

21-1498

Belya v. Kapral, et al.

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 8th day of February, two thousand twenty-three.

Present:

DEBRA ANN LIVINGSTON,
Chief Judge,
JOSÉ A. CABRANES,
RAYMOND J. LOHIER, JR.,
RICHARD J. SULLIVAN,
MICHAEL H. PARK,
WILLIAM J. NARDINI,
STEVEN J. MENASHI,
EUNICE C. LEE,
BETH ROBINSON,
MYRNA PÉREZ,
ALISON J. NATHAN,
SARAH A. L. MERRIAM,
Circuit Judges.

ALEXANDER BELYA,

Plaintiff-Appellee,

v.

21-1498

HILARION KAPRAL, AKA
METROPOLITAN HILARION,

NICHOLAS OLKHOVSKIY, VICTOR
POTAPOV, SERGE LUKIANOV, DAVID
STRAUT, ALEXANDRE ANTCHOUTINE,
GEORGE TEMIDIS, SERAFIM GAN,
BORIS DMITRIEFF, EASTERN
AMERICAN DIOCESE OF THE RUSSIAN
ORTHODOX CHURCH OUTSIDE OF
RUSSIA, THE SYNOD OF BISHOPS OF
THE RUSSIAN ORTHODOX CHURCH
OUTSIDE OF RUSSIA, MARK MANCUSO,

Defendants-Appellants.

For Defendants-Appellants:

Diana Verm Thomson (Daniel H. Blomberg, Lori H. Windham, Daniel D. Benson, on the brief), The Becket Fund for Religious Liberty, Washington, DC, and Donald J. Feerick, Jr. (Alak Shah, on the brief), Feerick Nugent MacCartney, PLLC, South Nyack, NY.

For Plaintiff-Appellee:

Bradley Girard (Richard B. Katskee, on the brief), Americans United for Separation of Church and State, Washington, DC, and Oleg Rivkin, Rivkin Law Group PLLC, New York, NY.

For Amici Curiae Roman
Catholic Archdiocese of New
York, Jurisdiction of the Armed
Forces and Chaplaincy of the
Anglican Church in North
America, General Conference of
Seventh-day Adventists,

Gordon D. Todd, Daniel J. Hay, John L. Gibbons, Sidley Austin LLP, Washington, DC.

Lutheran Church–Missouri
Synod, International Society for
Krishna Consciousness
(ISKCON), Serbian Orthodox
Diocese of New Gracanica–
Midwestern America, in
support of Defendants-
Appellants:

For Amicus Curiae Jewish
Coalition for Religious Liberty,
in support of Defendants-
Appellants:

Ryan Paulsen, Haynes and Boone, LLP,
Dallas, TX.

For Amici Curiae Constitutional
Law Scholars, in support of
Defendants-Appellants:

Matthew T. Nelson, Warner Norcross +
Judd LLP, Grand Rapids, MI.

Amici Curiae States of
Nebraska, Alabama, Alaska,
Arizona, Arkansas, Georgia,
Kansas, Kentucky, Louisiana,
Mississippi, Montana,
Oklahoma, South Carolina,
Texas, and Utah, in support of
Defendants-Appellants:

James A. Campbell, Solicitor General of
Nebraska; Douglas J. Peterson, Attorney
General of Nebraska; David T. Bydalek,
Chief Deputy Attorney General of
Nebraska; Steve Marshall, Attorney General
of Alabama; Treg R. Taylor, Attorney
General of Alaska; Mark Brnovich, Attorney
General of Arizona; Leslie Rutledge,
Attorney General of Arkansas; Chris Carr,
Attorney General of Georgia; Derek
Schmidt, Attorney General of Kansas;
Daniel Cameron, Attorney General of
Kentucky; Jeff Landry, Attorney General of
Louisiana; Lynn Fitch, Attorney General of
Mississippi; Austin Knudsen, Attorney
General of Montana; John M. O'Connor,
Attorney General of Oklahoma; Alan
Wilson, Attorney General of South

Carolina; Ken Paxton, Attorney General of Texas; and Sean D. Reyes, Attorney General of Utah.

Following disposition of this appeal on August 17, 2022, Defendants-Appellants filed a petition for rehearing *en banc*. The opinion was amended September 16, 2022, and an active judge of the Court thereafter requested a poll on whether to rehear the case *en banc*. A poll having been conducted and there being no majority favoring *en banc* review, the petition for rehearing *en banc* is hereby **DENIED**.

Raymond J. Lohier, Jr., *Circuit Judge*, joined by Eunice C. Lee, Beth Robinson, Alison J. Nathan, and Sarah A. L. Merriam, *Circuit Judges*, concurs by opinion in the denial of rehearing *en banc*.

José A. Cabranes, *Circuit Judge*, dissents by opinion from the denial of rehearing *en banc*.

Michael H. Park, *Circuit Judge*, joined by Debra Ann Livingston, *Chief Judge*, and Richard J. Sullivan, William J. Nardini, and Steven J. Menashi, *Circuit Judges*, dissents by opinion from the denial of rehearing *en banc*.

Denny Chin, *Circuit Judge*, filed a statement with respect to the denial of rehearing *en banc*.

Joseph F. Bianco, *Circuit Judge*, took no part in the consideration or decision of the petition.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk


Catherine O'Hagan Wolfe

The seal of the United States Second Circuit Court of Appeals is circular. It features the text "UNITED STATES" at the top, "SECOND CIRCUIT" in the center, and "COURT OF APPEALS" at the bottom. There are small stars on either side of the center text.