455(a)).

d. Petitioner moved for reconsideration and asserted, as a new basis for recusal, that the court had “undertaken an investigation and fact-gathering mission of [its] own” by obtaining affidavits from the other judges. D. Ct. Doc. 1054 at 4 (Apr. 8, 2025); id. at 4-5. Petitioner further asserted that recusal was warranted under 28 U.S.C. 455(b)(1) because Judge Gergel had “personal knowledge of the factual dispute at issue.” D. Ct. Doc. 1054, at 5-6. The court denied reconsideration. D. Ct. Doc. 1062 (Apr. 18, 2025).

4. While his collateral attack remained pending, petitioner filed a petition for a writ of mandamus in the court of appeals seeking to recuse Judge Gergel from those postconviction proceedings. Pet. App. 1a-2a. The court of appeals denied the petition. Id. at 1a-4a.

The court of appeals found that petitioner had not met the mandamus prerequisite by showing a "clear and indisputable" right to recusal, observing that his motion was "based almost entirely on hearsay evidence that Judge Gergel desired to preside over the case," and that even if the hearsay were credited, an "alleged interest" would not indicate a bias against petitioner. Pet. App. 2a-3a. The court also explained that because petitioner had failed to establish a prima facie case of bias, "whatever 'investigation' Judge Gergel did or did not do is irrelevant." Id. at 3a. The court further determined that other allegations in the mandamus petition -- namely, that Judge Gergel referred to the victims once in a non-jury hearing as "my victims" and on another occasion rolled his eyes -- were insufficient to show bias. Ibid.

The court of appeals also found that petitioner had failed to satisfy a second mandamus prerequisite -- namely, that he lacked other available means for relief. Pet. App. 3a-4a. The court observed that in his collateral attack under Section 2255, petitioner argues that Judge Gergel's bias violated his due process rights and that his attorneys were constitutionally ineffective for failing to move for recusal at trial. Id. at 4a. The court of appeals observed that if the district court rejected those arguments, petitioner would be able to raise them in an appeal of the denial of postconviction relief. Ibid. Finally, the court determined that petitioner had failed to satisfy the prerequisite

that mandamus relief be “appropriate,” observing that a capital sentence “is not a sufficient reason alone” to grant mandamus relief, especially given the incentive of capital prisoners to delay resolution of their claims. Ibid.

ARGUMENT

Petitioner contends (Pet. 5-15) that the court of appeals erred in declining to issue a writ of mandamus that would disqualify Judge Gergel from presiding over petitioner’s collateral attack on his conviction and sentence under 28 U.S.C. 2255. The court of appeals correctly denied mandamus relief, and petitioner has identified no conflict among the circuits that warrants this Court’s intervention. The petition should be denied.

1. The court of appeals’ order denying mandamus relief is correct and warrants no further review. This Court has recognized three “conditions” that limit a court’s authority to issue a writ of mandamus under the All Writs Act, 28 U.S.C. 1651. Cheney v. United States Dist. Court, 542 U.S. 367, 380 (2004). To obtain the writ, a petitioner must establish “that his right to issuance of the writ is clear and indisputable”; that he has “no other adequate means to attain the relief he desires”; and that issuance of the writ is “appropriate under the circumstances” by pointing to “exceptional circumstances amounting to a judicial usurpation of power, or a clear abuse of discretion.” Id. at 380-381

(brackets, citation, and internal quotation marks omitted).
Petitioner does not satisfy those criteria.

a. As the court of appeals explained, petitioner failed to establish a clear and indisputable right to disqualification of the district judge under either the Due Process Clause or 28 U.S.C. 455. See Pet. App. 2a-4a.

The primary basis for petitioner's recusal motion is a disputed hearsay allegation regarding a phone conversation that took place over a decade ago, in which a different district judge -- who disclaims having done so -- allegedly told petitioner's former counsel that Judge Gergel "really wanted" to hear petitioner's case. See Pet. 11-12. But the Due Process Clause requires recusal only when, "considering all the circumstances alleged, the risk of bias [is] too high to be constitutionally tolerable." Rippo v. Baker, 580 U.S. 285, 287 (2017). And Section 455(a) requires a judge to "disqualify himself" only "in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. 455(a).

Neither requires recusal here. Even assuming the truth of the contested allegation, a bare expression of interest in hearing a case is not a basis on which a judge's impartiality can reasonably be questioned. See Pet. App. 2a-3a. A "judge has a duty to sit where not disqualified which is equally as strong as the duty to not sit where disqualified." Laird v. Tatum, 409 U.S.

824, 837 (1972). Interest in presiding over a particular case in itself suggests nothing more than interest in doing one's job -- not bias toward one side or the other.

Accordingly, not even O'Connell, after allegedly hearing of Judge Gergel's interest, questioned Judge Gergel's impartiality. Indeed, in June 2016 -- a year after the alleged conversation between O'Connell and Judge Norton -- O'Connell notified the court that petitioner was willing to waive a jury trial and be tried and sentenced in a bench trial before Judge Gergel. D. Ct. Doc. 181 (June 6, 2016). If even O'Connell, with knowledge of all of the alleged facts, was willing to proceed to a bench trial after learning of Judge Gergel's supposed interest in the case, no "reasonable person with knowledge of the relevant facts" would question Judge Gergel's impartiality. Cherry, 330 F.3d at 665; see Johnson v. Lumpkin, 74 F. 4th 334, 341 (5th Cir. 2023) (explaining that a reasonable outside observer is not a "hypersensitive, cynical, and suspicious person").

Petitioner asserts (Pet. 2) that his recusal motion is based on Judge Gergel's alleged expression of interest "coupled with concerns that the district court did not appear unbiased during the proceedings." But even if combined with the allegations he presented for the first time to the court of appeals, petitioner falls well short of showing bias or the appearance of it. Petitioner alleges that Judge Gergel at one point "rolled his

eyes," Pet. App. 3a, but it is well-established that demonstrations of frustration or even the development of a "negative view" of the defendant "properly and necessarily acquired in the course of proceedings" is insufficient to demonstrate bias or the appearance of bias, ibid. (quoting Liteky v. United States, 510 U.S. 540, 550-551 (1994)). See Liteky, 510 U.S. at 555-556 ("Not establishing bias or partiality, however, are expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as federal judges, sometimes display."). Nor would a single reference to "my victims," during a non-jury hearing, indicate a predisposition to tilt the proceedings against petitioner, who did not deny that parishioners had been killed by gunfire.

In addition to his principal claim of impermissible bias, petitioner also argues (Pet. 13-14) that Judge Gergel should be disqualified from ruling on the recusal motion under 28 U.S.C. 455(b)(1), which provides that a judge "shall also disqualify himself" if "he has * * * personal knowledge of disputed evidentiary facts concerning the proceeding." On petitioner's view, Section 455(b)(1) requires a judge to disqualify himself from deciding a recusal motion whenever the judge has "personal knowledge" regarding the alleged bias described in a recusal motion, such that Judge Gergel's knowledge regarding the case-

assignment process should disqualify him here. But that view of Section 455(b)(1) -- under which nearly every recusal motion would need to be transferred to a different judge for resolution -- cannot be squared with the well-established rule that a judge "is not required to" transfer a recusal motion and "it is entirely proper for the challenged judge to pass on the matter." 13D Charles Alan Wright et al., Federal Practice and Procedure § 3914.23.2 (3d ed.).

Section 455(b)(1) refers to personal knowledge of the underlying "proceeding," not of the recusal motion itself. Because judges will frequently (if not always) have some personal knowledge regarding allegations about their bias, interpreting "proceeding" to include the recusal motion itself would make little sense. Taken to its logical conclusion, the judge might not even be permitted to decide whether to recuse himself from a recusal motion, because that second-order recusal issue would itself be a "proceeding" about which he would have personal knowledge. More sensibly, therefore, courts have uniformly recognized that recusal motions, including "factual determinations," should be decided "by the judge whose recusal is in question." In re Martinez-Catala, 129 F.3d 213, 220 (1st Cir. 1997).

Indeed, "[d]iscretion is confided in the district judge" to decide a recusal motion precisely because he is "in the best position to appreciate the implications of those matters alleged."

In re Drexel Burnham Lambert Inc., 861 F.2d at 1312. In conducting the recusal inquiry, the court is “free to make credibility determinations, assign to the evidence what he believes to be its proper weight, and to contradict the evidence with facts drawn from his own personal knowledge.” United States v. Balistrieri, 779 F.2d 1191, 1202 (7th Cir. 1985), overruled on other grounds by Fowler v. Butts, 829 F.3d 788 (7th Cir. 2016); see Cheney v. United States District Court, 541 U.S. 913-915, 923 (2004) (Scalia, J., respecting recusal) (providing facts from personal knowledge because a judge must evaluate recusal “in light of the facts as they existed” and the recusal motion’s sources did not “have the facts right”).

Accordingly, the district court could have rejected O’Connell’s hearsay affidavit outright based on its own personal knowledge about how the case was assigned. See, e.g., Hinman v. Rogers, 831 F.2d 937 (10th Cir. 1987) (noting that judges are not “limited to those facts presented by the challenging party,” they may consider their personal knowledge and circumstances “both public and in hidden view”). Petitioner errs in suggesting (Pet. 12-13) that the district court judge demonstrated a clear and manifest appearance of bias by also allowing the record to be supplemented by statements from Judges Wooten and Norton refuting O’Connell’s allegations. Although petitioner appears to believe (Pet. 3) that those statements were filed at Judge Gergel’s

request, the more natural inference is that they were filed of Judge Wooten's and Judge Norton's own individual (or joint) accord, as a response to publicly filed hearsay allegations in a high-profile case. See Pet. App. 6a-7a.

The district court's entry of those statements into the record does not demonstrate bias. Section 455 itself generally "is silent on procedure." Wright, supra, § 3550. And petitioner's contention (Pet. 13) that the "adversarial legal system" requires a judge deciding a recusal motion to rely solely on information provided by the parties is inconsistent with the statutory design and with longstanding precedent. See In re Martinez-Catala, 129 F.3d at 220 (explaining that Congress struck a "reasonable balance" between concerns about appearance of partiality, "expedition," "and a concern to discourage judge shopping"). Indeed, in contrast to typical adversarial proceedings, judges are discouraged from "asking for the views of [the opposing] counsel on whether they should disqualify themselves in the case." Wright, supra, § 3550.

Accordingly, a district court is not required to conduct an adversarial hearing on the motion, especially one that would require the parties to examine sitting district judges. Cf. In re Brooks, 383 F.3d 1036, 1043 (D.C. Cir. 2004) (denying mandamus petition and noting that petitioners had cited no case supporting "discovery of the private communications between a district judge and subordinate judicial officers"). At a minimum, even if

petitioner could establish a procedural error in the entry of those statements into the record despite Section 455's silence on the matter, that would not in itself establish clear and manifest bias or an appearance thereof that would compel immediate disqualification via a writ of mandamus.

b. As the court of appeals recognized (Pet. App. 3a-4a), petitioner has also not established that he has "no other adequate means to attain the relief he desires." Cheney, 542 U.S. at 380 (citation omitted). The postconviction proceeding from which petitioner ultimately seeks Judge Gergel's recusal is a collateral attack under Section 2255 in which petitioner has argued that Judge Gergel's alleged bias violated his due process rights and that his trial attorneys were constitutionally ineffective for failing to move for Judge Gergel's recusal before petitioner's trial. Pet. App. 4a; see D. Ct. Doc. 1077, at 382-388 (July 17, 2025) (corrected Section 2255 motion). If the district court rejects those arguments in the Section 2255 proceeding, petitioner will be able to raise the issue of Judge Gergel's alleged bias and the denial of his recusal motion -- together with any other claims arising from the resolution of his Section 2255 -- on direct appeal. As this Court has made clear, "extraordinary writs cannot be used as substitutes for appeals, even though hardship may result from delay and perhaps unnecessary trial." Bankers Life & Cas.

Co. v. Holland, 346 U.S. 379, 383 (1953); see Cheney, 542 U.S. at 380-381.

Petitioner suggests (Pet. 8) that his motion for recusal from the Section 2255 proceedings would not be redressed by a merits appeal from the denial of Section 2255 relief. But petitioner's ineffective-assistance claim (along with a separate due-process claim) is based on the same factual allegations as his recusal motion. See D. Ct. Doc. 1077, at 382-387. As petitioner notes, courts of appeals have sometimes considered recusal motions in mandamus petitions where circumstances warranted it. See Pet. 8 (citing In re Creech, 119 F.4th 1114, 1122-1124 (9th Cir. 2024) (district judge was personal friends with attorney whose personal and professional reputation would be affected by upcoming proceeding); see also Cobell v. Norton, 334 F.3d 1128, 1139 (D.C. Cir. 2003). But that does not mean that petitioner automatically has a right to mandamus, notwithstanding the availability of an appeal following final judgment. See, e.g., In re Corrugated Container Antitrust Litig., 614 F.2d 958, 962 (5th Cir. 1980) (noting that "full review awaits these defendants upon appeal from final judgment" and denying mandamus "[o]n this ground alone"); In re Cabezas, No. 22-14054-A, 2023 WL 6784344, at *2 (11th Cir. Mar. 1, 2023) (denying writ of mandamus because Section 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"); In re Haeberli, No. 25-12111, 2025 WL 4694008, at *2 (11th Cir. Oct. 1, 2025) (noting that direct appeal is an adequate remedy absent "exceptional circumstances"); see also In re Moore, 955 F.3d 384, 390 (4th Cir. 2020) (denying mandamus relief for petitioner awaiting trial; stating that petitioner was not "without a remedy" because he could challenge the district court's refusal to recuse on appeal).

c. Finally, petitioner has also failed to demonstrate that issuance of the writ would be "appropriate." Cheney, 542 U.S. at 380. Petitioner has shown no "'exceptional circumstances amounting to a judicial usurpation of power' or a 'clear abuse of discretion.'" Id. at 380, 390 (citations omitted). Indeed, timeliness issues make this case a poor candidate for mandamus. "Timeliness is an essential element of a recusal motion." See, e.g., United States v. Owens, 902 F.2d 1154, 1155 (4th Cir. 1990). Petitioner's former counsel knew "the essential facts" upon which this recusal motion is based in the summer of 2015, but waited almost 10 years after the alleged conversation, and more than eight years after the trial, to raise the conversation as a basis for questioning Judge Gergel's impartiality.

Enforcing a timeliness requirement is essential to avoid litigants taking a "wait-and-see" approach to allege bias in the hopes of receiving a new hearing before a different judge after they are convicted and receive their sentence. Owens, 902 F.2d

1156; cf. Puckett v. United States, 556 U.S. 129, 134 (2009) (discussing the value of applying plain-error review to untimely objections). And even if petitioner's assertion of bias could be timely with respect to his Section 2255 proceeding, granting mandamus based on allegations as stale as those in this case could encourage dilatory tactics and belated last-ditch assertions of bias that would harm, rather than support, public confidence in the impartiality of courts. Cf. Isom v. Arkansas, 589 U.S. 1093, 1095 (2019) (statement of Sotomayor, J. respecting the denial of certiorari) (agreeing that certiorari should be denied because the petitioner "did not raise the issue of [a judge's potential bias], either at his capital trial or for nearly 15 years thereafter").

Accordingly, the general proposition cited by petitioner that review of recusal issues may "prevent a substantive injustice in . . . future cases by encouraging a judge or litigant to more carefully examine possible grounds for disqualification and to promptly disclose them when discovered," Pet. 14-15 (quoting Liljeberg, 486 U.S. at 868) (brackets omitted), cuts definitively against him here, where he seeks relief despite the decade-long delay. Likewise, while petitioner asserts (Pet. 14-15) that his capital sentence makes mandamus appropriate here, postconviction claimants in death-penalty cases in fact have a particular incentive to prolong collateral review. See Pet. App. 4a; see also, e.g., Rhines v. Weber, 544 U.S. 269, 277-278 (2005). And

even in capital cases, this Court defers to the factual findings of lower courts concerning bias. See, e.g., Wainwright v. Witt, 469 U.S. 412, 428-430 (1985).

2. Petitioner contends (Pet. 15-18) that this Court should grant certiorari to resolve a circuit conflict on the standard of review for a writ of mandamus when a litigant is seeking recusal. But this Court's intervention is not warranted. Petitioner acknowledges that the court of appeals aligns with "most other circuits" in requiring clear and indisputable evidence to order a judge's recusal through mandamus is the norm. Pet. 15; see In re Gibson, 950 F.3d 919, 924 n.2 (7th Cir. 2019) (collecting cases). He bases his assertion of a circuit conflict on the Seventh Circuit's application of de novo review to mandamus petitions seeking recusal. That outlier rule provides no basis for certiorari.

Before overturning prior circuit precedent, the Seventh Circuit employed a "three-decade ban" on review of the denial of a recusal motion under Section 455(a) in a direct appeal following final judgment, instead allowing review of such denials only through mandamus. See In re Gibson, 950 F.3d at 922. That outlier approach led the court to apply de novo review to mandamus petitions seeking denial of recusal motions. Id. at 923 (explaining that the "unusually relaxed mandamus standard stemmed from the unavailability of direct review"). After abandoning its

mandamus-only approach, the Seventh Circuit has acknowledged that the "logic of [its] application of a de novo standard of review of this type of mandamus petition" has been "undermine[d]." Ibid. And while the Seventh Circuit has not yet had occasion to overrule precedent applying that approach, ibid., its concededly outdated approach provides no basis to question the court of appeals' correct application of the traditional mandamus standard in this case.

Petitioner further contends (Pet. 17) that whereas the court of appeals applied a doubly deferential standard because it applied the "clear and indisputable" standard to a district court's discretionary recusal decision, the Third Circuit "collapse[es]" the abuse of discretion standard for recusal and the clear and indisputable standard for mandamus "into a single inquiry." Pet. 17 (citing In re Kensington Int'l Ltd., 368 F.3d at 301). But petitioner cites no case where any distinctions between those highly deferential standards would make a difference, including his own. The petition thus fails to establish that this Court's intervention is needed to address the standard of review for a petition for a writ of mandamus challenging the denial of a recusal motion.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

D. JOHN SAUER
Solicitor General
Counsel of Record

HARMEET K. DHILLON
A. TYSEN DUVA
Assistant Attorneys General

JESUS A. OSETE
Principal Deputy Assistant
Attorney General

ANN O'CONNELL ADAMS
KATHERINE McCALLISTER
Attorneys

JULY 2026