

Case No. 24-10287

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

IN RE HIGHLAND CAPITAL MANAGEMENT, L.P.

**JAMES DONDERO; HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS,
L.P.; the DUGABOY INVESTMENT TRUST; GET GOOD TRUST; and
NEXPOINT REAL ESTATE PARTNERS, LLC,**

Appellants

v.

JUDGE STACEY G. JERNIGAN,

Appellee

On Appeal From the United States District Court For the Northern District of
Texas, Dallas Division; No. 3:23-CV-0726-S

BRIEF OF APPELLANTS

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NexPoint Real Estate Partners, LLC*

Oral Argument Requested



193405424061800000000007

| Folder No(s). | Record Reference | Exhibit Description | Doc Date(s) | Page Range: |
|----------------------|--|----------------------------|-------------------------------|----------------------|
| 1 | District Court Docket | | 04/05/2023 – 04/26/2024 | 24-10287.1-6 |
| 2 | Notice of Appeal | Case No. 3:23-cv-00726-S | 03/28/2024 | 24-10287.18891-18895 |
| 3 | Exhibit A in Support of Notice of Appeal | Case No. 3:23-cv-00726-S | 03/28/2024 | 24-10287.18896-18902 |

CERTIFICATE OF SERVICE

This is to certify that this brief was served this day on all parties who receive notification through the Court's electronic filing systems.

Dated June 17, 2024

/s/Michael J. Lang (with permission)

Michael J. Lang

Attorney for Appellants

APPEAL,CLOSED,TOLIVER

**U.S. District Court
Northern District of Texas (Dallas)
CIVIL DOCKET FOR CASE #: 3:23-cv-00726-S**

Dondero et al v. Jernigan
Assigned to: Judge Karen Gren Scholer
Case in other court: USCA5, 24-10287
Cause: 28:1651 Petition for Writ of Mandamus

Date Filed: 04/05/2023
Date Terminated: 03/08/2024
Jury Demand: None
Nature of Suit: 890 Other Statutes: Other
Statutory Actions
Jurisdiction: U.S. Government Defendant

Petitioner

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Respondent

Stacey G Jernigan

Respondent

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| Date Filed | # | Docket Text |
|------------|-------------------|--|
| 04/05/2023 | <u>1 (p.7)</u> | Petition For Writ of Mandamus filed by James Dondero, Highland Capital Management Fund Advisors LP, NexPoint Real Estate Partners LLC, The Dugaboy Investment Trust, Get Good Trust. In each Notice of Electronic Filing, the judge assignment is indicated, and a link to the <u>Judges Copy Requirements</u> is provided. The court reminds the filer that any required copy of this and future documents must be delivered to the judge, in the manner prescribed, within three business days of filing. (Filing fee \$402; receipt number ATXNDC-13643538) (Attachments: # <u>1 (p.7)</u> Exhibit(s) PART 1 - Appendix to Petition for Writ of Mandamus, # <u>2 (p.3632)</u> Exhibit(s) PART 2 - Appendix to Petition for Writ of Mandamus, # <u>3 (p.3634)</u> Exhibit(s) PART 3 - Appendix to Petition for Writ of Mandamus, # <u>4 (p.3636)</u> Exhibit(s) PART 4 - Appendix to Petition for Writ of Mandamus, # <u>5 (p.3638)</u> Exhibit(s) PART 5 - Appendix to Petition for Writ of Mandamus) (Lang, Michael) Modified party text on 4/6/2023 (acm). Modified filers on 4/7/2024 (axm). (Entered: 04/05/2023) |
| 04/06/2023 | <u>2 (p.3632)</u> | New Case Notes: A filing fee has been paid. Pursuant to Misc. Order 6, Plaintiff is provided the Notice of Right to Consent to Proceed Before A U.S. Magistrate Judge (Judge Toliver). Clerk to provide copy to plaintiff if not received electronically. (acm) (Entered: 04/06/2023) |
| 04/11/2023 | <u>3 (p.3634)</u> | ADDITIONAL ATTACHMENTS (Civil Cover Sheet) to <u>1 (p.7)</u> Petition for Writ of Mandamus by Petitioners James Dondero, Highland Capital Management Fund Advisors LP, NexPoint Real Estate Partners LLC, The Dugaboy Investment Trust. |

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| | | (Lang, Michael) Modified text on 4/12/2023 (acm). (Entered: 04/11/2023) |
| 04/11/2023 | <u>4 (p.3636)</u> | CERTIFICATE OF INTERESTED PERSONS/DISCLOSURE STATEMENT by James Dondero, Highland Capital Management Fund Advisors LP, NexPoint Real Estate Partners LLC, The Dugaboy Investment Trust. (Clerk QC note: No affiliate entered in ECF). (Lang, Michael) (Entered: 04/11/2023) |
| 05/15/2023 | <u>5 (p.3638)</u> | CERTIFICATE OF SERVICE by James Dondero re <u>1 (p.7)</u> Petition for Writ of Mandamus. (Ohlinger, Alexandra) (Entered: 05/15/2023) |
| 12/14/2023 | <u>6 (p.3641)</u> | STIPULATION (<i>Stipulation to Supplement Record</i>) by Highland Capital Management LP. (Attachments: # <u>1 (p.7)</u> Proposed Order) (Annable, Zachery) (Entered: 12/14/2023) |
| 12/15/2023 | <u>7 (p.3647)</u> | ORDER re: <u>6 (p.3641)</u> Stipulation to Supplement Record. Petitioners and Respondent Highland Capital Management LP may file the referenced materials by 12/29/2023. The Court ORDERS Respondent Highland Capital Management LP to respond to the Petition for Writ of Mandamus [ECF No. <u>1 (p.7)</u>] no later than 1/8/2024. (Ordered by Judge Karen Gren Scholer on 12/15/2023) (axm) (Entered: 12/15/2023) |
| 12/29/2023 | <u>8 (p.3648)</u> | Appendix in Support filed by James Dondero, Highland Capital Management Fund Advisors LP, Highland Capital Management LP, NexPoint Real Estate Partners LLC, The Dugaboy Investment Trust re <u>1 (p.7)</u> Petition for Writ of Mandamus,,,, (<i>Joint Supplemental Appendix</i>) (Attachments: # <u>1 (p.7)</u> Exhibit(s) 1, # <u>2 (p.3632)</u> Exhibit(s) 2, # <u>3 (p.3634)</u> Exhibit(s) 3, # <u>4 (p.3636)</u> Exhibit(s) 4, # <u>5 (p.3638)</u> Exhibit(s) 5, # <u>6 (p.3641)</u> Exhibit(s) 6, # <u>7 (p.3647)</u> Exhibit(s) 7, # <u>8 (p.3648)</u> Exhibit(s) 8, # <u>9 (p.18784)</u> Exhibit(s) 9, # <u>10 (p.18791)</u> Exhibit(s) 10, # <u>11 (p.18798)</u> Exhibit(s) 11, # <u>12</u> Exhibit(s) 12, # <u>13</u> Exhibit(s) 13, # <u>14</u> Exhibit(s) 14, # <u>15 (p.18804)</u> Exhibit(s) 15, # <u>16 (p.18811)</u> Exhibit(s) 16, # <u>17 (p.18815)</u> Exhibit(s) 17, # <u>18</u> Exhibit(s) 18, # <u>19 (p.18842)</u> Exhibit(s) 19, # <u>20 (p.18846)</u> Exhibit(s) 20, # <u>21 (p.18850)</u> Exhibit(s) 21 Part 1, # <u>22 (p.18854)</u> Exhibit(s) 21 Part 2, # <u>23 (p.18858)</u> Exhibit(s) 21 Part 3, # <u>24 (p.18870)</u> Exhibit(s) 21 Part 4, # <u>25 (p.18885)</u> Exhibit(s) 22, # <u>26 (p.18891)</u> Exhibit(s) 23, # <u>27</u> Exhibit(s) 24, # <u>28</u> Exhibit(s) 25, # <u>29</u> Exhibit(s) 26, # <u>30</u> Exhibit(s) 27, # <u>31</u> Exhibit(s) 28, # <u>32</u> Exhibit(s) 29, # <u>33</u> Exhibit(s) 30 Part 1, # <u>34</u> Exhibit(s) 30 Part 2, # <u>35</u> Exhibit(s) 30 Part 3) (Annable, Zachery) (Entered: 12/29/2023) |
| 01/04/2024 | <u>9 (p.18784)</u> | Application for Admission Pro Hac Vice with Certificate of Good Standing for Attorney John A. Morris (Filing fee \$100; Receipt number ATXNDC-14287094) filed by Highland Capital Management LP (Annable, Zachery) (Entered: 01/04/2024) |
| 01/04/2024 | <u>10 (p.18791)</u> | Application for Admission Pro Hac Vice with Certificate of Good Standing for Attorney Gregory V. Demo (Filing fee \$100; Receipt number ATXNDC-14287131) filed by Highland Capital Management LP (Annable, Zachery) (Entered: 01/04/2024) |
| 01/04/2024 | <u>11 (p.18798)</u> | Application for Admission Pro Hac Vice with Certificate of Good Standing for Attorney Hayley R. Winograd (Filing fee \$100; Receipt number ATXNDC-14288530) filed by Highland Capital Management LP (Annable, Zachery) (Entered: 01/04/2024) |
| 01/05/2024 | 12 | ELECTRONIC ORDER granting <u>9 (p.18784)</u> Application for Admission Pro Hac Vice of John Morris. Important Reminder: Unless excused for cause, an attorney who is not an ECF user must register within 14 days of the date the attorney |

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| | | appears in a case pursuant to LR 5.1(f) and LCrR 49.2(g). (Ordered by Judge Karen Gren Scholer on 1/5/2024) (chmb) (Entered: 01/05/2024) |
| 01/05/2024 | 13 | ELECTRONIC ORDER granting <u>10 (p.18791)</u> Application for Admission Pro Hac Vice of Gregory Demo. Important Reminder: Unless excused for cause, an attorney who is not an ECF user must register within 14 days of the date the attorney appears in a case pursuant to LR 5.1(f) and LCrR 49.2(g). (Ordered by Judge Karen Gren Scholer on 1/5/2024) (chmb) (Entered: 01/05/2024) |
| 01/05/2024 | 14 | ELECTRONIC ORDER granting <u>11 (p.18798)</u> Application for Admission Pro Hac Vice of Hayley Winograd. Important Reminder: Unless excused for cause, an attorney who is not an ECF user must register within 14 days of the date the attorney appears in a case pursuant to LR 5.1(f) and LCrR 49.2(g). (Ordered by Judge Karen Gren Scholer on 1/5/2024) (chmb) (Entered: 01/05/2024) |
| 01/05/2024 | <u>15 (p.18804)</u> | Application for Admission Pro Hac Vice with Certificate of Good Standing for Attorney Jeffrey N. Pomerantz (Filing fee \$100; Receipt number ATXNDC-14292424) filed by Highland Capital Management LP (Annable, Zachery) (Entered: 01/05/2024) |
| 01/08/2024 | <u>16 (p.18811)</u> | CERTIFICATE OF INTERESTED PERSONS/DISCLOSURE STATEMENT by Highland Capital Management LP. (Clerk QC note: Affiliate entry indicated). (Annable, Zachery) (Entered: 01/08/2024) |
| 01/08/2024 | <u>17 (p.18815)</u> | RESPONSE filed by Highland Capital Management LP re: <u>1 (p.7)</u> Petition for Writ of Mandamus,,,, (Annable, Zachery) (Entered: 01/08/2024) |
| 01/11/2024 | 18 | ELECTRONIC ORDER granting <u>15 (p.18804)</u> Application for Admission Pro Hac Vice of Jeffrey Pomerantz. Important Reminder: Unless excused for cause, an attorney who is not an ECF user must register within 14 days of the date the attorney appears in a case pursuant to LR 5.1(f) and LCrR 49.2(g). (Ordered by Judge Karen Gren Scholer on 1/11/2024) (chmb) (Entered: 01/11/2024) |
| 01/18/2024 | <u>19 (p.18842)</u> | CERTIFICATE OF SERVICE by Highland Capital Management LP re <u>8 (p.3648)</u> Appendix in Support. (Annable, Zachery) (Entered: 01/18/2024) |
| 01/18/2024 | <u>20 (p.18846)</u> | CERTIFICATE OF SERVICE by Highland Capital Management LP re <u>16 (p.18811)</u> Cert. Of Interested Persons/Disclosure Statement, <u>17 (p.18815)</u> Response/Objection (Annable, Zachery) (Entered: 01/18/2024) |
| 01/18/2024 | <u>21 (p.18850)</u> | CERTIFICATE OF SERVICE by Highland Capital Management LP re <u>8 (p.3648)</u> Appendix in Support, <u>19 (p.18842)</u> Certificate of Service (<i>Amended Certificate of Service</i>) (Annable, Zachery) (Entered: 01/18/2024) |
| 01/18/2024 | <u>22 (p.18854)</u> | CERTIFICATE OF SERVICE by Highland Capital Management LP re <u>16 (p.18811)</u> Cert. Of Interested Persons/Disclosure Statement, <u>20 (p.18846)</u> Certificate of Service, <u>17 (p.18815)</u> Response/Objection (<i>Amended Certificate of Service</i>) (Annable, Zachery) (Entered: 01/18/2024) |
| 01/22/2024 | <u>23 (p.18858)</u> | REPLY filed by James Dondero re: <u>17 (p.18815)</u> Response/Objection (Lang, Michael) (Entered: 01/22/2024) |
| 01/22/2024 | <u>24 (p.18870)</u> | Appendix in Support filed by James Dondero re <u>23 (p.18858)</u> Reply in Support of Petition For Writ of Mandamus (Lang, Michael) (Entered: 01/22/2024) |
| 03/08/2024 | <u>25 (p.18885)</u> | Order: The Court finds that Petitioners have not proved "exceptional circumstances" sufficient to justify the extraordinary remedy of a writ of |

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| | | mandamus. The Petition for Writ of Mandamus [ECF No. [1]] is DENIED. (Ordered by Judge Karen Gren Scholer on 3/8/2024) (ykp) (Entered: 03/08/2024) |
| 03/28/2024 | <u>26</u> <u>(p.18891)</u> | NOTICE OF APPEAL as to <u>25 (p.18885)</u> Order of Dismissal or Administrative Closure, to the Fifth Circuit by James Dondero, Highland Capital Management Fund Advisors LP, NexPoint Real Estate Partners LLC, The Dugaboy Investment Trust, Get Good Trust. Filing fee \$605, receipt number ATXNDC-14499175. T.O. form to appellant electronically at <u>Transcript Order Form</u> or US Mail as appropriate. Copy of NOA to be sent US Mail to parties not electronically noticed. IMPORTANT ACTION REQUIRED: Provide an electronic copy of any exhibit you offered during a hearing or trial that was admitted into evidence to the clerk of the district court within 14 days of the date of this notice. Copies must be transmitted as PDF attachments through ECF by all ECF Users or delivered to the clerk on a CD by all non-ECF Users. See detailed instructions <u>here</u> . (Exception: This requirement does not apply to a pro se prisoner litigant.) Please note that if original exhibits are in your possession, you must maintain them through final disposition of the case. (Attachments: # <u>1 (p.7)</u> Exhibit(s) A) (Ruhland, Amy) Modified filer on 4/7/2024 (axm). (Entered: 03/28/2024) |
| 04/26/2024 | | USCA Case Number 24-10287 in USCA5 for <u>26 (p.18891)</u> Notice of Appeal filed by James Dondero, The Dugaboy Investment Trust, Highland Capital Management Fund Advisors LP, Get Good Trust, NexPoint Real Estate Partners LLC. (axm) (Entered: 04/26/2024) |

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**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re: JAMES DONDERO, HIGHLAND
CAPITAL MANAGEMENT FUND
ADVISORS, L.P., THE DUGABOY
INVESTMENT TRUST, GET GOOD TRUST,
and NEXPOINT REAL ESTATE PARTNERS,
LLC

CIVIL ACTION NO. 3:23-CV-0726-S

Debtor.

NOTICE OF APPEAL

James Dondero, Highland Capital Management Fund Advisors, L.P., The Dugaboy Investment Trust, Get Good Trust, and NexPoint Real Estate Partners, LLC (“Petitioners”), movants in Civ. Act. No. 3:23-cv-0726-s and parties-in-interest in the bankruptcy proceeding styled *In re Highland Capital Management, L.P.*, Case No. 19-34054 (the “Bankruptcy

Proceeding”), hereby appeal to the United States Court of Appeals for the Fifth Circuit from the Order of the United States District for the Northern District of Texas entered in this case on March 8, 2024 as Dkt. No. 25 (the “Order”), which denied Petitioners’ Petition for Writ of Mandamus seeking the recusal of Judge Stacey G. Jernigan in the underlying Bankruptcy Proceeding. A true and correct copy of the Order is attached hereto as Exhibit A. The parties to the appeal are as follows:

Appellants/Petitioners: James Dondero, Highland Capital Management Fund Advisors, L.P., The Dugaboy Investment Trust, Get Good Trust, and NexPoint Real Estate Partners, LLC

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Appellee/Respondent: Judge Stacey G. Jernigan

Appellee/Respondent: Highland Capital Management, L.P.

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Dated: March 28, 2024

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Investment Trust, Get Good Trust, and NexPoint
Real Estate Partners, LLC*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 28, 2024, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/ Amy L. Ruhland

Amy L. Ruhland

EXHIBIT A

United States District Court
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

| | | |
|------------------------------|---|---------------------------------|
| IN RE: JAMES DONDERO, | § | |
| HIGHLAND CAPITAL | § | |
| MANAGEMENT FUND ADVISORS, | § | |
| L.P., THE DUGABOY INVESTMENT | § | CIVIL ACTION NO. 3:23-CV-0726-S |
| TRUST, GET GOOD TRUST, and | § | |
| NEXPOINT REAL ESTATE | § | |
| PARTNERS, LLC | § | |

ORDER

Before the Court is the Petition for Writ of Mandamus (“Petition”) [ECF No. 1], the Appendix to the Petition for Writ of Mandamus (“Appendix”) [ECF Nos. 1-1 through 1-5], the Joint Supplemental Appendix (“Supplemental Appendix”) [ECF No. 8], Highland Capital Management, L.P.’s Response to Petition for Writ of Mandamus (“Response”) [ECF No. 17], and the Reply in Support of Petition for Writ of Mandamus (“Reply”) [ECF No. 23]. Petitioners James Dondero, Highland Capital Management Fund Advisors, L.P., The Dugaboy Investment Trust, Get Good Trust, and NexPoint Real Estate Partners, LLC, seek a writ of mandamus ordering the recusal of Bankruptcy Judge Stacey G. Jernigan (“Judge Jernigan”) from the Chapter 11 bankruptcy proceedings concerning Highland Capital Management, L.P. (“Debtor”). For the reasons articulated in the Memorandum Opinion and Order Denying “Amended Renewed Motion to Recuse, Pursuant to 28 U.S.C. § 455” (“Third Order Denying Recusal”), the Court finds that Petitioners failed to present any objective manifestations of bias or prejudice that would constitute grounds for Judge Jernigan’s recusal. *See* App. 2-37. Accordingly, the Court finds that Petitioners have not shown that the extraordinary remedy of a writ of mandamus is warranted. For the following reasons, the Petition is **DENIED**.

I. BACKGROUND

On October 16, 2019, Debtor filed for Chapter 11 bankruptcy in the United States Bankruptcy Court for the District of Delaware (“Bankruptcy Case”), and that court transferred venue to the United States Bankruptcy Court for the Northern District of Texas. *Charitable DAF Fund, L.P. v. Highland Cap. Mgmt., L.P. (In re Highland Cap. Mgmt. L.P.)*, No. 19-34054-SGJ-11, 2022 WL 780991, at *1 (Bankr. N.D. Tex. Mar. 11, 2022). Fifteen months after the case was transferred, Petitioners filed a motion to recuse under 28 U.S.C. § 455 (“First Recusal Motion”). App. 39-75. Judge Jernigan denied the First Recusal Motion, Suppl. App. 3593-603, and Petitioners appealed (“First Appeal”), *id.* at 3732-64. Concluding that Judge Jernigan’s order was interlocutory and not immediately appealable as a matter of right, the district court dismissed the First Appeal for lack of jurisdiction. *Id.* at 5777-90.

Five months later, Petitioners filed their Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455, which they later amended (“Second Recusal Motion”). *Id.* at 5793-801 (original motion); *id.* at 6523-30 (amended motion). In the Second Recusal Motion, Petitioners asked Judge Jernigan to reconsider the First Recusal Motion along with Petitioners’ supplemental evidence and arguments and to “enter a final, appealable order on th[e] issue.” *Id.* at 6530. Judge Jernigan held a status conference on August 31, 2022, regarding the Second Recusal Motion. *Id.* at 14659-85. At the hearing and in a written order, Judge Jernigan denied the Second Recusal Motion as procedurally improper. *Id.* at 14656-58, 14681-84. The order was entered “without prejudice to the Movants’ right to file (1) a simple motion . . . seeking only a revised and amended Recusal Order . . . and/or (2) a new motion to recuse this bankruptcy judge based on any alleged new evidence or grounds for recusal” that were not included in the First Recusal Motion. *Id.* at 14658. Petitioners chose the second option.

On October 17, 2022, Petitioners filed their Amended Renewed Motion to Recuse Pursuant to 28 U.S.C. § 455 (“Third Recusal Motion”). App. 2800-28. Judge Jernigan issued the Third Order Denying Recusal on March 6, 2023. *Id.* at 2-37. On April 4, 2023, Petitioners filed a Petition for Writ of Mandamus in the First Appeal, but District Judge Ed Kinkeade (“Judge Kinkeade”) unfiled it because the First Appeal was dismissed, and the Petition for Writ of Mandamus was not “in any way . . . a continuation of the bankruptcy appeal that was before the Court.” Supl. App. 5791-92. Judge Kinkeade directed Petitioners to file a new action if they wished to seek relief as to the Third Order Denying Recusal. *Id.* This action before yet another district court ensued.

II. ANALYSIS

A writ of mandamus is an “extraordinary remedy” justified only by “exceptional circumstances.” *In re Gordon*, No. 18-60869, 2019 WL 11816606, at *1 (5th Cir. 2019) (citation omitted). As such, the Supreme Court has established three requirements that must be met before a writ may issue. “First, the party seeking issuance of the writ must have no other adequate means to attain the relief he desires. . . . Second, the petitioner must satisfy the burden of showing that his right to issuance of the writ is clear and indisputable.” *In re LeBlanc*, 559 F. App’x. 389, 392 (5th Cir. 2014) (citation omitted). And third, “the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances.” *Id.* For the reasons set forth in the Response, the Court finds these three requirements have not been met. Resp. 16-20.

To meet the first requirement, Petitioners must show that the alleged error is “*irremediable on ordinary appeal*,” thereby justifying emergency relief in the form of mandamus.” *In re Occidental Petroleum Corp.*, 217 F.3d 293, 295 (5th Cir. 2000) (footnote and citation omitted). “That is a high bar: The appeals process provides an adequate remedy in almost all cases, even where defendants face the prospect of an expensive trial.” *In re Depuy Orthopaedics, Inc.*, 870

F.3d 345, 352 (5th Cir. 2017) (citation omitted). Petitioners fail to make the required showing. As examples of Judge Jernigan’s alleged bias, Petitioners cite comments made by Judge Jernigan throughout the course of the Bankruptcy Case, *see* Pet. 5-7; however, the Court finds that these statements, when taken in context, provide no basis for reasonably questioning Judge Jernigan’s impartiality or finding personal bias or prejudice. As further evidence of Judge Jernigan’s alleged bias, Petitioners also cite rulings they never appealed and rulings that were appealed and affirmed in all material aspects. *See, e.g.*, App. 20-28; Resp. 7-8. If anything, Judge Jernigan’s rulings could arguably constitute grounds for appeal, not for recusal.

As to the second requirement, because Petitioners have not shown that recusal was warranted, Petitioners do not demonstrate a “clear and indisputable” right to mandamus. *In re LeBlanc*, 559 F. App’x. at 392 (citation omitted). 28 U.S.C. § 455, which applies to bankruptcy courts through Federal Rule of Bankruptcy Procedure 5004(a), provides in relevant part that any judge “shall disqualify [her]self in any proceeding in which [her] impartiality might reasonably be questioned” or “[w]here [s]he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding.” 28 U.S.C. § 455(a), (b)(1). A party seeking recusal must clear the following hurdles: “They must (1) demonstrate that the alleged comment, action, or circumstance was of ‘extrajudicial’ origin, (2) place the offending event into the context of the entire trial, and (3) do so by an ‘objective’ observer’s standard.” *Andrade v. Chojnacki*, 338 F.3d 448, 455 (5th Cir. 2003). The Court finds that Petitioners have not cleared the required hurdles.

Petitioners allege that Judge Jernigan displayed personal bias and animus toward Dondero and his affiliates based on rulings and statements made by Judge Jernigan throughout the Bankruptcy Case, Pet. 3-9, but none of the grounds Petitioners assert merit disqualification.

Petitioners do not place the contested rulings and statements in the appropriate context within the Bankruptcy Case. As set forth in the Third Order Denying Recusal, the Third Recusal Motion “contains several misstatements or partial descriptions of events during the case, in several places, that create misimpressions.” App. 19. Further, these challenges arise from “intrajudicial sources.” *Andrade*, 338 F.3d at 460. To lead to disqualification, events in court must “reveal such a high degree of favoritism or antagonism as to make fair judgment impossible.” *Id.* at 462 (citation omitted). Petitioners fail to identify any action or statement revealing a sufficient degree of antagonism.

Petitioners also contend that two *fiction* novels authored by Judge Jernigan are “the most revealing evidence of [her] bias.” Pet. 1. The Court is not persuaded by Petitioners’ far-reaching comparison between the books and the parties to the Bankruptcy Case. Petitioners fail to show how any portion of the crime novels could raise a doubt in the mind of a reasonable observer as to Judge Jernigan’s impartiality.

As to the third requirement, Petitioners have not shown that a writ of mandamus is appropriate under the circumstances. After a careful review of the record, the Court concludes that a reasonable and objective observer, aware of all the facts and circumstances, would not harbor doubts about Judge Jernigan’s impartiality in the Bankruptcy Case. The Court agrees with Judge Jernigan in finding that Petitioners’ allegations are wholly conclusory and baseless and do not establish Judge Jernigan’s personal bias or prejudice for or against any party, or any other basis upon which Judge Jernigan’s impartiality might reasonably be questioned. *See* 28 U.S.C § 455(a)-(b); FED. R. BANKR. P. 5004(a).

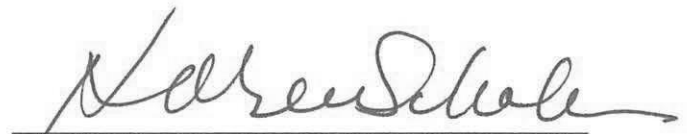
III. CONCLUSION

The Court finds that Petitioners have not proved “exceptional circumstances” sufficient to justify the extraordinary remedy of a writ of mandamus. *In re Gordon*, 2019 WL 11816606, at *1.

For the foregoing reasons, the Petition for Writ of Mandamus [ECF No. 1] is **DENIED**.

SO ORDERED.

SIGNED March 8, 2024.



KAREN GREN SCHOLER
UNITED STATES DISTRICT JUDGE