

No 4-6394

IN THE SUPREME COURT OF THE  
UNITED STATES

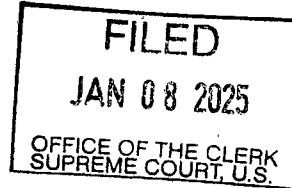
MEHDI MOSLEM and SAAED MOSLEM,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.



EMERGENCY PETITION FOR WRIT OF  
MANDAMUS

UNITED STATES COURT OF APPEALS FOR THE  
SECOND CIRCUIT

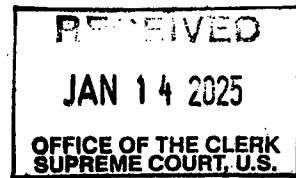
Appeal Case No. 22-2789 & 22-2790

SDNY District Case No. 19CR547

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Date: January 8<sup>th</sup>, 2025



## QUESTIONS PRESENTED

Whether the Second Circuit's failure to address Petitioners' claims of prosecutorial misconduct and judicial fraud, despite multiple emergency motions, warrants this Court's intervention through a writ of mandamus?

Whether Petitioners' convictions were obtained in violation of the statute of limitations, given the government's reliance on time-barred evidence and the court's failure to properly instruct the jury on this issue?

Whether the jury instructions were fundamentally flawed and violated Petitioners' constitutional rights by omitting critical legal standards and failing to properly guide the jury's deliberations?

Whether the government and Second Circuit have continually obstructed Petitioners' efforts to expose the truth, necessitating this Court's intervention to ensure justice and maintain the integrity of the judicial system?

## PARTIES TO THE PROCEEDING

Petitioners Mehdi Moslem and Saaed Moslem were defendants-appellants in the court below.

Respondent is the United States of America.

## RELATED PROCEEDINGS

United States v. Moslem, No. 22-2789(L), 22-2790 (2d Cir.) (appeal pending)

United States v. Moslem, No. 19CR547 (S.D.N.Y.) (judgment entered Oct. 17, 2022)

## JURISDICTION

This Court has jurisdiction to issue a writ of mandamus under the All Writs Act, 28 U.S.C. § 1651(a). The petition is filed under Rule 20 of the Rules of the Supreme Court.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. 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 offence to be twice put 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.”

U.S. Constitution, Amendment VI:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

18 U.S.C. § 3282(a):

"Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed."

Federal Rule of Criminal Procedure 12(b)(3)(B):

"The following defenses, objections, and requests must be raised by pretrial motion if the basis for the motion is then reasonably available and the motion can be determined without a trial on the merits: ... (v) a defect in the indictment or information, including: (A) joining two or more offenses in the same count (duplicity); (B) charging the same offense in more than one count (multiplicity); (C) lack of specificity; (D) improper joinder; and (E) failure to state an offense;"

28 U.S.C. § 1651(a):

Known as the All Writs Act, authorizes federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

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## STATEMENT OF THE CASE

This case arises from the convictions of Mehdi Moslem and Saaed Moslem following a jury trial in the Southern District of New York before Judge Cathy Seibel. The Moslems were found guilty of conspiracy to defraud the IRS, bank fraud conspiracy, and related charges on June 3, 2021. They were sentenced on October 17, 2022, with Saaed receiving 96 months' imprisonment and Mehdi receiving 40 months.

The Moslems filed direct appeals on October 24, 2022. After significant delays in the appellate process, including a 7-month period where the government failed to respond, the Moslems filed multiple emergency motions demonstrating prosecutorial misconduct, judicial fraud, ineffective assistance of counsel and egregious constitutional violations. These motions raised serious concerns about the integrity of the entire proceedings, from grand jury indictment through trial and post-conviction.

Pursuant to 28 U.S.C. § 1746 Mehdi Moslem and Saaed Moslem, declare under the penalty of perjury that the foregoing is true and correct.

Key issues raised in these motions include:

- A. Prosecutorial misconduct in lying to the grand jury, particularly regarding the status of key witness Stephen Strauhs.
- B. Violations of the statute of limitations, with charges based on conduct outside the 5-year limitations period.
- C. Judicial misconduct by Judge Seibel, including improper jury instructions and collusion with prosecutors, and defense counsel.
- D. Ineffective assistance of counsel at pre-trial, trial and on appeal.
- E. Constitutional violations, including due process and Sixth Amendment rights.

Despite the gravity of these facts, the Second Circuit has failed to substantively address any of the Moslems' claims. On December 6, 2024, the court issued an order granting Mehdi Moslem's request to proceed pro se and cancelling scheduled oral

arguments, opting instead to take the case on submission. This order came after months of inaction on the Moslems' direct appeal, which has been pending for over 26 months.

The combination of extraordinary delay, the court's failure to address serious constitutional claims, and the cancellation of oral arguments without explanation has left the Moslems with no adequate remedy in the lower courts. This petition seeks the Supreme Court's intervention to address these egregious violations and restore integrity to the judicial process.

## REASONS FOR GRANTING THE WRIT

### A. The Second Circuit's Failure to Address Petitioners' Claims of Prosecutorial Misconduct and Judicial Fraud Warrants This Court's Intervention

The extraordinary circumstances of this case, involving systemic misconduct at multiple levels of the judicial process, demanding this Court's supervisory intervention. The Second Circuit's continued inaction in the face of irrefutable evidence of prosecutorial misconduct and judicial fraud threatens the integrity of the justice system and public confidence in the courts.

#### 1. The Government's Misrepresentations to the Grand Jury Constitute Prosecutorial Misconduct Requiring Dismissal

Petitioners have presented irrefutable evidence that prosecutors deliberately misled the grand jury regarding the status of key witness Stephen Strauhs. Specifically, the prosecutors portrayed Strauhs as an active co-conspirator through 2018, despite knowing he began cooperating with the government in 2012. This misrepresentation was material to obtaining an indictment on time-barred charges.

The Supreme Court has long recognized that prosecutorial misconduct before the grand jury can warrant dismissal of an indictment. In *Bank of Nova Scotia v. United States*, 487 U.S. 250 (1988), this Court held that dismissal is appropriate

where misconduct "substantially influenced the grand jury's decision to indict" or created "grave doubt" that the decision was free from such influence. The misrepresentation of Strauhs' status meets this standard, as it directly impacted the grand jury's understanding of the conspiracy's timeline and the applicability of the statute of limitations.

Furthermore, in *United States v. Williams*, 504 U.S. 36 (1992), this Court emphasized that prosecutors have a duty of good faith to the grand jury. The deliberate presentation of misleading evidence regarding a key witness's status violates this duty and undermines the grand jury's essential function as a check on prosecutorial power.

The Second Circuit's failure to address these serious allegations of prosecutorial misconduct, despite multiple emergency motions, represents an abdication of its responsibility to ensure the integrity of the grand jury process. This Court's intervention is necessary to clarify the standards for addressing such misconduct and to prevent the erosion of fundamental safeguards in the criminal justice system.

## 2. Judge Seibel's Actions Amount to Fraud on the Court

Petitioners have presented evidence of judicial fraud perpetrated by Judge Cathy Seibel, which constitutes fraud on the court. These fraudulent activities include:

- i. Knowingly allowing the use of time-barred evidence and charges
- ii. Misrepresenting grand jury proceedings in court orders
- iii. Colluding with prosecutors to conceal misconduct
- iv. Making unsupported claims about "overwhelming evidence" to justify denying relief

This Court has recognized the gravity of fraud on the court, defining it as conduct that "seriously affects the integrity of the normal process of adjudication." *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 245 (1944). The actions of

Judge Seibel, particularly her misrepresentations about grand jury proceedings and collusion with prosecutors, strike at the heart of judicial integrity.

The Second Circuit's failure to investigate or address these facts, despite their seriousness and supporting evidence, raises concerns about the adequacy of existing mechanisms to address judicial misconduct. This Court's intervention is necessary to reaffirm the importance of judicial integrity and to provide guidance on addressing fraud on the court allegations in the context of criminal proceedings.

#### B. The Convictions Were Obtained in Violation of the Statute of Limitations

Petitioners argue that their convictions were based on conduct outside the applicable five-year statute of limitations. This claim is rooted in the government's misrepresentation of Stephen Strauhs' status to the grand jury and the court's failure to properly instruct the jury on the limitations issue.

In *United States v. Grimm*, 738 F.3d 498 (2d Cir. 2013), the Second Circuit held that routine payments made after a conspiracy ends cannot extend the statute of limitations. Petitioners argue that under Grimm, Strauhs' cooperation in 2012 effectively ended the charged conspiracy, making the 2019 indictment untimely.

The indictment charged conduct dating back to 2009, well beyond the applicable statute of limitations. Judge Seibel failed to instruct the jury that they must find at least one overt act occurred within the limitations period to convict on the conspiracy charges, violating *United States v. Salmonese*, 352 F.3d 608 (2d Cir. 2003).

The instructions failed to explain requirements for a conspiracy to continue between Mehdi and Saaed, after Strauhs' cooperation began, ignoring principles from *United States v. Nkansah*, 699 F.3d 743 (2d Cir. 2012).

Judge Seibel failed to instruct the jury that they must unanimously agree on specific overt acts committed in furtherance of the conspiracy. This omission

violates Supreme Court and Second Circuit precedents, including Richardson v. United States, 526 U.S. 813 (1999) and United States v. Kozeny, 667 F.3d 122 (2d Cir. 2011).

There was no instruction on how to evaluate evidence from Strauhs before and after he began cooperating, violating principles established in United States v. Rosenblatt, 554 F.2d 36 (2d Cir. 1977).

The statute of limitations serves as a critical safeguard against stale prosecutions and the erosion of defendants' ability to mount an effective defense. This Court's intervention is necessary in this case involving cooperating witnesses and to ensure that lower courts properly instruct juries on statute of limitations issues in conspiracy cases.

### C. The Jury Instructions Were Fundamentally Flawed and Violated Petitioners' Constitutional Rights

Petitioners demonstrated that Judge Seibel's jury instructions contained critical omissions that violated their constitutional rights to due process and a fair trial. Specifically, they argue that the instructions failed to:

- i. Require unanimity on specific overt acts (violating Richardson v. United States, 526 U.S. 813 (1999))
- ii. Address the temporal scope of the conspiracy (contrary to United States v. Grimm)
- iii. Provide guidance on evaluating co-conspirator testimony (violating United States v. Rosenblatt, 554 F.2d 36 (2d Cir. 1977))
- iv. Instruct on specialized knowledge for expert witnesses (contrary to Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993))

The cumulative effect of these omissions deprived the jury of essential guidance and resulted in a fundamentally unfair trial. The Second Circuit's failure to address these instructional errors, despite their constitutional implications, warrants this Court's review.

#### D. The Government and Second Circuit Have Continually Obstructed Petitioners' Efforts to Expose the Truth

Petitioners have exposed a pattern of obstruction by both the government and the Second Circuit that has prevented them from obtaining relief or even a fair hearing on their claims. This includes:

- i. The government's 26-month delay in adjudication of their direct appeal
- ii. The Second Circuit's failure to rule on multiple emergency motions
- iii. The cancellation of oral arguments without explanation
- iv. The court's refusal to address serious allegations of prosecutorial misconduct and judicial fraud

This pattern of delay and inaction has effectively denied petitioners any meaningful opportunity to present their claims of constitutional violations and systemic misconduct. The extraordinary nature of these obstructions, combined with the gravity of the underlying allegations, necessitates this Court's intervention to ensure that petitioners receive a full and fair review of their claims.

**E. This Case Presents Exceptional Circumstances Warranting the Extraordinary Remedy of Mandamus**

The issuance of a writ of mandamus is an extraordinary remedy reserved for exceptional circumstances. *Cheney v. U.S. Dist. Court for D.C.*, 542 U.S. 367, 380 (2004). This case presents such circumstances, given:

- i. The serious allegations of prosecutorial misconduct and judicial fraud
- ii. The constitutional implications of the claimed errors
- iii. The Second Circuit's continued failure to address these issues
- iv. The lack of any other adequate means to attain relief

The combination of these factors threatens not only petitioners' individual rights but also the integrity of the judicial process itself. This Court's intervention through mandamus is necessary to prevent a miscarriage of justice and to provide guidance to lower courts on addressing systemic misconduct allegations.

**F. Continued Non-Response by Government and Second Circuit Violates Due Process**

The government's repeated failure to respond to critical motions, coupled with the Second Circuit's refusal to address these issues, demonstrates a systemic breakdown in the judicial process that necessitates this Court's intervention.

**1. Government's Violation of FRAP Rule 27**

On December 5, 2024, Mehdi Moslem filed an emergency motion to dismiss the indictment, citing prosecutorial misconduct, statute of limitations violations, and constitutional infringements. Federal Rule of Appellate Procedure 27(a)(3)(A) mandates that any party may file a response to a motion within 10 days after service. The government's failure to respond within this timeframe constitutes a significant procedural default.

This Court has consistently held that when a party fails to oppose a motion raising substantial constitutional issues, such non-opposition may be deemed a concession of the motion's merits. The government's silence in the face of serious allegations of misconduct is particularly egregious given:

- a. The motion raises fundamental constitutional violations
- b. The government, as a sophisticated litigant, is fully aware of its obligations
- c. The underlying claims involve grave miscarriages of justice

## 2. Second Circuit's Failure to Address Critical Motions

The Second Circuit has similarly failed to rule on multiple emergency motions, including:

- i. Mehdi Moslem's December 17, 2024 motion to dismiss, due to the government non- opposition
- ii. Saaed Moslem's motion for recusal of Judge Richard J. Sullivan and expedited adjudication, filed on December 9, 2024

The court's inaction on these motions, which raise serious questions about the integrity of the judicial process, constitutes an abdication of its responsibility to ensure due process and equal protection under the law.

## 3. Implications of Continued Non-Response

The combined effect of the government's procedural default and the Second Circuit's refusal to address these critical issues creates an untenable situation where:

- i. Defendants are denied their right to prompt adjudication of claims
- ii. Serious allegations of misconduct go unaddressed
- iii. The integrity of the judicial process is undermined
- iv. Over 3.5 years of unlawful incarceration

This pattern of non-response effectively denies the Moslems any meaningful opportunity to present their claims of constitutional violations and systemic misconduct. The extraordinary nature of these obstructions, combined with the gravity of the underlying allegations, necessitates this Court's intervention to ensure that petitioners receive a full and fair review of their claims.

The continued silence from both the government and the Second Circuit in the face of these serious allegations raises grave concerns about the administration of justice and the protection of constitutional rights. This Court's intervention through mandamus is necessary to prevent a miscarriage of justice and to provide guidance to lower courts on addressing systemic misconduct allegations.

#### **G. The Supreme Court's Decision Will Reflect Its Commitment to Justice and the Rule of Law**

This case presents extraordinary circumstances involving systemic misconduct, including prosecutorial fraud, judicial fraud, Defense counsel Collusion, and violations of constitutional rights. The Petitioners have been subjected to prolonged incarceration based on an indictment obtained through egregious misconduct and collusion at multiple levels of the judicial system. Despite raising these serious claims in multiple motions, neither the government nor the Second Circuit Court of Appeals has substantively addressed them, leaving Petitioners without any meaningful avenue for relief.

The Supreme Court now stands as the last safeguard for ensuring justice in this case. A denial of this petition without proper adjudication is signaling that such systemic misconduct can go unchecked, eroding public confidence in the judiciary's ability to act as a neutral arbiter of justice. Conversely, granting this petition would reaffirm the Court's role as a guardian of constitutional rights and its commitment to addressing grave miscarriages of justice.

The Petitioners respectfully urge this Court to consider the broader implications of its decision. By addressing these serious allegations and providing clear guidance

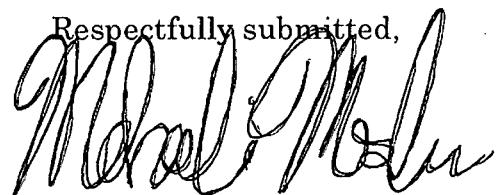
on the standards for prosecutorial and judicial conduct, this Court has an opportunity to restore faith in the integrity of the judicial process. Failure to do so is perpetuating the harm caused by unconstitutional convictions and undermining the foundational principles upon which our legal system is built.

The Petitioners do not seek special treatment but only a fair and impartial review of their claims. They trust that this Court will recognize the importance of ensuring that no individual is deprived of their liberty based on fraudulent and unconstitutional proceedings. The stakes in this case extend beyond the Petitioners themselves; they implicate the credibility and legitimacy of our entire system of justice.

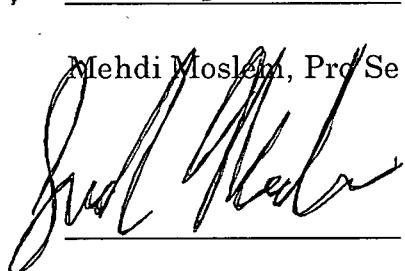
## CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of mandamus, direct the Second Circuit to address petitioners' claims of prosecutorial misconduct and judicial fraud, and provide guidance on the proper standards for evaluating such claims in criminal proceedings.

Respectfully submitted,



Mehdi Moslem, Pro Se



Saaed Moslem, Pro Se

Date: January 8<sup>th</sup>, 2025