

NO. 24-1264

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IN THE SUPREME COURT OF THE UNITED STATES

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DAVID M. KIRK, Petitioner,

v.

CITIGROUP GLOBAL MARKETS HOLDINGS, INC., Respondent

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On Petition for Writ of Certiorari to the  
United States Court of Appeals for the Second Circuit

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PETITION FOR WRIT OF CERTIORARI

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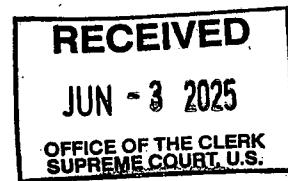
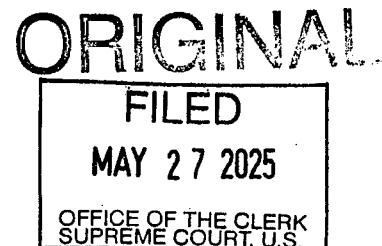
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**QUESTIONS PRESENTED:**

1. The first and most important question presented is whether this case is of high national importance. This case is one of a string of seven recent frauds I list below by Defendant of huge amounts. The total amount of the fraud on all UWT stock investors as I listed in my Doc 22 complaint as early as 12/19/20, based on the number of shares issued, was \$156 million. I've since stated that this figure has never been contested by Defense Counsel, though I've consistently repeated it in my Doc 144 complaint of 10/26/2023 and my appeal recently dismissed, both adjusting it for inflation to \$187.2 million. "REASONS..." section below, paragraph (1) lists six other major financial frauds by Defendant, some resulting in fine or indictment, including one at \$900 million and another at \$1.9 billion and a Miami case just revived days ago for \$1 billion. Defendant must be stopped.
2. The next question presented is the validity of my denial of rehearing, Appeals Case 24-237, 04/02/2025, Docket 37.1. Though denial of petitions for rehearing without comment is common, my petition was compelling, stating that the appeals court 24-237 Docket 33.1

Order was crucially flawed in omitting the word "Intraday" in its quoting of the stock prospectus. Said appeal was for the ruling of dismissal in my district court case #1:20-CV-07619-ALC.

3. The next question presented is whether this case would serve to literally and finally define a prime example of the "rare exception" to exceeding the single digit multiple for punitive damages established as precedent in *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003). I strongly believe it would because of the \$156 million amount above (\$187.2 million inflation adjusted). In Doc 144 I stated that since mine was the last open case of the dozen original plaintiffs to be able to hold Defendant accountable, if I were to receive any amount less than \$187.2 million then the Defendant would profit from the fraud. In *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996), the Court rejected the \$2 million in punitive damages as excessive but stated however, that these three factors can be over-ridden if it is "necessary to deter future conduct". Given the plethora of gross ongoing frauds by Defendant before and after my case that I reference below in "REASONS..." section, paragraph (1), such

high punitive damages are necessary for such a deterrent.

4) The next question presented is, should this case be accepted, whether venue should be transferred back to Florida. I originally filed suit in my nearest federal court in the middle district of Florida, Case 3:20-cv-00504 (2020), and my summons couldn't be served because Defendant timed the fraud to the very day they knew their main NYC office would be closed because then NY Gov Cuomo closed all non-essential businesses due to Covid-19. Defendant knew the policy of the NY SOS (Secretary of State) prohibiting service of summons from courts outside the state of NY. Though not in violation of the UCC, it's certainly an unfair element that Defendant knew would enable them to litigate amongst local judges with conflicts not direct enough to warrant recusal: the district Judge Carter and two of the three appellate judges being recommended for appointment by Senator Schumer, whose third largest contributor is the Defendant; and Carter's wife being a former attorney for JP Morgan, a co-defendant with Citigroup in a plethora of fraud cases.

#### **PARTIES TO THE PROCEEDING**

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Respondent: Citigroup Global Markets Holdings, Inc. by Defense Counsel Samuel J. Rubin Goodwin Proctor LLP The New York Times Building 620 Eighth Avenue New York, NY 10018, srubin@goodwinlaw.com

#### **RELATED CASES**

David M. Kirk v. Citigroup Global Markets Holdings, Inc., No. 1:20-cv-07619-ALC, U.S. District Court for the Southern District of New York. Doc 156 Dismissal Order entered 12/28/2023.

David M. Kirk v. Citigroup Global Markets Holdings, Inc., No. 24-237, Second Circuit Court of Appeals. Docket 33.2 upholds Dismissal Order, judgement entered 3/10/202



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## PETITION FOR A WRIT OF CERTIORARI

Petitioner David M. Kirk respectfully requests the issuance of a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

### OPINIONS BELOW

The Order of Dismissal by the United States District Court for the Southern District of New York is Docket Entry 156, Case 1:20-cv-07619-ALC, 12/23/2023 and reproduced at Appendix A, App. 1-4.

The Order upholding Dismissal by the United States Court of Appeals for the Second Circuit is Docket Entry 33.1, Case 24-237, 3/10/2025 and reproduced at Appendix B, App. 5-14.

My Petition for Rehearing to the United States Court of Appeals for the Second Circuit is Docket Entry 35.1, Case 24-237, 3/21/2025 and reproduced at Appendix C, App 15-21.

The Order of Denial of my Petition for Rehearing by the United States Court of Appeals for the Second Circuit is Docket Entry 37.1, Case 24-237, 4/2/2025 and reproduced at Appendix D, App 22

### JURISDICTION

The Second Circuit Court of Appeals already established its jurisdiction when in my first appeal, case 22-179, it reversed district Judge Carter's dismissal for lack of jurisdiction of my district court case. This Court's jurisdiction is invoked under 28

U.S.C. § 1254; I, as petitioner, having timely filed this petition for a writ of certiorari within ninety days of the denial of my motion for rehearing (said denial docketed 4/2/2025, docket entry 37, appeals case 24-237).

### CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be put twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment XIV:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

United States Constitution, Article I, Section 8, Clause 3.7:

States may not discriminate against interstate commerce...states may not take actions that are facially neutral but unduly burden interstate commerce.

### STATEMENT OF THE CASE

As stated above in the Jurisdiction section V, the Second Circuit Court of Appeals on 4/2/2025 denied my motion for rehearing (docket entry 37, case 24-237). This was done with a single sentence not mentioning a single word of my motion. My motion for rehearing stated that the Appeals Court on 3/10/25 upholding district court Judge Carter's dismissal was critically flawed in its quoting from the stock prospectus by omitting the single word "Intraday". In my petition for rehearing, I specifically quoted from my appeal such language that included "Intraday" that I quoted from the stock prospectus. My petition further quoted from my appeal quoting from the prospectus that such Intraday variations are referred to as varying "based on the Index and used to value the notes at redemption or maturity", thus inferring that such variations would be corrected for at maturity. I then stated that not only were no corrections made but that four additional days of grossly under tracking the stated index caused the final value at maturity to be 94% lower than advertised. Basically, the stock description in bold promising to track 3 times the change in the stated oil index was totally meaningless. I also stated in my petition for rehearing "Citing this court's recent dismissal, page 5, that 'The Pricing Supplement further described how trading prices could be affected by "many unpredictable factors" that alter "global supply and demand for crude oil'"". I also stated that the fluctuation in oil price had nothing to do with the stock tracking the price change in the specified oil index and that I never stated that the change in the price of oil was the cause in my case – only the under tracking of the price change. In affirming Judge Carter's dismissal, the appeals court even praised Judge Carter for his courtroom decorum – even after I stated he delayed his ruling nine months, only ruling after I filed a mandamus and his dismissal stated that I was never promised three times the change in the oil index. I responded that he must not have read the stock description in bold promising three times the change in value of the stated oil index could be off by as much as 50% in a day and never corrected for but further under tracking four additional days. My Doc 144 complaint stated that both UWT stock (the focus of my case) and the advertised inverse stock DWT followed the index and each other with precision inversely for

the first 180 trading days since inception and on closing March 19, 2020 UWT dropped 50.7% and DWT dropped 54.1% - clearly not "inverse" of each other. Even putting aside the argument of "Intraday", clearly to be 50% off in one day of its promised price, a footnote would be needed at the end of the stock description in bold saying so, not on page 41 of the lengthy prospectus.

## REASONS FOR GRANTING THE WRIT

1. This case is of strong national importance because I am the last remaining plaintiff of the dozen plaintiffs in related cases listed in Doc 37 of my district court case to be able to hold the Defendant accountable. Some lost seven figure amounts, and the total amount of the fraud I calculated in bold on page 8 of my Doc 22 complaint on 12/29/20 was at least \$156 million and this figure was never contested by Defense Counsel (adjusted for inflation to \$187.2 million in my Doc 144 final amended complaint). Defendant is a repeated gross fraudster receiving little if any punishments. This petition finally gives the means through this Honorable Court the chance to see that fair punishment is meted out by a fair-minded jury. As I stated in my final amended complaint at Doc 22, paragraph 1 (with supporting footnotes), "Defendant has admitted to "have fallen short of regulators' expectations", those regulators citing "unsafe and unsound banking practices" over "longstanding failure" easily encompassing the same time period as the offenses stated in this complaint – from settling a criminal inquiry with federal prosecutors who claimed that in 2017 Defendant was allowing drug smugglers to use the bank to launder money from Mexico to Defendant's agreement on March 19, 2020 (this complaint lists that date of offense), to paying fine to the OCC for violating the fair housing act, to a \$900 million clerical error on Aug 16, 2020." Defendant continues to perpetuate gross frauds with impunity, even after lauding itself as the first major bank to hire a female CEO who promised to correct the company's longstanding failures. The "longstanding failure" quoted above occurred October 2020 after this case was originally filed resulting in a \$400 million fine and the fair housing act violation occurred 6 months after the fraud in this case. Defendant Citi also received a felony indictment after being "ratted out" by co-conspirator JP Morgan in a \$1.9 billion Australian stock fraud, ref: online article, Wall Street on Parade, by Pam Martens and Russ Martens: June 4, 2018. The same year the SEC fined Defendant \$4.75 million for failure of internal controls of \$1 billion related Banamex and days ago the Miami Federal Appeals Court revived the Banamex case.
2. As mentioned in "QUESTIONS PRESENTED" paragraph (2), the denial of my rehearing, Appeals Case 24-237, 04/02/2025, Docket 37.1 without comment is not an uncommon situation. However, my petition was compelling, stating that the appeals court 24-237 Docket 33.1 Order was crucially flawed in omitting the word "Intraday" in its quoting of the stock

prospectus. Said appeal was for the ruling of dismissal in my district court case #1:20-CV-07619-ALC. To quote from the first paragraph of my petition for rehearing:

“First and foremost, please be advised that I am frantically composing this petition in the very late-night hours of Thursday, 3/20/25 as I was only made aware hours ago of the 3/10/25 dismissal by this Honorable Court from getting word from a friend as I’ve received no notice to date in the mail or by email. My new case manager told me hours ago that the 14-day deadline to file this is Monday, so I consider my deadline as shortly after 8am Friday (only hours from now), as that seems to be the best time for emailing filings for them to be docketed fastest just as the court opens. This would still leave Monday in case it isn’t docketed Friday.”

I have retained the envelope in which the 3/10/25 dismissal order was mailed to me and it is postmarked 3/12/25 – two business days after the order and I didn’t receive it until 3/25/25 – a day after the deadline to file my petition for rehearing. Since I have no access to pacer records and my district court motion for access was denied, if I hadn’t asked the friend to access pacer for me, I would have missed the deadline. Lack of due process started with the NY SOS not serving my summons from my local district court of the middle district of Florida (detailed below), not being able to access judicial decisions and receiving my mailed copy a day after the deadline to file my motion for rehearing and said motion denied without explanation.

3. Regarding venue change back to Florida should this petition be accepted, I emphasize Defendant’s choice of timing of the fraud to the day they knew they couldn’t be served summons from out of state courts, forcing venue to NYC with judges with huge conflicts of interest not direct enough to warrant recusal. District Judge Carter was recommended for appointment by Senator Schumer, whose largest contributors are NY based companies such as the Defendant in this case who is his third largest contributor. I also stated Judge Carter’s wife worked formerly as an attorney for JP Morgan whom I listed was a co-Defendant in a plethora of fraud cases with Citigroup. Two of the appellate judges on the Second Circuit Court of Appeals (Honorable Judges Mr. Sullivan and Ms. Lee) were also recommended by Senator Schumer. In response to my Doc 15 advancing for change of venue, Defense Counsel responded in Doc 16 citing *Bakken Resources, Inc. v. Edington*, No. 15 Civ. 8686 (ALC), 2019 WL 1437273, at \*6 (S.D.N.Y. Mar. 29, 2019) that I “had an opportunity to choose the venue when filing...There has been no change in circumstances since this action was commenced.” Venue was strictly chosen by Defendant’s timing of the fraud to the day it knew its main NYC office would be closed and it couldn’t be served summons from courts outside of NY because of the NY SOS policy. District court Order 20 denied my request for change of venue back to the Florida court as premature

because jurisdiction hadn't been established. However, jurisdiction was established in my successful first appeal 22-179 (Doc 100 in the district court case), but the issue of change of venue was never revisited. Venue should have been changed then which would have saved the miscarriage of justice of Judge Carter's dismissal for lack of jurisdiction (overturned in my 22-179 appeal) and the later denial of my petition for rehearing without comment. Though these indirect conflicts alone aren't enough to warrant change of venue, when combined with the denial of process of service of my Florida court summons, they indeed are enough, especially given the actions of Judge Carter detailed below (9 month delay, citing related cases denied jurisdiction when this case already established jurisdiction, denying the three times change in price guaranteed in bold in the stock description), and the appeals court denial of my motion for rehearing without comment.

4. As mentioned, there were eleven more related cases. They were identical to this one except in amount and plaintiff names but all those failed because the plaintiffs dropped out because of lack of legal knowledge and fatigue after dealing with district court judges with such "indirect conflicts". Judge Carter even delayed his decision in this case by nine months and only ruled after I filed a mandamus with the appeals court. This was after he knew that this case was many years old and had even stated that a jury adjusting for inflationary loss was not a given outcome. Quoting from my 24-237 Appellant Brief "Doc 156 Dismissal Order cites the dismissals of the related cases of plaintiffs Allen and Zellner and the Allen case cited the Jacobson and Zellner cases. All three cases were dismissed on the grounds that "the Court found no basis for an exercise of diversity jurisdiction". Obviously, this Honorable Court [Second Circuit Court of Appeals] affirmed jurisdiction in my 22-179 appeal, so when Judge Carter cited those cases in his 12/28/23 Doc 156 Order granting dismissal, he already knew from the 10/18/22 decision of this Honorable Court that jurisdiction was affirmed, yet he still cited the Allen and Zellner cases."

## CONCLUSION

For the foregoing reasons, as plaintiff appellant, I respectfully request that this Honorable Court issue a writ of certiorari to review the judgement of the Second Circuit Court of Appeals. Should the decision of the Second Circuit Court of Appeals be reversed and this case be allowed to continue, I respectfully request that per 28 U.S.C. § 1404(a) "in the interest of justice" that venue be directed back to the federal district court for the middle district of Florida where I originally filed suit but my summons couldn't be served because of the aforementioned policy of the NY Secretary of State.

DATED this 12<sup>th</sup> day of May, 2025

Respectfully submitted,

/s/ David M. Kirk

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