

JUN 26 2021

No. 20-1404

SUPREME COURT OF THE UNITED STATES

Kenyon Garrett,

Petitioner,

vs.

United States of America,

Respondent

On Petition for a Writ of Certiorari to
the United States Court of Appeals
for the Fifth Circuit

PETITION FOR REHEARING

Kenyon J Garrett

Petitioner, Pro Se

P.O. Box 132826

Tyler, TX 75713

(903) 574-0783

Kentylar88@gmail.com

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	ii
PETITION FOR REHEARING.....	1
CONCLUSION.....	7
CERTIFICATE OF COUNSEL.....	9
CERTIFICATE OF SERVICE.....	10

TABLE OF AUTHORITIES

PAGE

CASES

Aetna Life Ins. Co. v. Lavoie, 475 U.S. 813 (1986).....3

Bracy v. Gramley 520 U.S. 899 (1997).....3

Brecht v. Abrahamson, 507 U.S. 619, (1993) (Footnote Nine).....5

Caperton v. A.T. Massey Coal Co., 556 U.S. 868, 872, 129. S. cf. 2252, 173 L. Ed. 2d 1208
(2009).....3

Chauffeurs, Teamsters and Helpers Local 391 v. Terry, 494 U.S. 558 (1990).....7

Clinton v. Jones, 520 U.S. 681, 701, 117 S. Ct. 1636, 137 L. Ed. 2d 945 (1997).....6

Curtis v. Loether, 415 U.S. 189, 194 (1974).....7

In Re Murchison, 349 U.S. 133 (1955).....4

Loving v. United States, 517 U.S. 748, 757, 116 S. Ct. 1737, 135 L. Ed. 2d 36 (1996).....6

United States v. Bedoy, No.15-10438 (5th Cir. 2016).....5

United States v. L.C. Lister, Jr. 53 F.3d 66 (5th Cir.1995).....5

United States v. Juan Carlos Marin-Cardona, No. 17-11091 (5th Cir. 2018).....5

Williams v. Pennsylvania 136. S. Ct. 1899 (2016).....1, 3, 4, 6

Withrow v. Larkin, 421 U.S. 35, 47, 95, S. Ct. 1456, 43 L. Ed. 2d 712 (1975).....3

TABLE OF AUTHORITIES – (Cont'd)

PAGE

STATUTES, RULES AND, LAWS

18 U.S.C. § 1503.....5
18 U.S.C §1512.....5
28 U.S.C. §455 (a)(b)(1).....6
38 U.S.C § 1110.....7
38 U.S.C § 1710 (a) (1) (A) (B).....7
38 U.S.C § 1728 (a) (1) (2) (3).....7
American Bar Association Model Code of Judicial Conduct – Rule 2.2, Rule 2.3, Rule 2.6, Rule 2.11 (A) (1).....6
Code of Conduct for United States Judges – Canon 2, Canon3.....6
Louisiana Civil Code Tit V, Art. 2315.....7
Louisiana Civil Code Tit V, Art. 2320.....7
Louisiana Code of Judicial Conduct – Canon 2 (B), Canon 3 (A) (4), Canon 3 (C).....6
Louisiana Legal Ethics – 8.4 (a) (c) (d) (g).....5

AMENDMENTS

5th Amendment.....1, 2, 4, 5, 6, 8
6th Amendment.....5
7th Amendment.....5, 7, 8
14th Amendment.....1, 2, 4, 5, 6, 8

MISCELLANEOUS

Black's Law Dictionary Free Online Legal Dictionary 2nd Ed.....5

Separation of Power Doctrine.....5, 6, 7

PETITION FOR REHEARING

Pursuant to Sup. Ct. R. 44.2, Civil Litigant (petitioner) Kenyon J Garrett respectfully petitions this Court for an order (1) granting rehearing (2) vacating the Court's June 1, 2021, order denying certiorari (3) grant me full judgement, and/or (4) remand this case to a different circuit for further consideration. For the purposes of determining if I suffered unconstitutional bias (actual and/or judicial), prejudice, and camouflaging of bias when the Fifth Circuit's Appeal Court panel judge in this case refused to recuse himself under Williams v. Pennsylvania 136 S. Ct. 1899 (2016). Moreover, did the Fifth Circuit aid the Government by covering-up the Government's egregious misconduct in the case, and in the process of doing so violated the Separation of Power Doctrine; as well as deprived me of my constitutional rights to a fair and impartial legal process. Furthermore, the Fifth Circuit's panel judge apparent bias and prejudice in this case violated the Due Process Clause of the 5th and 14th Amendment. Additionally, this is a *Federal Tort Claims Act* (FTCA) case, so this legal matter includes the 14th Amendment, as this case also entails violations of state laws.

I submit that this Court has granted writs of certiorari in prior cases that involved allegations of bias and prejudice against multi-members Courts, especially when the risk of bias and prejudice is too high to be constitutionally tolerable. These petitions for writs of certiorari raised the same issues that I'm raising in this case, as I pray that this Court follows it past precedents regarding unconstitutional bias and prejudice used against me in this legal matter. The Appeal judge whose impartiality that's in question is a current member of the judicial council for the Fifth Circuit who recently released and refused to investigate this legal matter (Jud Mis Comp Nos. 05-21-90046 through 05-21-90064). I seek rehearing on the issues raised in this brief, and rehearing on the issues raised in my petition for a writ of certiorari.

REASONS FOR REHEARING

The grounds for this petition for rehearing are as follows:

- (1) Whether the Due Process Clause of the 5th and 14th Amendments was violated when the Appeal Court panel judge of the Fifth Circuit Court of Appeals declined to recuse himself from participation in the Court's consideration of this case?**

I was informed and provided evidence that Fifth Circuit Court of Appeal Judge Gregg Costa, who was on the panel that decided my case was a former colleague, and good friend of David C Joseph, the United States Attorney for the Western District of Louisiana who signed off on the egregious misconduct of Government Attorneys involved in my case. The lower Court's record reflects that David C. Joseph signed off on the majority of the Governments documents that were submitted into the record, and he was much involved in the Government attorneys' egregious misconduct that violated my constitutional rights. Judge Gregg Costa had an interest

in the outcome of this case which was to make sure that his former colleague, associate, and friend receive an appointment as a federal judge on his circuit.

This appointment assured that Judge Costa friend David C Joseph would receive a new Government job that entails lifetime federal pay with lifetime federal benefits. In Judge Gregg Costa single "Order" from the lower Court dated 10/28/2020 where he refused to recuse he clearly stated "Nor do I even know the AUSAs involved in this matter." Judge Costa never wrote, or denied being a friend and associate of David C. Joseph; who was the United States Attorney for the Western District of Louisiana, not an AUSA. Nor did Judge Greg Costa deny wanting to help his friend become a federal judge in his refusal to recuse motion. Moreover, Judge Gregg Costa also stated in his denial to recuse "Order" that "recusal is only warranted when I had involvement with the matter that is the subject of the appeal." However, this Court has stated that the Due Process Clause incorporates the common-law rule that a judge must recuse himself when he has a direct, personal, substantial, pecuniary interest in a case.

When my Emergency Motion to Recuse was filed, the Fifth Circuit still had jurisdiction over this case, as the lower Court's record will reflect that I specifically named David Joseph in this motion. The following undisputed facts that are located within the lower Court's record will prove that the Fifth Circuits Court of Appeal judges had unconstitutional bias and prejudice that violated the Due Process Clause of the *5th and 14th Amendment*.

My appeal to the Fifth Circuit entails egregious misconduct (criminal intent to obstruct justice) on part of the Government attorneys involved in my case. These Government attorneys included David C. Joseph. Moreover, the Government never denied their unconstitutional criminal intent to prevent me from fully and fairly presenting my case. Judge Gregg Costa knew that these allegations of intent to criminal Obstruct Justice against David C. Joseph his friend and associate, could affect his nomination to become a federal judge. Therefore, Judge Gregg Costa and the Fifth Circuit Appeals Court panel judges who were involved in the "Ruling" of my case used several undisputed unconstitutional bias and prejudice methods to dismiss my case before the U.S. Senate confirmation of David C. Joseph to his new Government position as a federal judge; which was July 28, 2020.

First, the record reflects that I caught the lower Court rushing my appeal through the Court system by issuing a "Ruling" to dismiss my case numerous days before the due date of my Reply to the Government's brief was due. This proves that the lower Court didn't have any intentions on viewing my evidence because their decision to rule against me was already written when I made the allegations and provided undisputed direct/concrete evidence that the Government attorneys that included David C. Joseph had criminal intent to obstruct this official legal proceeding. Moreover, the record reflects that the lower Court broke its own appellate rules and general "Orders" to cover-up the Government undisputed egregious misconduct, see FRAP

28. (c) which states in pertinent parts: that an appellant may file a reply to the appellee's brief, unless the court states no further briefs may be filled; which the lower Court didn't make such a ruling before entering their "Ruling" to dismiss my case. Furthermore, this undisputed fact proves that the Appeal judges colluded with Judge Gregg Costa to rush my "Ruling" through the Appeals process so there wouldn't be any issues with David C Joseph nomination process to become a federal judge. I rely on the criminal case Bracy v. Gramley 520 U.S. 899 (1997) because the judge in that case was caught rushing the petitioner case through the Court system to cover-up his criminal conduct.

Once the lower Court was caught issuing a predetermined "Ruling" in my case it used camouflage bias to cover-up their unconstitutional acts by allowing me to submit a Reply brief and a Motion to Supplement the Record brief after the fact. It was a moot issue to allow a Reply brief when the lower Court had already made their decision without viewing my evidence. Moreover, because the lower Court withdrew their predetermined "Ruling," once they were caught, then added and subtracted a few lines to their "Ruling" was still camouflage bias to hide their unconstitutional acts. "Due Process requires a fair trial before a judge without actual bias against the defendant or an interest in the outcome of his particular case," quoting Bracy v. Gramley 520 U.S. 899 (1997). This undisputed bias and prejudice in the form of a predetermined "Ruling" by the lower Court violated the Due Process clause of 5th and 14th Amendments, as the record reflects that my case was decided before it started; thus rendering the appeal process in my case unfair and unconstitutional.

Second, the Fifth Circuit Court of Appeals is a multi-member Court; therefore no one can determine what influence Judge Gregg Costa had on the rest of the Court in this legal matter. So he could get his former colleague and good friend a lifetime appointment as Federal Judge in his circuit. I rely on the precedent that this Court set in Aetna Life Ins. Co. v. Lavoie, 475 U.S. 813 (1986), to get relief in this legal matter. As Justice Brennan stated in his concurring opinion in Aetna Life Ins. Co. "And, while the influence of any single participant in the process can never be measured with precision, experience teaches us that each member's involvement plays a part in shaping the court's ultimate disposition. The participation of a judge who has a substantial interest in the outcome of a case of which he knows at the time he participates, necessarily imports a bias into the deliberative process. This deprives litigants of the assurance of impartiality that is the fundamental requirement of due process."

I also rely on the precedent this Court set in Williams v. Pennsylvania 136. S Ct. 1899 (2016), to get relief in this legal matter. In Williams v. Pennsylvania this Court stated "This Court's precedents set forth an objective standard that requires recusal when the likelihood of bias on part of the judge "is too high to be constitutionally tolerable" Caperton v. A.T. Massey Coal Co., 556 U.S. 868, 872, 129 S. Cf. 2252, 173 L. Ed. 2d 1208 (2009) quoting Withrow v. Larkin, 421 U.S. 35, 47, 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975). Then this Court stated "Applying this standard the Court concludes that Due Process compelled the justice's recusal," Williams v. Pennsylvania 136. S Ct. 1899 (2016). Even if Judge Gregg

Costa didn't have the deciding vote in this legal matter this Court precedent in Williams v. Pennsylvania provides "The fact that the interested judge's vote was not dispositive may mean only that the judge was successful in persuading most members of the Court to accept his or her position. A multimember Court must not have its guarantee of neutrality undermined, for the appearance of bias demeans the reputation and integrity not just of one jurist, but of the larger institution of which he or she is a part."

Also, the lower Court record reflects that I requested the Fifth Circuit Court of Appeals to investigate the recusal of Judge Gregg Costa from this legal matter. However, in this multi-member Court the investigation was done only by Judge Gregg Costa himself. This Court held in In re Murchinson, 349 U.S. (1955) that "no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome," as Judge Costa refused to recuse his self from this case which he had an interest in the outcome. Furthermore, Judge Costa refusal to recuse was unfair and a violation of my Due Process rights under the 5th and 14th Amendments.

Additionally, the Fifth Circuit Court of Appeals failed to ask any questions regarding the recusal of Judge Gregg Costa from the panel in this case, and by doing so they violated my Due Process rights. This Court precedent requires questions to be ask in recusal matters which the lower Court didn't ask anything, as I rely on the criminal case Rippo v. Baker, 137 S. Ct. 905 (2017) to respectfully request relief in this legal matter. In Rippo v. Baker, this Court held "The Nevada Supreme Court did not ask the questions our precedents require: whether, considering all circumstances alleged, the risk of bias was too high to be constitutionally tolerable. As a result, we grant the petition for writ of certiorari," for the reasons stated in this case this Court must grant my petition.

Third, the lower Court record reflects that the Fifth Circuit intentionally tried to cover-up the Government's attorneys' criminal intent to obstruct justice. I provided the Fifth Circuit with four undisputed facts of the Government criminal intent to obstruct justice which was listed as follows: **(1) "However, if you go forward with anymore baseless accusations I will file sanctions."** **(2) "I can of course, get the court involved if you keep trying to make this matter into something criminal"** **(3) "If I can't locate the exhibits despite an exhaustive search, there is a problem."** **(4) "If you have proof, bring it forward in the same manner that an attorney would be required to do so. I do not want to have to seek sanction or penalty but I will do so if you do not cease with disparaging remarks and baseless allegations."** The four statements listed above were sent to me in letter form, and they're contained within the record; which the Government never denied these criminal intent statements to obstruct this official legal proceeding.

Judge Gregg Costa and the Appeals Court knew that the statement labeled number one (1) was undisputed criminal "Obstruction of Justice," and would have caused problems with the now federal judge David Joseph nomination if this statement was included in their

predetermined "Ruling." Therefore, the lower Court made sure it didn't include the criminal intent statement labeled number one (1) in their predetermined "Ruling." The lower Court predetermined "Ruling" is located in the Appendix section (1-5) of my original brief to this Court. Moreover, the lower Court knew that the Government egregious misconduct fitted squarely into Brecht v. Abrahamson, 507 U.S. 619, 638 N.9 113 S. Ct. 1710, 1722 N.9, 123 L. Ed 2d 353 (1993) (Foot note Nine), but ignored this precedent when I discussed it in my brief. Furthermore, this bias and prejudice (hiding of the Government criminal intent to obstruct justice) by the lower Court deprived me of Due Process that is guaranteed under the 5th and 14th Amendment.

In addition, the lower Court knew that the Government attorneys that were involved in this case including David C. Joseph violated Louisiana Legal Ethics 8.4 (a) (c) (d) (g), with their undisputed egregious misconduct; that the Government didn't deny. Moreover, Judge Costa and the Fifth Circuit Court of Appeals knew that David C Joseph could have gotten his attorney license suspended in the State of Louisiana if they didn't hide the Government attorney's egregious misconduct in my case, given David Joseph was the U.S. Attorney who signed off on this egregious misconduct.

To further prove this unconstitutional bias and prejudice against me in this legal proceeding this Court must observe the following Fifth Circuit Court of Appeals cases that involved the Government bringing charges against petitioners for Obstructing Justice, see United States v. Bedoy, No. 15-10438 (5th Cir. 2016); United States v. L.C. Lister, Jr. 53 F.3d 66 (5th Cir. 1995); United States v. Juan Carlos Marin-Cardona, No.17-11091 (5th Cir. 2018). In these cases the lower Court articulated every legal argument to uphold or enhance "Obstruction of Justice" charges. However, the record confirms that the lower Court intentionally failed to articulate the Government criminal intent to Obstruct Justice in my case as it has done in the above case when the Government brought charges.

Fourth, this Court must rehear and grant writ of certiorari in the case because the lower Court ignored the Separation of Power doctrine by allowing the District Court to become the attorney for the Government. According to the *Black's Law Dictionary Free Online Legal Dictionary 2nd Ed* the Separation of Power doctrine is "a constitutional principal limiting powers vested in an institution or person. Government authority is divided into 3 branches: Legislative, Executive, and Judiciary." I presented the Government with questions of violations of my constitutional rights 5th, 6th, 7th, 14th Amendments, egregious misconduct of the Government attorneys, and whether violations of 28 U.S.C. § 1503 and 28 U.S.C. § 1512 in civil cases constitute violations of civil rights. These questions required answers from the Government, but the District Court in bad faith took the lead and answered these questions for the Government. In the Government's brief to the Fifth Circuit it conceded that the District Court

answered the above questions before they could offer a reply. This bias and prejudice that Judge Gregg Costa and the Fifth Circuit ignored was unfair and unconstitutional. As the Fifth Circuit knew the above questions would include answers from the former U.S. Attorney and Federal Judge David C. Joseph.

When the District Court prevented the Government from doing their job it encroach on the on the domain of the Executive branch. This encroachment by the District Court that the Fifth Circuit ignored was unconstitutional, and denied me of Due Process. *Article II* of the U.S. Constitution calls for the Executive branch to defend the interests of the United States according to the law, as *Article III* of the U.S. Constitution established the Judicial Branch to interpret the laws. The Separation of Powers doctrine restrains the three branches of the Federal Government from encroachment as this Court recognized in Clinton v. Jones, 520 U.S. 681, 701, 117 S. Ct. 137 L. Ed. 2d 945 (1997) “[e]ven when a branch does not arrogate power to itself...the separation-of-powers doctrine requires that a branch not impair another in the performance of its constitutional duties,” quoting Loving v. United States, 517 U.S. 748, 757, 116 S.Ct. 1737, 135 L. Ed. 2d 36 (1996).

Fifth, Judge Gregg Costa refusal to recuse from this legal matter violated the Due Process Clause of the *5th and 14th Amendment* as well as violated the following statues and rules: *Louisiana Code of Judicial Conduct*-Canon 2 (B), Canon 3 (A) (4), Canon 3 (C); *Code of Conduct for United States Judges*-Canon 2, Canon 3; *28 U.S.C. § 455* (a) (b) (1); *American Bar Association Model Code of Judicial Conduct* – Rule 2.2, Rule 2.3, Rule 2.6, Rule 2.11 (A) (1).

Sixth, its undisputed facts that David C Joseph nomination and confirmation process to become a federal judge in the Fifth Circuit coincides with lower Court dismissal of my case so it could protect David Joseph nomination. Judge Gregg Costa and the Fifth Circuit Appeal panel judges made sure that my appeal was dismiss before the confirmation of their friend, even when I caught Judge Costa and the panel issuing a predetermine “Ruling” as the lower Court record reflects. “Both the appearance and reality of impartial justice are necessary to the public legitimacy of judicial pronouncements and thus to the rule of law itself. When the objective risk of actual bias on the part of a judge rises to an unconstitutional level, the failure to recuse cannot be deemed harmless,” Williams v. Pennsylvania 136 S. Ct. 1899 (2016).

David Joseph time-line to become a federal judge is as follows: Nomination by President Trump on 11/20/2019; U.S. Senate Judiciary Committee Hearing on his nomination 01/08/2020; Nomination was reported out of the Senate Committee on 05/14/2020; U.S. Senate confirmed his nomination on 07/28/2020.

Kenyon J Garrett briefs and dismissal of case time-line: District Court becomes attorney for the Government and dismisses my *FRCP 59* and *FRCP 60 (b) (2) (3) (6)* motions which included

the Government attorneys egregious misconduct – 11/21/2019; Notice of Appeal to the Fifth Circuit docketed – 12/10/2020; Fifth Circuit was caught issuing their predetermined “Ruling” on 04/17/2020; Fifth Circuit issued the same “Ruling” with the exception of changing a couple of sentences on 07/24/2020.

(2) Whether a Pro Se Petitioner Seventh Amendment right to a jury trial can be denied by the lower Courts in a civil proceeding, when the disputed amount is greater than twenty dollars (\$20.00), and the jury trial was requested by the petitioner in writing in the Original Complaint under F.R.C.P 38?

My suit against the Government included actions to enforce legal rights, and various state laws such as *Louisiana Civil Code Tit V, Art. 2315* and *Louisiana Civil Code Tit V, Art. 2320*. Moreover, the entire record reflects that my father, whom this case is centered around, had legal rights to Veterans Disability Benefits that included financial payments and payments of medical care he may receive. These benefits and services are actionable under *38 U.S.C. § 1110*, *38 U.S.C § 1710 (a) (1) (A) (B)*, and *38 U.S.C. § 1728 (a) (1) (2) (3)*. If not for the negligent medical acts caused by the Department of Veteran Affairs employees my father would have received his benefits payments. Furthermore, the Department of Veterans Affairs refused to make payments for the medical care my father received that was caused by their negligent acts. None the less, the entire record reflects that I included these legal right payment amounts in this suit against the Government. I rely on the precedents set forth by this Court in the following cases to ask for relief, and to respectfully say that the denial of my 7th Amendment right to a jury trial in this legal matter was unconstitutional. As the petitioners in the following cases were granted their 7th Amendment right to a jury trial because their cases like mine were based on law and legal rights, see *Chauffeurs, Teamsters and Helper Local 391 v. Terry*, 494 U.S. 558 (1990); *Curtis v. Loether*, 415 U.S. 189, 194 (1974).

CONCLUSION

For the foregoing reasons, Civil Litigant (petitioner) Kenyon J Garrett prays that this Court (1) granting rehearing (2) vacating the Court’s June 1, 2021, order denying certiorari (3) grant me full judgement, and/or (4) remand this case to a different circuit for further consideration in light of the precedents set forth in cases listed within this brief. For the purposes of determining if I suffered unconstitutional bias (actual and/or judicial), prejudice, and camouflaging of bias when the Fifth Circuit’s Appeal Court panel judge in this case refused to recuse himself from this legal matter. Likewise, did the Fifth Circuit aid the Government by covering-up the Government’s egregious misconduct in the case, and in the process of doing so

violated the Separation of Power Doctrine; as well as depriving me of my constitutional rights to a fair and impartial legal process. Moreover, did the Fifth Circuit's panel judge apparent bias and prejudice in this case violate the Due Process Clause of the 5th and 14th Amendment? Finally, whether the denial of my 7th Amendment right to a jury trial was unconstitutional taken when this suit included the enforcement of legal rights, and the Government motion to strike my jury trial was in bad faith and untimely.

Date: June 24, 2021

Respectfully submitted,

By 

Kenyon J Garrett

Petitioner, Pro Se

P.O. Box 132826

Tyler, TX 75713

(903) 574-0783

Kentylor88@gmail.com

SUPREME COURT OF THE UNITED STATES

Kenyon Garrett,

Petitioner,

vs.

United States of America,

Respondent

On Petition for a Writ of Certiorari to
the United States Court of Appeals
for the Fifth Circuit

PETITION FOR REHEARING

CERTIFICATE OF COUNSEL

I, Kenyon J Garrett hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2



Kenyon J Garrett