

In The  
**Supreme Court of the United States**

FRANK POLO (Pro Se),

Applicant,

v.

SCOTT BERNSTEIN, et al.,

Respondents.

ORIGINAL

**FILED**  
**FEB 16 2026**  
OFFICE OF THE CLERK  
SUPREME COURT, U.S.

ON PETITION FOR WRIT OF CERTIORARI FROM THE COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT, CASE NO. 25-10016

**PETITION FOR WRIT OF CERTIORARI**

Frank E. Polo Sr.  
Pro Se  
1475 SW 8<sup>th</sup> St Apt 411  
Miami, FL. 33135  
Phone: (305) 901-3360  
Email: Frank.Polo@msn.com

Petitioner

**I. QUESTIONS PRESENTED FOR REVIEW**

1. Whether, when a litigant presents record-supported grounds that, taken cumulatively, would cause a reasonable observer to question a federal judge's impartiality under 28 U.S.C. § 455(a) and the Due Process Clause, a district court may deny recusal and enter dispositive judgment without meaningfully addressing the asserted appearance-of-impartiality concerns.

2. Whether a court of appeals may affirm dismissal of a case without meaningfully engaging preserved arguments that the denial of recusal failed to apply § 455(a)'s objective cumulative-circumstances standard, thereby leaving unresolved whether the case was adjudicated by a constitutionally impartial tribunal..

**II. LIST OF PARTIES TO THE PROCEEDING**

- 3. Scott Bernstein;
- 4. Marcia Del Rey;
- 5. Spencer Multack;
- 6. Thomas Logue;
- 7. St. Thomas University;
- 8. Manuel Segarra; and
- 9. Segarra & Associates, P.A.
- 10. Merlin Hernandez
- 11. Randolph Martinez

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**STATUTORY PROVISIONS:**

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## V. OPINIONS BELOW

1. The unpublished opinion of the United States Court of Appeals for the Eleventh Circuit affirming the judgment below is unreported. *Polo v. Bernstein*, No. 25-10016, ECF No. 51 (11th Cir. Oct. 1, 2025) (unpublished). It is reproduced in the Appendix. [APPENDIX A]

2. The order of the Eleventh Circuit denying rehearing is unreported. *Polo v. Bernstein*, No. 25-10016 (11th Cir. Nov. 21, 2025). It is reproduced in the Appendix. [APPENDIX B]

3. The district court's order denying Petitioner's motion for judicial recusal is unreported. *Polo v. Bernstein*, No. 1:23-cv-21684, ECF No. 54 (S.D. Fla. July 22, 2024). It is reproduced in the Appendix. [APPENDIX C]

4. The district court's final order dismissing the operative complaint is unreported. *Polo v. Bernstein*, No. 1:23-cv-21684, ECF No. 55 (S.D. Fla. July 22, 2024). It is reproduced in the Appendix. [APPENDIX D]

5. The district court's order denying Petitioner's motion to alter or amend the judgment under Rule 59(e) is unreported. *Polo v. Bernstein*, No. 1:23-cv-21684, ECF No. 72 (S.D. Fla. Dec. 4, 2024). It is reproduced in the Appendix. [APPENDIX E]

## VI. BASIS FOR JURISDICTION

6. The judgment of the United States Court of Appeals for the Eleventh Circuit was entered on October 1, 2025. A timely petition for rehearing was denied on November 21, 2025.

7. This Court has jurisdiction under 28 U.S.C. § 1254(1).

8. This petition is timely filed within 90 days of the denial of rehearing.

See Sup. Ct. R. 13.

## **VII. STATUTORY AND CONSTITUTIONAL PROVISIONS**

9. The Due Process Clause of the Fifth Amendment to the United States Constitution provides:

“No person shall ... be deprived of life, liberty, or property, without due process of law.”

10. Title 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.

## **VIII. RELATED PROCEEDINGS IN FEDERAL COURT**

11. Polo v. Bernstein (1:23-cv-21684), District Court, S.D. Florida.

12. Frank Polo, Sr. v. Scott Bernstein (25-10016), Court of Appeals for the Eleventh Circuit.

## **IX. PETITION FOR A WRIT OF CERTIORARI**

13. Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

## **X. INTRODUCTION**

14. This petition presents a structural question concerning the treatment of recusal motions under 28 U.S.C. § 455(a) and the Due Process Clause. Petitioner moved for disqualification of the presiding district judge based on asserted appearance-of-impartiality concerns grounded in prior professional overlap within

the same judicial division and related disclosure requests. The district court denied recusal and, on the same day, dismissed the case with prejudice. The court of appeals affirmed.

15. The question presented is not whether recusal was ultimately required on these facts. It is whether § 455(a)'s objective appearance-of-impartiality standard requires meaningful engagement before a case is terminated, and whether appellate courts may affirm dispositive judgments without independently addressing preserved structural recusal arguments.

16. The integrity of federal adjudication depends not only on correct outcomes but on public confidence that cases are decided by neutral tribunals. This Court's review is warranted to clarify the obligations of district and appellate courts when substantial recusal concerns are raised prior to dispositive judgment.

## **XI. STATEMENT OF THE CASE**

17. Petitioner filed this action in the United States District Court for the Southern District of Florida on May 4, 2023, asserting federal constitutional claims and related causes of action.

18. On May 24, 2024, Petitioner moved for judicial recusal under 28 U.S.C. § 455(a), asserting that cumulative circumstances—including prior professional overlap within the same judicial division that had not been disclosed at the time of assignment and procedural rulings that, in Petitioner's view, bore upon the appearance of impartiality—required disqualification under the objective standard of § 455(a). [APPENDIX F].

19. On July 22, 2024, the district court denied the recusal motion.

20. On the same day, the district court dismissed the operative complaint with prejudice on shotgun-pleading grounds.

21. Petitioner timely moved to alter or amend the judgment under Fed. R. Civ. P. 59(e). The district court denied that motion on December 4, 2024.

22. Petitioner appealed. The United States Court of Appeals for the Eleventh Circuit affirmed in an unpublished opinion on October 1, 2025. The court of appeals denied rehearing on November 21, 2025.

23. This petition timely follows.

## **XII. REASONS FOR GRANTING THE WRIT**

### **A. This Case Presents an Important Structural Question Concerning the Required Treatment of Recusal Motions Under § 455(a).**

24. Section 455(a) codifies Congress's judgment that justice must not only be fair but must appear fair. A federal judge must disqualify himself whenever his "impartiality might reasonably be questioned." This Court has repeatedly emphasized that the appearance of justice is itself a constitutional concern. Liljeberg v. Health Servs. Acquisition Corp., 486 U.S. 847, 860–64 (1988); Caperton v. A.T. Massey Coal Co., 556 U.S. 868, 883–90 (2009); In re Murchison, 349 U.S. 133, 136 (1955).

25. This case presents not merely a dispute about recusal in a single proceeding, but a question about the obligation of appellate courts to meaningfully review preserved structural impartiality claims before affirming dispositive judgments. Where a litigant invokes § 455(a)'s objective cumulative-circumstances

standard, appellate review cannot be reduced to characterizing the arguments as dissatisfaction with adverse rulings or speculative association. The appearance-of-impartiality inquiry protects a structural guarantee. If appellate courts may affirm without addressing whether the cumulative circumstances satisfy § 455(a)'s objective test, the statutory safeguard risks erosion through procedural disposition rather than direct adjudication.

26. Petitioner filed a motion for recusal under § 455(a) raising cumulative appearance-of-impartiality concerns [APPENDIX F]. The district court denied recusal and, on the same day, entered dispositive judgment dismissing the action with prejudice [APPENDIX C and D].

**B. The Decision Below Permits Dispositive Rulings to Insulate Recusal Denials From Meaningful Appellate Review.**

27. On appeal, Petitioner preserved his § 455(a) and due process arguments [APPENDIX A].

28. The court of appeals affirmed dismissal and characterized Petitioner's recusal contentions as dissatisfaction with adverse rulings and speculative association [APPENDIX A]. The opinion did not separately analyze whether the cumulative circumstances satisfied § 455(a)'s objective standard.

29. By affirming dismissal without independent analysis of the structural recusal issue [APPENDIX A], the decision below risks allowing structural recusal claims to be subsumed within procedural affirmances.

30. Clarification is warranted to ensure that § 455(a) remains an objective safeguard and that structural impartiality concerns receive meaningful appellate review.

**C. This case is a suitable vehicle.**

31. The procedural posture cleanly presents the question. Petitioner moved for recusal under § 455(a). The district court denied recusal and dismissed the case the same day. The court of appeals affirmed and denied rehearing.

**XIII. CONCLUSION AND PRAYER FOR RELIEF**

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

By: 

Frank Polo Sr.

Petitioner, pro se.

1475 SW 8<sup>th</sup> St Apt. 411

Miami, FL. 33135

Telephone: 305-901-3360

Email: Frank.Polo@msn.com