No. _____

In The

Supreme Court of the United States

STACIE DEMERS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari
To The United States Court of Appeals
For The Second Circuit

PETITION FOR A WRIT OF CERTIORARI WITH APPENDIX

JAMES M. BRANDEN, ESQ.
Counsel of Record for Petitioner
551 Fifth Avenue, Suite 422
New York, NY 10176
(212) 286-0173

QUESTION PRESENTED

Whether the Circuit Court of Appeals should have decided Ms. Demers's claim of ineffective assistance of counsel.

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The Second Circuit Court of Appeals decision can be found at 740 Fed.Appx. 750 (2d Cir. 2017) and a copy of it is attached as Appendix 1. In addition, the district court's decision on Ms. Demer's Rule 33 motion, which bears some relevance to the question here presented, is attached as Appendix 2.

JURISDICTION

The Second Circuit filed its decision and order on October 29, 2018. This Court has jurisdiction under 28 U.S.C. §1254(1) to review the Circuit Court's decision on writ of certiorari.

STATEMENT OF FACTS

The Indictment

Ms. Demers was charged with: 1) conspiring to distribute and to possess with intent to distribute 1,000 kilograms or more of marijuana between 2004 and October 2013, in violation of 21 U.S.C. §§846, 841(b)(1)(A); and 2) aiding and abetting possession with intent to distribute marijuana between June 14 and 19, 2013, in violation of 21 U.S.C. §§841(b)(1)(D) and 2(a).

The Trial

At trial, the government sought to establish that Ms. Demers and members of her family (including, principally, her father, Lee Smith) stashed marijuana at their properties along the northern New York border after it was smuggled out of Canada and was en route to the east coast of the United States. Money was returned to the Montreal supplier, "Sid" also known as "the Fat Fuck," who divided the spoils and redistributed profits.

The government called five cooperators, including a Canadian driver/dispatcher, Archie

Rafter, three United States drivers, Ralph Dumas, Paul Southworth and Timothy Fleury, and one distributer from Saugerties, New York, James McLernon. In addition, it called four law enforcement agents. Their testimony is reviewed below, seriatim.

Cooperator Testimony

The Supply End

Archie Rafter lived in Elkin, Quebec, in Canada. By trade he was a heavy equipment operator and commercial truck driver.

In 2003, Richard Vieu, a friend, approached Rafter and asked if he could refer someone to help him smuggle marijuana to the United States. Vieu said he worked for a man named "Sid" who lived in Montreal, whom he called the "Fat Fuck" (153). Rafter referred his neighbor, Andrew Schuppel, known as "The Kid". Schuppel's property abutted the United States border.

Vieu also needed a driver in the United States. Fortuitously, Rafter's brother, John MacDonald, owned M&S Trucking Co. ("M&S"), based in Mooers, New York, just across the border. MacDonald recruited Ralph Dumas, one of his employees.

With the personnel in place, Vieu brought 20 boxes of marijuana, 25 to 30 pounds each, to Rafter's garage. Because other proposed drivers backed out, Rafter and Schuppel drove 10 of those boxes to Schuppel's neighbor in the United States, Lee Smith. At Smith's, the boxes were re-loaded into the back of a pick-up truck. Rafter and two others, including Ms. Demers, drove to the Cherry Knoll Truck Stop where the marijuana was again re-loaded into a tractor-trailer.[1] Rafter drove the tractor-trailer to New York City. Vieu paid Rafter $10,000 for his services.

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1 In his first meeting with DEA agents, when discussing this smuggling trip, Rafter did not mention Ms. Demers.

Rafter moved the other ten boxes, as well. In doing so, he picked up the boxes in a shed "across from Lee Smith's place" and drove them to New York City. Rafter never picked-up marijuana on Ms. Demers's property.

Thereafter, first Vieu, then Rafter, drove marijuana, initially contained in boxes then in hockey bags, to Schuppel, two or three times per month. Schuppel moved them to Lee Smith's property in a four-wheeler, a snow machine or farm equipment. Dumas and Paul Southworth, an M&S co-worker, drove the marijuana to eastern New York, specifically to "Fred, Steve and Metal".

In 2004, both Vieu and MacDonald were cut out. As a result, Rafter dealt more directly with Sid and was responsible for collecting marijuana at a "burger joint" in his town and driving it to Schuppel's shed, typically four to six bags, weighing 25-30 pounds each. Money from eastern New York would be returned to Lee Smith, then to Schuppel, and Rafter would deliver it to Sid. Proceeds would be split and the money for the participants from the United States would be delivered to Schuppel, and then to Lee Smith. Rafter did not know if money was paid to Ms. Demers.

In 2010, the operation was shut down. In 2013, Dumas called Rafter to meet and then explained that he was cash-strapped and wondered if they could re-start the shipments. On April 18, Rafter met Dumas at a restaurant in Malone, New York. On May 12, Rafter met Dumas at his home in Malone.

Rafter estimated that he participated in smuggling 30-40,000 pounds of marijuana to the United States and was paid $750,000 to $1 million.

Rafter pleaded guilty to a conspiracy to distribute and to possess with intent to distribute more than 1,000 kilograms of marijuana, which carried a mandatory minimum term of imprisonment of ten years.

From 2004 to 2013, Ralph Dumas smuggled marijuana. In 2004, Dumas worked as a driver for M&S. His boss, John McDonald, asked him if he would be interested in "moving a load" of marijuana. McDonald and his stepbrother, Archie Rafter, had been smuggling marijuana for sometime, McDonald said. From McDonald and Rafter, Dumas learned that a Canadian man by the name of the "Big Fuck" supplied marijuana and "The Kid," also known as "Mudhen," transported it from Rafter's property to the bordering property in the United States in Constable, New York.

On his first outing, Dumas was told to meet a man at a truck stop and follow him to a warehouse in Constable. Lee Smith was present and he helped Dumas load two bags of marijuana weighing approximately 30-40 pounds apiece. Dumas drove the marijuana to "Red" in New York City.

Three or four months later, McDonald told Dumas that the frequency of shipments would increase and he asked Dumas to refer another driver. Dumas referred Southworth, another driver for M&S. Marijuana deliveries were made two or three times a week, beginning at the warehouse in Constable. Different vehicles were used. At first, an Envoy was used and it could hold two or three bags. Dumas and Southworth next used a semi to move ten to twelve bags. After that, they drove pick-up trucks with four to six bags. This continued for three or four months.

The pick-up spot was changed from the warehouse to the garage of the residence of Steve Brand (the husband of Ms. Demers's sister), about thirty minutes from the warehouse. Again, Dumas and Southworth drove semis and then pick-up trucks. This lasted six to eight months. Brand was present and sometimes Ms. Demers was also present.

After that, the pick-up spot moved to a cargo trailer on the property of Shane Smith (Ms. Demers's brother), in Constable. Dumas and Southworth only used pick-up trucks to carry four to

six bags, once a week. This continued for six to eight months.

In 2006, approximately, McDonald got out of the business. And, at some point thereafter, deliveries ceased.

In 2007, Rafter asked Dumas to recommence deliveries. He said "no" and contacted Southworth to see if he would assist. Southworth agreed but he did not want contact with the Canadians. As a result, Dumas became the liaison between Rafter and Southworth. In a pick-up truck, Southworth collected marijuana two or three times per week from a back shed on Ms. Demers's property. Sometimes Ms. Demers assisted him. After his deliveries, Southworth returned cash to Lee Smith, which he stored in the trunk of an old "Chevy". This continued until 2013 when Southworth got arrested carrying currency back north.[2]

In January 2013, DEA agents approached Dumas and told him he was suspected of transporting marijuana. They told him that he had "one chance" to cooperate and if he did not, the agents would arrest him, along with his wife and son (who were uninvolved). Dumas agreed to act as a confidential source. In March and April, plans were made for renewed transportation and Dumas met with Lee Smith and Rafter.

On April 30, Dumas recorded a conversation with Lee Smith. On June 17, Rafter told Dumas that he had a load "ready to come down". Dumas met Ms. Demers at her house the next day. She handed him a key and told him "you know what to do with it". Dumas used the key to open the back shed and pick up two hockey bags of marijuana. He told Ms. Demers that he planned to "run them down" to "Fred" the next day. Dumas video- and audio-taped the June 18 collection.

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[2] Dumas recalled that 140 pounds of marijuana went missing from Mr. Demers's shed. Demers, Lee Smith, Dumas and Southworth had to pay the Canadians for it.

Dumas drove to Malone and met with the police, who arranged for a controlled delivery. On June 19, Dumas reported to Rafter that the marijuana had been delivered and he met with Lee Smith in person to advise him that money should be "coming down" soon. The latter conversation was recorded.

On September 18, Dumas met with Ms. Demers and Lee Smith to track down money owed.[3] The participants agreed that if they were to continue to move marijuana they needed to be paid up-front and in-full. Dumas recorded the conversation.

Dumas pleaded guilty to a conspiracy to possess with intent to distribute a controlled substance that carried a mandatory ten year minimum term of imprisonment.

In 2003, Dumas, then a dispatcher at M&S, asked Paul Southworth if he wanted to earn extra money. On the first trip, Southworth and Dumas drove four to six hockey bags of marijuana to Connecticut in a tractor-trailer. MacDonald paid Southworth $4,500 for his efforts. Southworth continued to make six to eight tractor-trailer trips to New York City and approximately four trips to Atlanta. Dumas paid Southworth for these trips. Within the first year, Southworth switched out for a regular vehicle, Dumas's SUV and then pickup trucks. Southworth picked up the SUV pre-loaded at Dumas's house. When using the pickup trucks, he and Dumas picked up from Steve Brand's garage two or three times a week. Each carried six to eight bags of marijuana. Sometimes Ms. Demers opened the garage for them.

After a year or so, the operation was moved to Shane Smith's property in Constable, New York. The marijuana was stored in a trailer there. The amounts and frequency were similar to

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[3] That was the only load in 2013.

before. The Shane Smith pickup spot was discontinued after nearly two years.

Transportation recommenced at Ms. Demers's. The marijuana was stored in a back shed. Dumas or Ms. Demers herself would open up the shed for Southworth. The amounts and frequency were similar to before.

A couple of times over the years, pickups were made at Lee Smith's property.

Deliveries were made to Fred, Steve and "Cowboy". Usually the recipients had a "bag or two" of cash to be returned. On one occasion, Southworth brought back $4 million. In 2010, Southworth was stopped on a return trip with $65,000 he had collected from Cowboy.

Southworth estimated that he smuggled 50 to 80,000 pounds of marijuana and earned approximately $100,000 per year. Southworth pleaded guilty to a conspiracy to distribute and to possess with intent to distribute more than 50 kilograms of marijuana.

Timothy Fleury lived in Constable, New York and worked on a dairy farm. Beginning in 2004, Fleury dated Shane Smith's daughter. Around that time, Fleury and Jody Smith, Ms. Demers's brother, found approximately 30 hockey bags of marijuana on Lee Smith's property and moved them to Ms. Demers's shed.

In 2006, Fleury met Dumas. He started to work with Dumas and Shane Smith to make some "extra" money. Initially, he was a "blocker," driving ahead of a marijuana shipment to make certain the path was free of law enforcement. He then became a direct transporter. In that latter capacity, he picked up approximately 125 pounds of marijuana from Ms. Demers's property two or three times. In general, he delivered marijuana to Plattsburgh or Watertown. In addition, on a couple of occasions, Fleury observed Dumas collect marijuana from the shed or from a trailer near the shed on Ms. Demers's property. Ms. Demers was present on one of those occasions.

In 2007, Fleury stopped working with "defendant's family" to work for Terry Friedlander, a marijuana smuggler. In 2008, he was shot while fleeing United States Border Patrol agents. He went to Shane Smith's house and was arrested there. He continued to smuggle and transport marijuana until 2010, but not with anyone in Ms. Demers's family.

In all, Fleury smuggled approximately 20,000 pounds of marijuana and earned $1.5 million. With regard to Ms. Demers's family only, he moved approximately 1,000 to 1,500 pounds and earned $7,500 to $12,000.

He was convicted of a federal narcotics offense and sentenced to 121 months' imprisonment. After sentencing, he entered a cooperation agreement with the government. He received a Rule 35 benefit and was on supervised release at the time of his testimony. He believed that he would be returned to prison if he did not testify at the instant trial.

The Distribution End

James McLernon was a hair stylist. He lived in Saugerties, New York. He was friendly with Rob Swartenburg (also known as "Fred") and came to know that he distributed marijuana. McLernon joined him and distributed to "Frank" usually in a supermarket parking lot or a gas station. Frank paid him $3,400 per pound of marijuana. On one occasion, McLernon distributed to the "Thin Man" from Massachusetts, who paid only $200 per pound.

On June 18, 2013, McLernon met Swartenburg in Woodstock, New York. Swartenburg said that he expected a marijuana shipment from Canada and wanted to leave it at McLernon's overnight. McLernon agreed, for $50 a pound.

On June 19, the shipment was driven in and stored on McLernon's property. McLernon was arrested soon after the driver left.

McLernon did not know Ms. Demers.

McLernon pleaded guilty to a conspiracy to distribute and to possess with intent to distribute marijuana carrying a five-year mandatory term of imprisonment.

Law Enforcement Testimony

Paul Allen was a United States Border Patrol agent. On November 1, 2010, at noon, Allen, while on patrol, observed an ATV with several large black hockey bags illegally enter the United States. The ATV driver unloaded a bag in a brush line just across the border and continued farther south to Lee Smith's driveway. Allen "covertly" made a search for the bag. He found it, opened it and determined it contained individually-wrapped bags of marijuana.[4]

Allen alerted his partner, Agent Dennis Rascoe, and asked him to contact the ATV driver. In an attempt to arrest the driver, Rascoe exited his vehicle and walked stealthily to Lee Smith's property where he saw the driver and Lee Smith talking. As Rascoe neared, the ATV driver noticed him and high-tailed it back to Canada. Allen watched as one of the hockey bags the ATV driver was still carrying opened and vacuum-sealed bags of marijuana sprayed over a field. The driver was able to gather them and still outrun Allen.

Canadian officials were notified and located a suspect. Allen and Rascoe identified him.

Richard Norcross was a narcotics investigator with the NYP. In 2013, he assisted in DEA investigations of marijuana smuggling. Beginning In January and continuing through October, he met regularly with Dumas.

Norcross confirmed that, on June 18, he met with Dumas to provide him with recording

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[4] The hockey bag secured by Allen contained 13.8 kilograms of marijuana.

equipment and "to complete a marijuana recovery from the residence of Ms. Demers". Dumas returned to the "meet location" with two hockey bags filled with individual packaging of marijuana.

The following day, June 19, Norcross and others executed a controlled delivery. Norcross drove marijuana to a gas station in Saugerties (off Exit 20 on I-87). He was approached by "Fred" in a Subaru car, who told him to follow. Norcross followed through back roads to a private residence. "Fred" instructed him to back up the vehicle to a small cottage at the rear of the property. The marijuana was unloaded.[5] "Fred" led Norcross back to I-87 and Norcross notified his supervisor of the delivery, all of which was audio- and video-recorded.

Andrew Hermes was a Special Agent with the DEA. Ms. Demers and her father, Lee Smith, were arrested on November 5, 2013. Ms. Demers was taken to the DEA offices in Plattsburgh 50-60 miles away. There, Hermes provided her Miranda warnings. She waived her rights and agreed to speak. As part of her statement, she said that "Andrew" used his four-wheeler to transport marijuana to a little garage near her house. Normally it was locked but when she knew a shipment was due, she unlocked it. Shipments were made two times a week for eleven or twelve years and each included two or three hockey bags, weighing approximately 50 pounds each. "Hay man" or "Teddy Bear" came to collect the bags.[6] Ms. Demers said that she was paid $1,000 per bag. She said that her brother Shane was involved in a similar "hosting" capacity for approximately seven to ten years. The interview was unrecorded.

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[5] The marijuana weighed 47.2 kilograms.

[6] Hay man was Dumas's nickname.

The Erroneous Admission of a Confession to Other Marijuana Distribution

DEA Agent Hermes took Ms. Demers's post-arrest statement. After detailing the Miranda procedures and her waiver, he was asked "what if anything did [she] say?". Hermes answered:

> The defendant stated that in the '90s she met Bob, [at] Pivan's Restaurant in Huntington, Quebec, and it was agreed that marijuana would be transported to her house and then the defendant would then take the marijuana to one of a few locations around the area. The defendant stated that the bag weighed approximately 50 pounds and she was paid $500 to do that. The defendant also stated she did this for about eight to ten years and they did about one bag a week.

Defense counsel objected noting that a reference to marijuana smuggling in the 1990s was uncharged and admitted impermissibly to show criminal propensity in derogation of Molineaux, a New York State case. He initially asked for a curative instruction, but on further reflection, said:

> I'm kind of concerned that – that it's not going to be possible to have a sufficiently curative instruction and that's just because the government has just branded my client as a drug dealer and . . . I didn't anticipate that was going to be the first answer out of the agent's mouth. There wasn't any disclosure . . . of the intention to use a prior bad act..

He went on to note that he did not want to ask for a mistrial "because . . . we're satisfied with the way the evidence has gone in . . . but it's – certainly is damaging, there's no question about it, and I really have some concerns about that. The court informed the jury:

> [B]efore the break, [Hermes] was asked this question, "What if anything did the defendant say after she waived her Miranda rights?" and he gave an answer. My preliminary instructions to you you'll probably remember I told you that if I instruct you to strike something from your minds, you must. I am instructing you to strike from your minds and from any consideration in this case the answer that the special agent gave. You may not consider that. I know it's hard to remove things from your brain but I'm instructing you that the answer is stricken and you must not consider that answer in this matter.

Following the guilty verdict, Ms. Demers moved for a new trial of count one pursuant to Rule

33 of the Federal Rules of Criminal Procedure. She argued that the government explicitly indicated that it did not intend to introduce 404(b) evidence and that Hermes immediately blurted out the reference to her earlier marijuana distribution in an "additionally suspect" way. Moreover, she stated that it was an "open question" as to whether the jury credited the court's curative instruction. She concluded that a new trial was warranted "in the absence of a reasonable explanation as to why Agent Hermes gave the testimony in the manner he did."

In opposition, the government argued that defense counsel explicitly waived the 404(b) issue by seeking a curative instruction but not a mistrial. It also argued that the curative instruction was sufficient to cure any prejudice. Last, any error was harmless because the trial evidence was "overwhelming."

The court denied the Rule 33 motion, agreeing with the government on all three of its points (Exhibit 2 attached).

REASONS FOR GRANTING THE PETITION

WHETHER THE CIRCUIT COURT OF APPEALS SHOULD HAVE DECIDED MS. DEMERS'S CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL

Defendants have a Sixth Amendment right to counsel. U.S. Const. Amend. VI. A claim of ineffective assistance of counsel requires a showing that: 1) defense counsel's performance was objectively unreasonable; and 2) the deficient performance prejudiced the defense. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); see Massero v. United States, 538 U.S. 500, 505 (2003) ("a defendant claiming ineffective counsel must show that counsel's actions were not supported by

a reasonable strategy and that the error was prejudicial"). The performance component of the Strickland test asks whether "counsel's representation fell below an objective standard of reasonableness." Id. at 688. A defense attorney's performance is unreasonable when it is so deficient that it falls outside the "wide range of professionally competent assistance." Id. at 690. The prejudice component requires a "showing that counsel's errors were so serious as to deprive defendant of a fair trial, a trial whose result is reliable." Id. at 687.

With regard to erroneous admissions of a confession, harmless error analysis depends upon the following: 1) the overall strength of the prosecution's case; 2) the prosecutor's conduct with respect to the confession; 3) the importance of the confession; and, 4) whether the confession was somehow cumulative of otherwise properly admitted evidence. See Zappulla v. New York, 391 F.3d 462, 468 (2d Cir. 2004). Particularly as to 3), "the court conducting a harmless-error inquiry must appreciate the indelible impact a full confession may have on the trier of fact." Arizona v. Fulminante, 499 U.S. 279, 313 (1991). Indeed, it may be "devastating." Id. at 312.

Here, as to count one, it was the government's contention that Ms. Demers conspired to distribute and to possess with intent to distribute 1,000 kilograms or more of marijuana and that she in fact allowed smugglers and transporters to use her property (usually her shed), at times over the course of ten years, to store marijuana. Though the government gave no "prior bad act" notice pursuant to Rule 404(b) of the Federal Rules of Evidence, it elicited testimony from Special Agent Hermes that Ms. Demers made a full confession to similar marijuana activities with "Bob" from Quebec during the entirety of the 1990s and that, as part of those activities, she personally moved the marijuana to locations around the area. This evidence was stunning and obviously prejudicial to the defense. See Arizona v. Fulminante, supra, 499 U.S. at 312 (recognizing both "indelible" and

"devastating" impact of confession on trier of fact).

So stunning was the evidence that defense counsel could not determine what to do.[7] He rightly noted, at first, that a curative instruction was likely insufficient ("I'm kind of concerned that – that it's not going to be possible to have a sufficiently curative instruction"). Rejecting the wisdom of his observation, he foolishly changed course and lamely explained that he did not want to seek a mistrial because he was "satisfied with the way the evidence had come in."

For two reasons, this was unreasonable strategy. First, under the best of circumstances, a jury will be hard pressed to disregard testimony. The very fact that it is asked to usually draws even more attention to the tainted evidence. Here, where the tainted evidence amounted to a full confession to the exact same crime plus actual distribution, over the course of yet another decade, a jury could not be expected to disregard it even if instructed to. A bell rung that loudly simply cannot be unrung. Second, counsel's explanation for seeking a lesser remedy was illogical. At a second trial, the evidence was likely to come in more or less as it had at the first, and the defense would have the great benefit of knowing what to expect.

As to the prejudice prong, counsel's error rendered the result of the trial unreliable. In this regard, as to count one, the government's case was by no means overwhelming. It was based mostly on the testimony of cooperators, all of whom faced significant mandatory minimum terms of imprisonment and had a motive to falsify. Rafter, the Canadian, was involved in marijuana smuggling from 2003 to 2013 and never once picked up marijuana on Ms. Demers's property.[8]

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[7] Or, perhaps, even where he was, as he cited a New York state court case (Molineaux) to support his request for a remedy instead of the applicable Federal Rule (Fed.R.Evid. 404(b)).

[8] Further, while he testified that Ms. Demers was present for a short portion of his first

Further, Rafter did not know if Ms. Demers was paid any money by Sid's organization. Dumas was involved from 2004 to 2013, first as a driver and then, beginning in 2007, as a liaison between Rafter and Southworth. He only said that, in 2007, Ms. Demers's shed was used to store marijuana and, without detail, Ms. Demers "sometimes" assisted Southworth. Consistent therewith, Southworth, who was involved from 2003 to 2010, said that Ms. Demers unlocked Steve Brand's garage or her shed for him on occasion. Likewise, Fleury stated that around 2007, he too picked up from the shed but only once was Ms. Demers present. McLernon, the distributor out of Saugerties, New York, never even met Ms. Demers. In all, there was very little evidence that Ms. Demers knowingly and intentionally participated in the marijuana distribution at issue and thus that she joined the conspiracy, and what there was, was suspect. This holds for the alleged confession, which was conspicuously unrecorded.

As to count two, the evidence against Ms. Demers was also thin. On June 18, 2013, she handed Dumas a key to her shed and said "you know what to do with it." After he collected bags of marijuana from the shed, Dumas told her he would "run them down" to "Fred" the next day. At the very least, this evidence did not make clear whether Ms. Demers knew the bags in the shed contained a controlled substance.

Against this background, the erroneous admission of a full confession as to marijuana smuggling and actual distribution by Mr. Demers throughout the 1990s was especially prejudicial. Finally, the confession was not cumulative of otherwise properly admitted evidence.[9]

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marijuana smuggling trip, he did not mention her presence in his first meeting with DEA agents and, at trial, he did not specify what actions Ms. Demers took that day or what she may have known.

[9] While defense counsel was suspicious of the government's manner in questioning Special

The Second Circuit Court of Appeals refused to consider this argument even though the facts underlying it were fully presented on the trial, and Rule 33, record.

With this case, at the very least, the Supreme Court can define the circumstances in which a Court of Appeals should decide an ineffectiveness of counsel claim. Ms. Demers was well aware of her right to raise such a claim on direct appeal, or to file it later as part of a 2255 motion. She chose the former so that, were it found to be winning, she would appear back in the district court forthwith for a retrial or voluntary resolution of the matter. The Circuit Court's decision to push this down the line, despite the fact that all necessary facts were before it, prejudiced Ms. Demers unfairly, as the Circuit Court's precedent does to many. She will now be forced to file a 2255 motion, the resolution of which will be at least another year on. A new bright line should issue such that, when all facts necessary to the adjudication of an ineffectiveness of counsel claim are known, and appellant has assumed the risk of raising the issue, Courts of Appeals should reach the merits.

CONCLUSION

The Court should grant the petition for a writ of certiorari and reverse the decision of the Second Circuit Court of Appeals.

Respectfully submitted,

JAMES M. BRANDEN
Counsel of Record for Petitioner
551 Fifth Avenue, Suite 422
New York, NY 10176
(212) 286-0173

Agent Hermes, no claim is made here that the government sought improperly to capitalize on the erroneously admitted confession in summation or in some other way.