No. _____

IN THE SUPREME COURT OF THE UNITED STATES

PHOSAVAN KHAMNIVONG,

PETITIONER,

vs.

UNITED STATES OF AMERICA,

RESPONDENT.

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

PETITION FOR WRIT OF CERTIORARI

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Appointed Under the Criminal Justice Act of 1964

QUESTION PRESENTED

Whether, contrary to the Ninth Circuit's decision below, federal district judges have "a personal duty to disclose on the record any circumstances that may give rise to a reasonable question about their impartiality," *United States v. Murphy*, 768 F.2d 1518, 1537 (7th Cir. 1985), as the Third, Seventh, and Tenth Circuits have held.

PARTIES TO THE PROCEEDING

Petitioner is Phosavan Khamnivong, the petitioner/appellant in the proceedings below.

Respondent is the United States of America.

STATEMENT OF RELATED PROCEEDINGS

The proceedings identified below are directly related to the above-captioned case in this Court.

- *United States v. Khamnivong*, No. 3:13-cr-92-RRB-2, U.S. District Court for the District of Alaska. Order denying § 2255 motion to vacate entered December 17, 2024.
- *United States v. Khamnivong*, No. 25-245, U.S. Court of Appeals for the Ninth Circuit. Decision entered April 20, 2026. Petition for rehearing or rehearing en banc denied on August 13, 2026.
- *United States v. Seugasala*, No. 3:13-cr-00092-RRB-1, U.S. District Court for the District of Alaska. Order denying motion for relief from judgment under Federal Rule of Civil Procedure 60(b) entered May 30, 2024.
- *United States v. Seugasala*, No. 24-44, U.S. Court of Appeals for the Ninth Circuit. Decision entered April 20, 2026. Petition for rehearing or rehearing en banc denied on August 13, 2026.

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The Ninth Circuit Court of Appeals' decision denying rehearing en banc is unpublished but reproduced in the appendix at App-20.

The court of appeals' decision affirming the district court's denial of Mr. Khamnivong's § 2255 petition is available at: 2026 U.S. App. LEXIS 11470, 2026 LX 151167 or 2026 WL 1068512. App-1.

The district court's orders denying Mr. Khamnivong's § 2255 petition and analyzing the conflict of interest claim are unpublished. *See* App-4; App-10.

JURISDICTION

On April 20, 2026, the United States Court of Appeals for the Ninth Circuit entered its decision affirming the district court's denial of petitioner's petition under 28 U.S.C. § 2255. On August 13, 2026, the Ninth Circuit denied petitioner's petition for rehearing or rehearing en banc. The district court had jurisdiction over the underlying criminal case pursuant to 18 U.S.C. § 3231 and jurisdiction over Mr. Khamnivong's § 2255 petition under 28 U.S.C. § 2255. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

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.

INTRODUCTION

This petition presents the question of whether a district judge errs when he fails to personally disclose a potential conflict of interest to the parties involved in a criminal case. In this case, District Judge Ralph Beistline presided over a criminal trial in which an individual named Ricky Sierer played a central role in the most serious charged conduct: federal kidnapping. Though he was never indicted, and never called as a witness, the government's evidence established that Mr. Sierer facilitated the kidnapping at the heart of this case. He arranged for the victim to meet up with his alleged kidnappers (Mr. Khamnivong and his co-defendant Stuart Seugasala[1]). He was repeatedly in touch with the victim throughout the course of the day leading up to the kidnapping. And he even called the victim during the kidnapping itself and listened as Mr. Seugasala explained that he was assaulting the victim and that the victim was about to die.

Unbeknownst to Mr. Khamnivong, this was not the first time Judge Beistline had encountered Ricky Sierer. As a sworn declaration Mr. Sierer submitted in connection with Mr. Khamnivong's § 2255 petition reflects, Mr. Sierer had been involved in a multi-year dating relationship with Judge Beistline's daughter. He had often visited the Beistline home—at times even staying the night. And his sister was also one of Judge Beistline's close friends, having known him for over twenty years and attended the same church.

Even though he acknowledged—in the course of the § 2255 proceedings—that

[1] Mr. Seugasala raised a materially identical issue to the one at issue in this petition on appeal in *United States v. Seugasala*, No. 24-44 (9th Cir.).

he had recognized Mr. Sierer when he heard his name and saw his face during Mr. Khamnivong's trial, Judge Beistline never notified the parties of any connection between him and Mr. Sierer. And he denied Mr. Khamnivong's eventual § 2255 petition, concluding that he was under no personal obligation to tell Mr. Khamnivong's attorneys about this relationship; asserting that—even if Mr. Sierer's declaration had been entirely accurate—it did not reasonably call Judge Beistline's impartiality into question; and also questioning (without affirmatively ruling on) the accuracy of Mr. Sierer's declaration.

For its part, the Ninth Circuit affirmed Judge Beistline's decision to deny Mr. Khamnivong's § 2255 petition, holding—contrary to the rule announced by the Seventh Circuit in *Murphy*—that Judge Beistline had no personal obligation to disclose his relationship with Mr. Sierer to the parties to Mr. Khamnivong's criminal case.

The Court should grant certiorari to resolve the circuit split over whether judges have a personal obligation to disclose possible grounds for disqualification on the record. As the American Bar Association and numerous states have recognized, this is an exceptionally important issue that goes to the heart of the integrity of the American judicial system. This case presents an ideal vehicle to resolve it.

STATEMENT OF THE CASE

I. The underlying criminal trial—and Ricky Sierer's crucial role as an unindicted co-conspirator.

In 2015, a jury convicted Phosavan Khamnivong of conspiracy to distribute and possess with intent to distribute at least 500 grams of methamphetamine (in

violation of 21 U.S.C. §§ 846 and 841(a)(1)), two counts of kidnapping (in violation of 18 U.S.C. § 1201(a)(1)), and two § 924(c) counts (one in relation to drug trafficking, the other in relation to kidnapping) (AB at 4-5).[2] Judge Beistline—who presided over Mr. Khamnivong's trial, sentencing, and habeas proceedings—originally sentenced Mr. Khamnivong to 924 months in prison (AB at 5). After the Ninth Circuit reversed one of Mr. Khamnivong's § 924(c) convictions—on the basis that kidnapping is not a crime of violence—Judge Beistline resentenced Mr. Khamnivong to 720 months in prison (*id.*). On August 12, 2022, the Ninth Circuit affirmed that sentence. *See United States v. Khamnivong*, 2022 WL 3334979 (9th Cir. Aug. 12, 2022).

By far the most serious conduct in Mr. Khamnivong's case—and the conduct that drove his sentence—was the two kidnappings. The government's theory of these two kidnappings was that Mr. Khamnivong and three confederates, including co-defendant Stuart Seugasala, lured two drug dealers—Isaac Samples and Courtney Guy—to an apartment, held them there against their wills, and sodomized them with a curling iron (AB at 2-4). They committed this kidnapping and assault as punishment for Mr. Guy's having failed to timely repay a drug debt—and they only let Mr. Guy and Mr. Samples go after Mr. Guy promised to repay (*id.*).

As the government emphasized at Mr. Khamnivong's trial, an unindicted

[2] "AB" refers to the government's answering brief filed in the Ninth Circuit Court of Appeals. "App." refers to the appendix to this petition. "OB" refers to Mr. Khamnivong's opening brief in the Ninth Circuit and "ER" refers to the excerpts of record filed in the Ninth Circuit.

coconspirator—Ricky Sierer—played a central role in this kidnapping conduct. On the day of the kidnapping, Mr. Sierer was repeatedly in touch with Mr. Guy by telephone (2-ER-219). He arranged for him to meet up with Mr. Seugasala on the pretense of consummating a drug deal (2-ER-219). He even called Mr. Guy during the kidnapping itself; Mr. Seugasala answered that phone call, placed the phone on speakerphone, and told Mr. Sierer that he was assaulting Mr. Guy and that Mr. Guy was about to die (2-ER-236). The government also presented evidence that about a month after Mr. Guy's kidnapping and assault—while Mr. Guy still owed Mr. Seugasala a drug debt—Mr. Guy received a phone call telling him that Mr. Seugasala and Mr. Sierer were looking for him (2-ER-348).

And even though Mr. Sierer was neither charged nor called as a witness at Mr. Khamnivong's trial, the government's evidence left absolutely no room for doubt as to Mr. Sierer's identity as a central actor in the underlying criminal conduct: the government and its witnesses referred to Mr. Sierer by name, described his role in the kidnapping, and even presented a photograph of Mr. Sierer to Mr. Khamnivong's jury (OB at 8). Despite this, at no time during Mr. Khamnivong's trial did Judge Beistline address his connection with Mr. Sierer—or even notify the parties that he knew Mr. Sierer. He failed to do this even though—years after Mr. Khamnivong's trial—Judge Beistline acknowledged that he had recognized Mr. Sierer when he heard his name and saw his face during Mr. Khamnivong's trial (1-ER-16-18).

II. The § 2255 proceedings—and Mr. Khamnivong's discovery of the undisclosed personal relationship between Mr. Sierer and Judge

Beistline.

In late 2023 or early 2024, attorneys for Mr. Seugasala learned about the relationship between Judge Beistline and Mr. Sierer for the first time (OB at 9 (citing 2-ER-174, 176)). On February 13, 2024, Mr. Sierer signed a sworn declaration attesting to the nature of that relationship (2-ER-174). Mr. Sierer attested that he had been involved in a multi-year dating relationship with Judge Beistline's daughter, Tammy Beistline (2-ER-174). Mr. Sierer had dated Tammy for two years while the two were in high school (*id.*). After a brief breakup, Mr. Sierer and Tammy then resumed their dating relationship a few years later (*id.*).

When he was dating Tammy, Mr. Sierer often visited the Beistline house and had friendly interactions with Judge Beistline (*id.*). He even, at times, stayed over in the Beistline home (*id.*). Additionally, Mr. Sierer attested that his sister has known Judge Beistline for over twenty years, attends the same church, and is Judge Beistline's close friend (*id.*).

Mr. Khamnivong's § 2255 petition was already pending before Judge Beistline by the time Mr. Khamnivong learned this new information (2-ER-67-80). Once he discovered Judge Beistline's relationship with Mr. Sierer, Mr. Khamnivong amended that petition, adding the claim that Judge Beistline should have recused himself based on his undisclosed personal relationship with Mr. Sierer (2-ER-21-39).

On December 17, 2024, Judge Beistline denied Mr. Khamnivong's § 2255 petition (1-ER-2, 7, 10-19). With respect to Mr. Khamnivong's recusal claim, Judge Beistline confirmed—for the first time since Mr. Khamnivong was indicted—that he

knew Mr. Sierer and his sister (1-ER-17-18). But he held that his relationship with the Sierers did not present actual or apparent bias.

Judge Beistline held that—even if Mr. Sierer's declaration was "completely accurate"—it did "not set forth a [legal] basis for recusal" (1-ER-16). But he also questioned the accuracy of Mr. Sierer's declaration, asserting that "[t]o the best of the undersigned's recollection . . . . [t]he only time the undersigned recalls ever seeing and speaking with [Mr. Sierer] occurred in roughly 1994 when [he] stopped by the family home to visit [Tammy]" (1-ER-17). In his order, Judge Beistline specifically recalled that in 1994 he "opened [his] door, welcomed the young man in, and called for [Tammy]" (*id.*). He denied having any other "in-person contact" with Mr. Sierer and denied any recollection that Mr. Sierer and Tammy dated—though he did specifically recall that they "socialized for a period of time as high school students" (*id.*).

As for Mr. Sierer's sister, Judge Beistline acknowledged knowing her through church, but stated that their "association was for a relatively short period of time, well over 25 years ago, and dealt solely with church related matters in group church settings" (1-ER-18). Judge Beistline concluded that neither his "casual acquaintance[]" with Mr. Sierer—nor his relationship with Mr. Sierer's sister—presented either the appearance or actuality of bias (1-ER-17, 18). He accordingly denied Mr. Khamnivong's § 2255 recusal claim (1-ER-8).

III. The Ninth Circuit's decision affirming Judge Beistline's denial of the recusal claim.

On appeal, Mr. Khamnivong argued that Judge Beistline should have

recused himself under the applicable standard set forth at 28 U.S.C. § 455(a), which requires a judge's recusal "in any proceeding in which his impartiality might reasonably be questioned" (OB at 11-16). That standard was satisfied, Mr. Khamnivong argued, by information that "Judge Beistline's daughter dated a major unindicted, non-testifying witness/co-conspirator" who was "the person responsible for" facilitating the kidnapping and assault in this case (OB at 16). At minimum, Mr. Khamnivong argued, "[t]his information should have been promptly disclosed to Khamnivong's lawyer" (OB at 16). Because of these errors, Mr. Khamnivong argued, his conviction and sentence were imposed in violation of federal law, and they accordingly needed to be vacated.

The Ninth Circuit rejected these arguments. The court acknowledged that Judge Beistline's personal relationship with Mr. Sierer was "undisclosed," but it nonetheless affirmed the district court's denial of Mr. Khamnivong's § 2255 petition on the basis that "Judge Beistline properly exercised his discretion when he held that a reasonable person would conclude that his minimal contacts with the witness [i.e., Mr. Sierer] would not jeopardize his impartiality." *Khamnivong*, 2026 U.S. App. LEXIS 11470, at *2. It rejected the proposition that Judge Beistline separately violated § 455(a) when he failed to personally disclose his relationship with Mr. Sierer to the litigants.

Mr. Khamnivong's petition for rehearing or rehearing en banc was denied on August 13, 2026. *See* App-20. He now petitions for certiorari.

REASONS FOR GRANTING THE PETITION

I. The Court should grant Mr. Khamnivong's petition for a writ of certiorari to resolve the circuit split over a crucially important issue: whether district judges have a personal obligation to disclose possible conflicts of interest in a case.

Certiorari is warranted because the Ninth Circuit's opinion creates a circuit split—and conflicts with this Court's own views—on an issue of central importance to the integrity of the judicial system: whether judges have a personal obligation to disclose, on the record, potential conflicts of interest when they arise in a case.

28 U.S.C. § 455(a) governs disqualification of judges in the event of a conflict of interest. It requires a judge to recuse himself "in any proceeding in which his impartiality might reasonably be questioned." *Id.* As the Ninth Circuit has itself recognized, "[t]he goal of section 455(a) is to avoid even the appearance of partiality." *United States v. Holland*, 519 F.3d 909, 913 (9th Cir. 2008); *see Liteky v. United States*, 510 U.S. 540, 548 (1994) (what matters under § 455(a) "is not the reality of bias or prejudice but its appearance"). Because of this, § 455(a) "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," *United States v. Carey*, 929 F.3d 1092, 1104 (9th Cir. 2019) (citing *In re Murchison*, 349 U.S. 133, 136 (1955)), and the recusal test under § 455(a) is accordingly "objective . . . inquiry . . . made from the perspective of a reasonable observer." *Microsoft Corp. v. United States*, 530 U.S. 1301, 1302 (2000) (statement of Rehnquist, C.J.).

There is broad consensus among the circuits concerning § 455(a)'s operative standard for recusal. But there is dissensus on the crucial, threshold procedural issue in this case: whether district judges have a personal obligation to disclose

potential conflicts of interest. Courts addressing this issue have uniformly recognized the practical value of district judges proactively placing potential conflicts of interest on the record, with even the Ninth Circuit having once stated that § 455(a) imposes a "de facto disclosure requirement" on the judge. *United States v. Bosch*, 951 F.2d 1546, 1555 n.6 (9th Cir. 1991). A judge's personally disclosing possible grounds for recusal resolves an incongruity created by the fact that, on the one hand, "a party seeking recusal has the burden of producing facts which would raise reasonable doubt as to the impartiality of the judge," *In re Spirtos*, 298 B.R. 425, 531 (C.D. Cal. 2003), while, on the other hand, judges themselves are typically in the best position to know about circumstances giving rise to the possibility of actual or perceived partiality. *Cf. Parker v. Connors Steel Co.*, 855 F.2d 1510, 1525 (11th Cir. 1988) (recognizing that a recusal motion could have been avoided if judge had disclosed grounds for recusal to the parties).

Despite the practical value of disclosure, the circuit courts are intractably split on whether district judges must, in fact, personally disclose possible grounds for recusal. The Seventh Circuit has squarely and repeatedly held that § 455(a) "places on the judge a personal duty to disclose on the record any circumstances that may give rise to a reasonable question about his impartiality." *Murphy*, 768 F.2d at 1537; *see also Listecki v. Official Comm. of Unsecured Creditors*, 780 F.3d 731, 750 (7th Cir. 2015) ("The onus is on the judge to ensure any potentially disqualifying information is brought to the attention of the litigants."). Similarly, the Third Circuit has recognized that "in the recusal context . . . if there is to be a

burden of disclosure, that burden is to be placed on the judge to disclose possible grounds for disqualification." *In re Kensington Int'l Ltd.*, 368 F.3d 289, 313 (3d Cir. 2004). The Tenth Circuit is in accord. *See In re McCarthey*, 368 F.3d 1266, 1269 (10th Cir. 2004) ("A judge must make disclosure on the record of circumstances that may give rise to a reasonable question about his impartiality."). By contrast, though it has adverted to a "de facto" personal disclosure obligation, the Ninth Circuit does not require district judges to personally disclose potential conflicts of interest to the parties. *Bosch*, 951 F.2d at 1555 n.6; *see also Perry v. Brown*, 671 F.3d 1052, 1095 (9th Cir. 2012) (declining to find personal obligation to disclose potential conflicts of interest).

The Ninth Circuit's approach conflicts with the longstanding rule in the Tenth and Seventh Circuit as well as the Third Circuit's own recognition that § 455(a) places a personal burden on district judges to disclose possible conflicts of interest to the litigants before them. The Ninth Circuit's approach also deviates from this Court's guidance in *Liljeberg v. Health Servs. Acquisition Corp.*, where the Court emphasized the importance of judges "carefully examin[ing] possible grounds for disqualification *and [] promptly disclos[ing] them when discovered*." 486 U.S. 847, 868 (1988) (emphasis added). The Court should grant certiorari to conform Ninth Circuit § 455 jurisprudence to the Seventh Circuit's approach and to this Court's own guidance in *Liljeberg*.

This issue is exceptionally important. In the years since § 455 was last amended, numerous authorities—including the American Bar Association—have

emphasized the importance of judges promptly disclosing potential bases for recusal to the parties. Thus, the American Bar Association's Model Code of Judicial Conduct provides that "[a] judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification." ABA Model Code of Judicial Conduct Canon 2.11, cmt. 5. Numerous states now follow this same basic approach.[3] And, as noted, this Court itself has emphasized the importance of judges "carefully examin[ing] possible grounds for disqualification *and [] promptly disclos[ing] them when discovered*." *Liljeberg*, 486 U.S. at 868 (emphasis added).

This case vividly illustrates the wisdom of a rule requiring a judge to disclose potential conflicts of interest to the parties. As Judge Beistline's order denying Mr.

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[3] *See* Alaska Code of Jud. Conduct Canon 3E(1) cmt.; Ariz. Code of Jud. Conduct r. 2.11 cmt. 5; Ark. Code of Jud. Conduct r. 2.11 cmt. 5; Cal. Code of Jud. Ethics Canon 3E(2); Colo. Code of Jud. Conduct r. 2.11 cmt. 5; Fla. Code of Jud. Conduct Canon 3E(1) cmt.; Ga. Code of Jud. Conduct r. 2.11 cmt. 2; Idaho Code of Jud. Conduct r. 2.11 cmt. 5; Ill. Code of Jud. Conduct r. 2.11 cmt. 5; Ind. Code of Jud. Conduct r. 2.11 cmt. 5; Iowa Ct. R. 51:2.11 cmt. 5; Kan. Code of Jud. Conduct r. 2.11 cmt. 5; Ky. Code of Jud. Conduct r. 2.11 cmt. 5; Md. Rule 18-102.11 cmt. 4; Mass. Code of Jud. Conduct r. 2.11 cmt. 5; Minn. Code of Jud. Conduct r. 2.11 cmt. 5; Miss. Code of Jud. Conduct Canon 3E(1) cmt.; Mont. Code of Jud. Conduct r. 2.12 cmt. 5; Neb. Rev. Code of Jud. Conduct § 5-302.11 cmt. 5; Nev. Code of Jud. Conduct r. 2.11 cmt. 5; N.H. Code of Jud. Conduct r. 2.11 cmt. 5; N.J. Code of Jud. Conduct r. 3.17(C); N.M. R. Ann. 21-211 cmt. 8; N.D. Code of Jud. Conduct r. 2.11 cmt. 6; Ohio Code of Jud. Conduct r. 2.11 cmt. 5; Okla. Code of Jud. Conduct r. 2.11 cmt. 5; Pa. Code of Jud. Conduct r. 2.11 cmt. 5; R.I. Code of Jud. Conduct r. 2.11 cmt. 5; S.C. Code of Jud. Conduct Canon 3E(1) cmt.; S.D. Code of Jud. Conduct Canon 3E(1) cmt.; Tenn. Code of Jud. Conduct r. 2.11 cmt. 5; Utah Code of Jud. Conduct r. 2.11 cmt. 5; Vt. Code of Jud. Conduct r. 2.11 cmt. 5; Va. Canons of Jud. Conduct Canon 1.D.4; Wash. Code of Jud. Conduct r. 2.11 cmt. 5; W. Va. Code of Jud. Conduct r. 2.11 cmt. 5; Wis. Sup. Ct. R. 60.04(4) cmt.; Wyo. Code of Jud. Conduct r. 2.11 cmt. 5; D.C. Code of Jud. Conduct r. 2.11 cmt. 5.

Khamnivong's § 2255 petition reflects, he recognized Mr. Sierer when his name came up during trial. He knew he had a personal relationship with Mr. Sierer. Nevertheless, he declined to disclose that relationship to the parties. As a result, there was never any discussion on the record about the nature of Judge Beistline's relationship with Mr. Sierer. Nor, needless to say, were the parties able to engage in a colloquy with Judge Beistline to develop a clear and complete account of that relationship. Absent this process, the appellate court was left to parse—years later—an, at best, indeterminate record that raises truly troubling questions about the extent of Judge Beistline's relationship with a drug dealer who facilitated horrific acts of violence in this case.

The judicial-recusal regime is essential to the integrity of the justice system. *See United States v. Perez*, 956 F.3d 970, 975 (7th Cir. 2020) ("[V]iolations of § 455 affect the integrity of and public confidence in the judicial system as a whole. . . ."). This case, in turn, stands as a posterchild for why the Seventh and Third Circuits' approach to disclosure is a critical piece of the judicial-recusal regime. It is exceptionally important for this Court to grant certiorari and adopt that approach in this case.

CONCLUSION

For the reasons stated above, certiorari is warranted, and Mr. Khamnivong respectfully asks the Court to grant it.

Date: November 12, 2026

Respectfully submitted,

s/Miles Pope

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