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IN THE  
**Supreme Court of the United States**

ANDREW JONES, ROBERT E. BUCKTOOTH, JR.,  
CHERYL BUCKTOOTH, ROBERT BUCKTOOTH, DEBBY JONES,  
KAREN JONES, NIKKI JONES, KARONIAKATA JONES, SHAWN  
JONES, KAHENTINETHA HORN, DYHYNEYYS, AKA ALFRED  
LOGAN, JR., TEKARONTAKE, AKA PAUL DELARONDE,  
ROSS JOHN, RONALD JONES, JR., NADINE O'FIELD /  
GANONHWEIH, FKA NADINE BUCKTOOTH,

*Petitioners,*

v.

JAMES J. PARMLEY, GEORGE BEACH, PAMELA J. MORRIS,  
DENNIS J. BLYTHE, INV., JOHN F. AHERN, INV., JOSEPH W.  
SMITH, SGT., JEFFREY D. SERGOTT, TRP., MICHAEL S. SLADE,  
TRP., JAMES D. MOYNIHAN, TRP., JAMES K. JECKO, TRP.,  
ROBERT HAUMANN, SGT., MARK E. CHAFFEE, TRP.,  
CHRISTOPHER J. CLARK, TRP., PAUL K. KUNZWILER, TRP.,  
DOUGLAS W. SHETLER, TRP., PATRICK M. DIPIRRO, GREGORY  
EBERL, TRP., GARY A. BARLOW, MARK E. LEPCZYK, TRP.,  
MARTIN ZUBRZYCKO, TRP., GLENN MINER, GARY DARSTEIN,  
TRP., KEVIN BUTTENSCHON, CHRIS A. SMITH, SGT., NORMAN J.  
MATTICE, SGT., JOHN E. WOOD, THOMAS P. CONNELLY, JERRY  
BROWN, HARRY SCHLEISER, SGT., NORMAN ASHBARRY, INV.,  
JOHN DOE, 1-100, JANE DOE, 1-100, PETER S. LEADLEY, TRP.,  
GLORIA L. WOOD, TRP., DAVID G. BONNER, TRP., DENNIS J.  
BURGOS, TRP., JOHN P. DOUGHERTY, TRP., DAVID V. DYE,  
TRP., DARYL O. FREE, TRP., JAMES J. GREENWOOD,  
SGT., ROBERT B. HEATH, TRP., ANDREW HALINSKI, TRP.,  
ROBERT H. HOVEY, TRP., ROBERT A. JURELLER, TRP.,  
STEPHEN P. KEALY, TRP., EDWARD J. MARECEK, TRP.,  
RONALD G. MORSE, TRP., PAUL M. MURRAY, TRP., ANTHONY  
RANDAZZO, TRP., ALLEN RILEY, TRP., FREDERICK A. SMITH,  
TRP., STEVEN B. KRUTH, SGT., TROY D. LITTLE, TRP.,

*Respondents.*

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

**PETITION FOR REHEARING**

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March 7, 2018

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## PETITION FOR REHEARING

Pursuant to this Court's Rule 44.2, the Onondaga 15 [Petitioners] petition for rehearing of the Court's order of February 20, 2018, denying certiorari. The grounds are "limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented."

### GROUNDS FOR REHEARING

**A. Supreme Court failed to provide statutorily mandated opportunity to Onondaga 15 to waive recusal of Justice Sotomayor.**

This Court made the following order:

The petition for a writ of certiorari is denied. Justice Sotomayor took no part in the consideration or decision of this petition.

Justice Sotomayor recused herself, sua sponte, pursuant to 28 U.S.C. 455(a):

(a) Any justice, judge, or magistrate judge of the United States shall disqualify [herself] in any proceeding in which [her] impartiality might reasonably be questioned.

The Onondaga 15 "are allowed, following full disclosure of the basis for disqualification, to waive a [justice's] recusal if the ground for disqualification arises only under this provision,"<sup>1</sup> pursuant to 28 U.S.C. 455(e):

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<sup>1</sup> Howard J. Bashman, *Recusal on Appeal: An Appellate Advocate's Perspective*, 7 *The Journal of Appellate Practice and Process* 59, 63 (2005); 28 U.S.C. 455 applies to Justices of the Supreme Court. Shapiro, Geller, Bishop, Hartnett, Himmelfarb, *Supreme Court Practice* [treatise] (2013, second printing 2017), page 7, note 12]. The disqualification factors in 28 U.S.C. 455(b) could not be involved because that would have disqualified

(e) \* \* \* Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

The Supreme Court violated this Act by not providing to the Onondaga 15 this statutorily mandated "full disclosure on the record of the basis for [Justice Sotomayor's] disqualification," and by not providing the Onondaga 15 their statutory right to waive Justice Sotomayor's recusal. After all, the Onondaga 15 relied upon Second Circuit Judge Sotomayor's 2006 interlocutory opinion as the law of this case, but their request to include it in Jury instructions was denied. They would have waived her recusal if they had been given their statutory right.

The Supreme Court is not above the law. The Supreme Court violated 28 U.S.C. 455(a), (e), and the violation can only be corrected by granting this motion for rehearing so that the Onondaga 15 can waive Justice Sotomayor's recusal. Justice Sotomayor will then participate with the other 8 justices reviewing and debating the merits of the original people's Petition for a Writ of Certiorari with full procedural Due Process.

**B. Justice Sotomayor's sua sponte recusal requires lower court judges to recuse for the same reason, requiring remand for new trial.**

The Supreme Court has determined that Justice Sotomayor must recuse. Her recusal was done sua

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Justice Sotomayor from sitting on the Second Circuit panel back in 2006.

sponte. Justice Sotomayor's recusal appears to be based upon the fact that she wrote the Second Circuit interlocutory opinion in 2006 in this case [affirming the District Court's summary judgment denying qualified immunity to the New York State Police troopers (Respondents)] that is relied upon in the Onondaga 15 petition for certiorari. As a result, the other judges in the lower courts that were involved in the pretrial interlocutory decisions should have also recused from any further proceedings.

District Court Judge Scullin wrote the pretrial summary judgment in 2005 that Justice Sotomayor affirmed. Justice Sotomayor's decision to recuse in the Supreme Court establishes that Judge Scullin should have recused as trial judge for the same reason.

Furthermore, Second Circuit Judges Newman and Walker agreed with and signed Judge Sotomayor's interlocutory opinion in 2006. After the Jury verdict, this case was appealed again to the Second Circuit, culminating with the Summary Order in 2017 that is the subject of the instant petition for certiorari. Therefore, Judge Newman and Judge Walker should have recused from the panel that issued this Summary Order for the same reason that Justice Sotomayor recused at the Supreme Court.

As a result, the Supreme Court should grant this Petition for Rehearing, set aside the lower court judgments, and remand the Onondaga 15 to the District Court for a new trial with a new trial judge that is not disqualified; or, in the alternative, remand to the Second Circuit for a new hearing before a new panel.

**C. Supreme Court's secret certiorari process is an apparent sham, and denies Due Process and a fair hearing by not properly reviewing the Onondaga 15 certiorari petition.**

The Supreme Court's secret and closed certiorari procedure violates Due Process and fair hearing in violation of the Fifth Amendment. Four justices are necessary to grant a petition. The Onondaga 15 petition for certiorari was 1 of an astronomical 392 certiorari cases distributed for the February 16, 2018 Friday conference of the Justices. 391 petitions were denied. Only 1 was granted (with remand to the lower court). The Court also considered and denied all 45 listed motions for rehearing at the same Friday conference. Many other miscellaneous items were also on the Friday docket. The Friday conference normally starts at 9:30 a.m. and concludes by noon. [*Supreme Court Practice*, page 324]. There were 25 pages of case names at the conference. It would take most of the morning to merely name all the cases, before any discussion on the merits. Assume that 392 petitions may average 50 pages per petition, with appendices. It is impossible for each justice to read and meaningfully consider and debate the merits of up to 20,000 pages of complex legal submissions related to conflicting case and statutory law in 392 cases that have traveled throughout the federal and state court systems to the high court. Furthermore, up to 20,000 additional pages may have been added for review by the 9 justices from responses to the petitions. This massive docket made meaningful review impossible, Due Process impossible, and a fair hearing impossible for the scheduled items.

The Onondaga 15 will never know if their petition ever made the elite "discuss list" for the Friday conference. If the petition does not make the "discuss list" the petition is automatically denied according to *Supreme Court Practice*. And even making the "discuss list" assures that the petition will also probably be denied. The Onondaga 15 petition was probably not reviewed by the 9 justices, who, according to the *Supreme Court Practice*, rely upon a random law clerk's memo that merely summarizes the petition with usually a recommendation of denial from the "cert pool." Inexplicably, there is no record of the secret and closed Friday conferences. No record of how the 9 justices debate the merits of each petition and may or may not be persuaded by a colleague. How is this possible in the highest court that supervises a justice system that prides itself in Public hearings for all to see to preserve "Truth" and "Justice"? All we know is the petition was "denied" and Justice Sotomayor "recused." No reasons given, and the Onondaga 15 and the other 390 petitioners have no idea what review was done for any of the 391 petitions denied at the February 16 Friday conference. [*Supreme Court Practice*; pages 318-325].

The *Supreme Court Practice* notes that during the 2006-2010 Terms the Court granted only 3 of 3,532 rehearing petitions filed [page 837]. There is no appeal from a "denial" and no further petition can be filed pursuant to Rule 44.4. Thus, the Supreme Court is not accountable to anyone. As shown above, the certiorari process that is required for a petitioner to be heard by the Supreme Court denies Due Process and a fair hearing. Unless corrected by the Supreme Court, this apparent sham process will continue to flourish, while denying cases that deserve the attention of the highest court.

We all know right from wrong. We all know that the Onondaga 15 have suffered a miscarriage of justice for 20 years in the United States civil court system. Four justices were unable to do the right thing and grant certiorari. The Onondaga 15 have proven that original people of turtle island cannot obtain Equal Justice Under Law, Due Process, or a fair hearing and be heard in any court in the United States, and especially in the secret and closed Supreme Court. The Onondaga 15 have proven that the certiorari process is an apparent sham for virtually everyone in the United States.

### CONCLUSION

For the above reasons, the Court must grant the petition for rehearing. The Onondaga 15 request the Court to set aside the lower court decisions, and remand this case to the District Court for a new trial with a new trial judge that is not disqualified; or remand to the Second Circuit in front of a new panel. In the alternative, after the Court corrects its violation of the recusal law, the Onondaga 15 request that all 9 justices provide Due Process and a fair hearing and actually read and meaningfully review and debate the meritorious Onondaga 15 petition and grant certiorari.

Respectfully submitted,

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March 7, 2018

**CERTIFICATE OF COUNSEL**

I hereby certify that this petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Supreme Court Rule 44.2.

Respectfully submitted,

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