Dear Justice Alito:

Today, we are compelled to request that you recuse yourself from any further participation in the cases of *Trump v. United States*, *Fischer v. United States*, and any other cases that may arise from the events surrounding January 6 or the 2020 election. A *New York Times* report revealed that on and around January 17, 2021, between the January 6 insurrection and the inauguration of President Biden, an inverted United States flag was photographed flying from the front lawn of your personal residence. You have acknowledged that the photograph is accurate, and the inverted flag was hung at your house in response to a political statement from a neighbor.¹

It is incontrovertible that at the time the upside down flag flew from your front lawn, “Stop the Steal” activists had adopted the inverted flag as their symbol of protest. Their belief that widespread election fraud had thrown the election from former President Trump to then President-Elect Biden has never been supported by any evidence.

United States Code Title 4 Section 8(a) mandates that “The flag should never be displayed with the union down, except as a signal of dire distress in instances of extreme danger to life or property.”² No such dire distress was in existence at the time the inverted flag flew from your front yard. Indeed, your own public statement attempts to pass responsibility to your wife, but you nonetheless acknowledge that it was a political statement in support of Donald Trump’s effort to overturn the 2020 election.³ Even if you had “no involvement” in the display yourself, the fact of such a political statement at your home creates, at minimum, the appearance of improper political bias. According to Canon 5 of the recently promulgated, non-binding, non-enforceable U.S. Supreme Court ethics guidelines, on which you are listed as a signatory, a Justice “should refrain from political activity.”⁴ In fact, the Court’s own employee guidelines explicitly prohibit public displays of political views – including yard signs and bumper stickers — because they create an appearance of a conflict of interest.⁵

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Canon 2 of the Court’s ethics guidelines states that “a Justice should avoid impropriety and the appearance of impropriety in all activities.” More prescriptively, in Canon 3B, the guidelines declare that “a Justice should disqualify himself or herself in a proceeding in which the Justice’s impartiality might reasonably be questioned, that is, where an unbiased and reasonable person who is aware of all relevant circumstances would doubt that the Justice could fairly discharge his or her duties.” The guidelines detail such instances, including those in which “The Justice has a personal bias or prejudice concerning a party.”

Currently, there are two cases before the Court involving January 6 rioters and the felony charge of obstructing an official proceeding: the former president’s claim that a president of the United States has absolute criminal immunity for any official acts (Trump v. United States), and another case involving January 6 rioters (Fischer v. United States). Reasonable people will doubt that you can be impartial in deciding whether Mr. Trump should face criminal prosecution for his actions arising from the “Stop the Steal” movement. Accordingly, this indisputable appearance of a conflict of interest requires that you recuse yourself from these two cases.

Sadly, you are now the second justice who has demonstrated at least an appearance of a conflict of interest related to the events surrounding the January 6 insurrection. In the aftermath of the 2020 election, text messages revealed that Virginia ‘Ginni’ Thomas, the wife of Justice Clarence Thomas, was actively strategizing with the White House chief of staff about how to overturn the election results and attending the January 6 “Stop the Steal” rally — precisely the same underlying conduct charged in Trump and Fischer. Although Justice Thomas seemingly acknowledged this conflict of interest by recusing himself from the Court’s case related to Trump attorney John Eastman, he has shockingly refused to recuse himself from Trump and Fischer.

Undoubtedly, public trust and confidence in the Supreme Court is in shambles, which jeopardizes our democracy and the Rule of Law upon which it is based. And given that your decisions in Trump and Fischer will profoundly affect the future of a past and potentially future President, and of democracy itself, it is essential that the Court attempt to bolster the public’s trust in the integrity of the Court. Thus, given your voluntary agreement to comply with the U.S. Supreme Court’s ethics guidelines, and most importantly, in order to protect the legitimacy of the Court’s ultimate decision in these historic cases, it is clear that both you and Justice Thomas must recuse yourselves from participating any further in these, or any other cases, related to January 6 or the 2020 election.

Sincerely,

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Jesus G. "Chuy" García
Member of Congress

Nikema Williams
Member of Congress

Eleanor Holmes Norton
Member of Congress

Sean Casten
Member of Congress

Adriano Espaillat
Member of Congress

Becca Balint
Member of Congress

Mark Pocan
Member of Congress

Melanie Stansbury
Member of Congress

Ayanna Pressley
Member of Congress

Deborah K. Ross
Member of Congress
Lloyd Doggett  
Member of Congress

Brendan F. Boyle  
Member of Congress

Veronica Escobar  
Member of Congress

Andrea Salinas  
Member of Congress

Sylvia R. Garcia  
Member of Congress

Ted W. Lieu  
Member of Congress

Cori Bush  
Member of Congress

Pramila Jayapal  
Member of Congress

Daniel T. Kildee  
Member of Congress

Rashida Tlaib  
Member of Congress
Paul Tonko  
Member of Congress

Chellie Pingree  
Member of Congress

Maxwell Alejandro Frost  
Member of Congress

Steve Cohen  
Member of Congress

Jill Tokuda  
Member of Congress

Jennifer L. McClellan  
Member of Congress

Glenn Ivey  
Member of Congress

Sheila Jackson Lee  
Member of Congress

Mikie Sherrill  
Member of Congress

Mark DeSaulnier  
Member of Congress
Frederica S. Wilson  
Member of Congress

Barbara Lee  
Member of Congress

Delia C. Ramirez  
Member of Congress

Nanette Diaz Barragan  
Member of Congress

Danny K. Davis  
Member of Congress

CC: Chief Justice John Roberts

Associate Justice Clarence Thomas