

No. \_\_\_\_ - \_\_\_\_

---

---

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

---

»«

IBRAHIM AKASHA ABDALLA,  
AKA IBRAHIM AKASHA,

*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**

---

---

Stephanie Carvlin  
*Counsel of Record*  
LAW OFFICE OF  
STEPHANIE CARVLIN  
*Counsel for Petitioner*  
140 Broadway, Suite 4610  
New York, New York 10005  
212-748-1636  
carvlin@hotmail.com

July 21, 2021

---

---

## **QUESTION PRESENTED FOR REVIEW**

What level of contact with the United States must a foreign national who never entered this country and committed the offense conduct solely outside of this country have with the United States for his prosecution here to comport with the Due Process Clause of the Fifth Amendment to the United States Constitution.

## LIST OF PROCEEDINGS

Petitioner Ibrahim Akasha Abdalla was indicted in the United States District Court for the Southern District of New York on charges related to his purported participation in a narcotics-distribution organization that operated out of Kenya. *United States v. Abdalla*, 14-cr-716 (VM). Appendix at 30-42 ("A"). He entered a plea of guilty to six of the charges contained in a ninth superseding indictment. *Id.* The District Court (Victor Marrero) sentenced Mr. Abdalla, *inter alia*, to an effective term of incarceration of 287 months. The judgment was entered on January 14, 2020. A11.

Mr. Abdalla filed a timely notice of appeal. By Order dated March 17, 2021, a panel of the United States Court of Appeals for the Second Circuit (Robert D. Sack, Richard C. Wesley and Richard J. Sullivan) affirmed the judgment of the District Court. A1-5.

The Second Circuit granted Mr. Abdalla's timely motion to extend the time to file a petition for rehearing. Mr. Abdalla filed his petition within the extended deadline. His petition for rehearing was denied on April 22, 2021. A8.

## TABLE OF CONTENTS

QUESTION PRESENTED.....	i
LIST OF PROCEEDINGS.....	ii
OPINION OF THE COURT BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	2
STATEMENT OF THE CASE.....	2
<u>Background</u> .....	3
<u>The Charges</u> .....	3
<u>The Motion to Dismiss the Indictment</u> .....	5
<u>The Plea and Sentence</u> .....	6
<u>The Appeal in the Second Circuit</u> .....	6
<u>The Petition for Rehearing</u> .....	8
REASONS FOR GRANTING THE PETITION.....	8
CONCLUSION.....	15

## APPENDIX TABLE OF CONTENTS

Summary Order of the United States Court of Appeals for the Second Circuit - <i>United States v. Abdalla</i> , 20-295.....	A1
Opinion of the United States Court of Appeals for the Second Circuit - <i>United States v. Abdalla</i> , 839 F.App'x 656 (2d Cir. 2021).....	A6
April 22, 2021 Order of the United States Court of Appeals for the Second Circuit denying rehearing - <i>United States v. Abdalla</i> , 20-295.....	A8
Judgment and Commitment - <i>United States</i> <i>v. Abdalla</i> , 14-cr-716 (VM).....	A9
Decision and Order Denying Motion To Dismiss Indictment - <i>United States v.</i> <i>Abdallah</i> , 14-cr-716 (VM).....	A14
Superseding Indictment S9 - <i>United</i> <i>States v. Abdalla</i> , 14-cr-716 (VM).....	A30

## **TABLE OF AUTHORITIES**

### **Cases:**

<i>Burger King Corp. v. Rudzewicz</i> , 471 U.S. 462 (1985) .....	13
<i>Daimler AG v. Bauman</i> , 571 U.S. 117 (2014) .....	9, 10, 12, 13
<i>Goodyear Dunlop Tires Operation, S.A. v. Brown</i> , 564 U.S. 915 (2011) .....	9, 11, 12, 13
<i>United States v. Abdalla</i> , 830 F.App'x 656 (2d Cir. 2021) .....	2
<i>United States v. Al Kassar</i> , 660 F.3d 108 (2d Cir. 2011) ...	7, 8, 9, 14
<i>United States v. Brehm</i> , 691 F.3d 547 (4 <sup>th</sup> Cir. 2012) .....	9
<i>United States v. Davis</i> , 905 F.3d 245 (9 <sup>th</sup> Cir. 1990) .....	9
<i>World-Wide Volkswagen Corp. v. Woodson</i> , 444 U.S. 286 (1980) .....	15

### **Statutes**

18 U.S.C. §2 .....	5, 6
18 U.S.C. §924(c)(1)(A)(ii) .....	5, 6
18 U.S.C. §924(o) .....	5
18 U.S.C. §3238 .....	4, 5
18 U.S.C. §1512(c) .....	5
18 U.S.C. §1512(i) .....	5
18 U.S.C. §1512(j) .....	5
18 U.S.C. §1512(k) .....	5

21 U.S.C. §959 (a) .....	5
21 U.S.C. §959 (c) .....	4, 5
21 U.S.C. §960 (b) (1) (A) .....	4, 5
21 USC §960 (b) (1) (H) .....	4, 5
21 U.S.C. §963.....	4
28 U.S.C. §1254.....	2

No.

---

---

In The  
SUPREME COURT OF THE UNITED STATES  
October Term, 2021

---

IBRAHIM AKASHA ABDULLA,  
AKA IBRAHIM AKASHA,

*Petitioner,*

-v-

THE 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 WRIT OF CERTIORARI**

Petitioner Ibrahim Akasha Abdulla respectfully  
petitions this Court for a writ of certiorari to review the  
judgment of the United States Court of Appeals for the  
Second Circuit in Case No. 20-295.

**OPINIONS OF THE COURT BELOW**

The United States Court of Appeals for the Second  
Circuit issued a Summary Order in this case. A1-5. The  
Summary Order has no official citation. The unofficial



citation is *United States v. Abdalla*, 830 F.App'x 656 (2d Cir. 2021). A6-11. The Circuit Court denied a timely petition for rehearing on April 22, 2021. A8.

### **JURISDICTION**

On March 17, 2021, the United States Court of Appeals for the Second Circuit issued a Summary Order affirming petitioner's convictions. A1-5. Petitioner timely filed for rehearing. The Second Circuit denied the Petition on April 22, 2021. A8. This petition is being filed within 90 days of that date.

This Court has jurisdiction to decide this petition pursuant to 28 U.S.C. §1254 (1), which provides that "[c]ases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree[.]"

### **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

The Fifth Amendment to the United States Constitution provides in relevant part as follows: " No person shall be ... deprived of life, liberty, or property, without due process of law[.]"

### **STATEMENT OF THE CASE**

This case presents an issue that arises frequently in the Courts of the United States : What type and degree of

contact must exist between charged conduct and the United States to permit a non-citizen defendant who has never entered the United States to be prosecuted in this country consistent with the Due Process Clause of the Fifth Amendment.

### Background

The United States Drug Enforcement Administration ("DEA") obtained evidence that led it to conclude that Mr. Abdalla and others were involved in a narcotics-distribution ring that operated primarily in Kenya and other parts of Africa. The DEA undertook a sting operation to target what it characterized as the Akasha organization. Two paid confidential sources working for the DEA represented themselves to members of the Akasha organization as Colombian drug traffickers who wanted to obtain large quantities of heroin to import into the United States. Ultimately, the Akasha organization provided 99 kilograms of heroin and 2 kilograms of methamphetamine to the DEA sources. Plans purportedly called for the organization to deliver additional quantities of both drugs.

### The Charges

Mr. Abdalla was arrested in Kenya on November 9, 2014. On November 10, 2014, the United States Attorney's Office for the Southern District of New York filed a superseding

indictment that charged Mr. Abdalla and others with conspiring to distribute heroin and methamphetamine knowing and intending that the substances would be imported into the United States and with distributing heroin and methamphetamine knowing and intending that the drugs would be imported into the United States.

The government sought to extradite Mr. Abdalla and his alleged co-conspirators to this country. Mr. Abdalla avoided extradition for several years. The government alleged that he and his co-defendants were able to do so by paying bribes to a prosecutor and members of the judiciary in Kenya. Nevertheless, on January 30, 2017, the government of Kenya expelled Mr. Abdalla and three co-defendants. They were transferred to agents of the DEA and brought to the United States, arriving first in the Southern District of New York.

The final superseding indictment in this case charged Mr. Abdalla and co-defendants with conspiracy to manufacture and distribute heroin intending and knowing that it would be imported into the United States in violation of 21 U.S.C. §§960(b)(1)(A), 963, 959(c), <sup>1</sup> 18

---

<sup>1</sup> Between the time the initial indictment was returned and the date of Mr. Abdalla's plea, 21 U.S.C. §959 was amended. New subsections were added, and old subsections were renumbered. The references in Indictment S9 are to the statute as it was written prior to the amendments.

U.S.C. §3238; conspiracy to import methamphetamine into the United States in violation of 21 USC §§960(b)(1)(H), 963, 959(c) and 18 U.S.C. §3238; distribution of heroin intending and knowing it would be imported into the United States in violation of 21 U.S.C. §§959(a), 960(b)(1)(A) and 18 U.S.C. §§2 and 3238; distribution of methamphetamine intending and knowing it would be imported into the United States in violation of 21 U.S.C. §§959(a), 960(b)(1)(H) and 18 U.S.C. §§2 and 3238; conspiracy to possess firearms during and in relation to drug-trafficking crimes for which they could be prosecuted in the United States in violation of 18 U.S.C. §924(o) and 18 U.S.C. §3238; brandishing firearms during and in relation to drug-trafficking crimes for which they could be prosecuted in the United States in violation of 18 U.S.C. §924(c)(1)(A)(ii), 18 U.S.C. §2 and 18 U.S.C. §3232. A seventh count alleged that Ibrahim and Baktash Abdalla conspired to impede an official proceeding in violation of 18 U.S.C. §§1512(c), (i), (j) and (k).

#### The Motion to Dismiss the Indictment

Mr. Abdalla and his co-defendant, Baktash Akasha Abdalla, filed motions to dismiss the indictment, alleging in part that the District Court lacked subject matter jurisdiction because the two men did not have the minimum level of contact with the United States such that their prosecution in this country met the due-process standard of

fundamental fairness. The District Court denied the motions.

#### The Plea and Sentence

Following the District Court's denial of his motion, Petitioner Ibrahim Abdalla entered into a plea agreement with the government under which he agreed to plead guilty to all of the charges except brandishing firearms in violation of 18 U.S.C. §924(c)(1)(A)(ii), 18 U.S.C. §2. During an initial Rule 11 hearing held before a Magistrate Judge and later during a supplemental hearing held by the District Court, Mr. Abdalla admitted his factual guilt on each count. The District Court held an evidentiary hearing to resolve some disputed factual issues that were relevant to sentencing. Ultimately, the Court sentenced Mr. Abdalla to an effective sentence of 27 6 months incarceration. Mr. Abdalla filed a timely appeal.

#### The Appeal in the Second Circuit

Mr. Abdalla appealed his convictions to the United States Court of Appeals for the Second Circuit, raising only the issue he seeks this Court to review: Whether extraterritorial application of the criminal laws of the United States to a foreign national who never entered this country and committed the offense conduct solely outside this country violated the Due Process Clause of the Fifth Amendment. Mr. Abdalla argued that the standard the Second

Circuit had developed in *United States v. Al Kassar*, 660 F.3d 108, 118 (2d Cir. 2011), and other cases for extraterritorial application of United States criminal laws did not comport with due process.

Petitioner's due-process argument had two components. First, Mr. Abdalla's conduct, which took place entirely outside the United States, lacked enough of a connection (nexus) to the United States to permit him to be prosecuted in this country consistent with the requirements of due process. See *United States v. Abdalla*, 839 F.App'x at 657-58. A6. Mr. Abdalla also asserted that his right to due process had been violated because he had insufficient notice that his conduct would be prosecuted in the United States. *Id.* at 658. A6-7.

The Second Circuit rejected both arguments, relying on its decision in *Al Kassar*, 660 F.3d at 118. In *Al Kassar*, the Second Circuit had held that when a non-citizen defendant acts "entirely abroad, a jurisdictional nexus exists when the aim of that activity is to cause harm inside the United States or to U.S. citizens or interests." *Id.* The Circuit reasoned in Mr. Abdalla's case that this standard was met because he believed that the heroin and methamphetamine his organization provided and intended to provide to the undercover sources would be imported into

the United States. *United States v. Abdalla*, 839 F.App'x at 657-58. A6-7.

The Second Circuit also rejected Mr. Abdalla's argument that due process requires that he have notice of *where* he risks being prosecuted, again applying its decision in *Al Kassar*. Under *Al Kassar* the notice requirement of due process is met anytime a defendant engages in conduct anywhere in the world that is "self-evidently criminal." Defendants need not understand that they could be prosecuted "*in the United States*" as long as they would reasonably understand that their conduct was criminal and would subject them to prosecution *somewhere*." *Id.* at 658, *quoting Al Kassar*, 660 F.3d at 119.

#### The Petition for Rehearing

Petitioner timely filed for rehearing in the Second Circuit. On April 22, 2021 the Circuit Court denied the Petition. A8.

#### **REASONS FOR GRANTING THE PETITION**

The Second Circuit and other Circuit Courts of Appeals have held that a defendant who is not a citizen of the United States and who has no pre-existing contacts here may be prosecuted in this country for conduct committed wholly outside this country. Under the reasoning employed by these courts, due process is not violated by this extraterritorial application of the criminal laws of the

United States as long as two requirements are met: the effect of a foreign defendant's criminal activity is to cause harm inside the United States or to United States citizens or interests, and the defendant had reason to know that his criminal conduct could subject him to criminal prosecution somewhere. *Al Kassar*, 660 F.3d at 118, 119; *United States v. Brehm*, 691 F.3d 547, 552, 554 (4<sup>th</sup> Cir. 2012); *United States v. Davis*, 905 F.3d 245, 249, (9<sup>th</sup> Cir. 1990). The former requirement, according to this rationale, assures that the prosecution here is not arbitrary or unfair, and the latter requirement satisfies the due-process component of notice. *Al Kassar* at 118, 119.

The first prong of this standard - cause harm or intend to cause harm in the United States - does not comport with the requirements of due process. An analysis of the standards this Court has imposed for determining in the civil context whether a foreign defendant has sufficient contacts with a forum to be sued there demonstrates why the Second, Fourth and Ninth Circuit's test is inadequate. See *Daimler AG v. Bauman*, 571 U.S. 117 (2014); and *Goodyear Dunlop Tires Operation, S.A. v. Brown*, 564 U.S. 915 (2011).

In *Daimler*, this Court addressed "the authority of a court in the United States to entertain a claim brought by foreign plaintiffs against a foreign defendant based on



events occurring entirely outside the United States.”

*Daimler*, 571 U.S. at 120. The plaintiffs, who were residents and citizens of Argentina, brought suit in the United States District Court for the Northern District of California against Daimler, a German company headquartered in Stuttgart. Daimler manufactured Mercedes-Benz vehicles. The plaintiffs alleged that Mercedes-Benz Argentina (MB Argentina) had collaborated with state security forces in Argentina during that country’s “Dirty War” to kidnap, detain, torture and kill certain MB Argentina workers, including the plaintiffs or people closely related to them. The plaintiffs asserted that the California contacts of a subsidiary of Daimler, Mercedes-Benz USA (MBUSA), were sufficient to permit them to sue the company there. The District Court disagreed and granted Daimler’s motion to dismiss. The Ninth Circuit reversed. This Court granted certiorari, characterizing the question presented as “whether the Due Process Clause of the Fourteenth Amendment precludes the District Court from exercising jurisdiction over Daimler in this case, given the absence of any California connections to the atrocities, perpetrators, or victims described in the complaint.”

This Court began its analysis of that question in *Daimler* by referencing its decision in *Goodyear Dunlop*. In that case the estate of two North Carolina residents who

had been killed in a bus accident in France brought suit in North Carolina against Goodyear USA, Goodyear Dunlop Tires France, SA and two other Goodyear US subsidiaries that were organized and operating in Luxembourg and Turkey respectively. Goodyear USA did not contest North Carolina's jurisdiction over it, but the foreign Goodyear subsidiaries moved to dismiss the claims against them, arguing that the state did not have personal jurisdiction. The trial court denied the motion, and the North Carolina Court of Appeals affirmed. This Court granted certiorari to review whether North Carolina's assertion of personal jurisdiction over the petitioners was consistent with due process. *Goodyear Dunlop*, 564 U.S. at 923.

In resolving that question, this Court reviewed the distinction between specific jurisdiction, which arises when there is a relationship between the forum and the "underlying controversy" and general jurisdiction, which permits a court to hear claims against foreign defendants based on the defendants' affiliations with the state. Because the suit against the Dunlop subsidiaries did not result from any activities they engaged in within North Carolina, jurisdiction over those companies, if it existed, had to be justified on the grounds of their contact with the state. "A court may assert general jurisdiction over foreign (sister-state or foreign-country) corporation to

hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum." *Id.*, citing *International Shoe Co. v. State of Washington*, 326 U.S. 310, 371 (1945). This Court found that that standard was not met in *Goodyear Dunlop*. The petitioners had only attenuated connections to North Carolina: they were not registered to do business in the state, they had no office in the state, they didn't solicit business in the state, and they did not sell or ship tires to the state. *Goodyear Dunlop Tires Operation, S.A.* 564 U.S. at 921. Due process requires more.

This Court applied the same analysis in *Daimler*. Writing for the majority, Justice Ginsburg noted that "Goodyear made clear that only a limited set of affiliations with a forum will render a defendant amenable to all-purpose [general] jurisdiction there." *Daimler*, 571 U.S. at 137. This Court specifically declined to adopt an alternate test for general jurisdiction suggested by the plaintiffs: that any state in which a corporation engages in a substantial, continuous, and systematic course of business provides an appropriate forum. *Id.* at 138. The inquiry under *Goodyear* was not whether a corporation's contacts in a forum were continuous and systematic but rather they were so continuous and systematic as to

essentially render the corporation "at home" in the forum. *Id.*, quoting *Goodyear*, 564 U.S. at 923. This Court found that Daimler's activities in California did not meet this standard. To hold otherwise would be to open a corporation to suit virtually anywhere:

If Daimler's California activities sufficed to allow adjudication of this Argentina-rooted case in California, the same global reach would presumably be available in every other State in which [Mercedes Benz USA] sales are sizable. Such exorbitant exercises of all-purpose jurisdiction would scarcely permit out-of-state defendants "to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit."

*Id.* at 139, quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985).

The Second Circuit has allowed just such an extravagant exercise of personal jurisdiction over defendants in criminal cases. A defendant need not be "at home" in this country to be brought here to face criminal charges. He can be prosecuted for conduct he committed entirely outside this country. A prospective defendant does not have to be a citizen or resident here. He need not have - or ever have had - any presence in this country. Indeed, an agent of the government can create the only arguable "contact" with the United States.

That is what happened in this case. The Abdalla organization had never imported drugs into the United

States or provided drugs for others to import into this country. The government presented no evidence that the organization ever intended to do so before the confidential sources purchased heroin and methamphetamine that they said they would bring into the United States. Yet, Mr. Abdalla was brought here from Kenya to face criminal charges in the Southern District of New York.

Also deficient is the test the Second Circuit and other Circuit Courts of Appeals have adopted and applied to determine whether the notice requirement of due process is met in criminal prosecutions that arise from extraterritorial conduct. Under this analysis, a defendant is considered to have notice sufficient to comport with due process that he can be prosecuted in the United States if his conduct outside this country is considered inherently or self-evidently criminal by some ill-defined standard. Under this theory, it is fair to subject a defendant to the criminal laws and sanctions of the United States because when he committed the underlying conduct he understood that he could be prosecuted *somewhere*. *Al Kassir*, 660 F.3d at 119. The first proposition does not logically support the second. If a United States citizen violates the criminal laws of France by conspiring to distribute narcotics there, it cannot reasonably be concluded that he would actually expect to be prosecuted in Turkey for that conduct.

The proposition also is legally flawed. Due process requires that a defendant be aware not only that he faces prosecution but that any such prosecution exposes him to certain penalties in a certain location. See *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 287 (1980) ("the foreseeability that is critical to due-process analysis ... is that the defendant's conduct and connection with the forum are such that he should reasonably anticipate being haled into court *there*." ) (emphasis added).

Mr. Abdalla was not provided the protections he would have been afforded were he being sued in the United States for the conduct he purportedly committed in Kenya and elsewhere in Africa. He cannot be said to be "at home" in this country. In fact, he personally had no contacts with the United States. The only possible connection between Mr. Abdalla and this country was provided by agents of the United States government who pretended that the drugs they sought to buy would be imported into the United States. Yet, this kind of prosecution is permitted under the standards the Second Circuit has articulated and followed in this case. Due Process requires more.

#### **CONCLUSION**

For the above-stated reasons, the petition for a writ of certiorari should be granted.

Dated: New York, New York  
July 21, 2021

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
STEPHANIE M. CARVLIN  
Attorney of Record For Petitioner  
Ibrahim Akasha Abdalla  
140 Broadway, Suite 4610  
New York, New York 10005  
(212) 748-1636