

**In the Supreme Court of the United States**

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JEREMY BATES, *derivatively on behalf of  
the United States of America,*

*Petitioner-Movant,*

v.

DONALD J. TRUMP, *in his personal capacity, and the  
UNITED STATES OF AMERICA,*

*Respondents.*

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

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**Consecutive Motion for Leave To File Out-of-Time Petition for Rehearing**

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August 31, 2025

Jeremy Bates  
21 West Street Apt. 21J  
New York, New York 10006  
917-626-2473  
jeremybates3@gmail.com  
*Petitioner-Movant pro Se, derivatively  
on behalf of the United States of America*

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Jeremy Bates, derivatively on behalf of the United States, moves (“Motion”) consecutively for leave to file an out-of-time petition for rehearing in *Bates v.*

*Trump*, No. 21-1389, *cert. denied* (June 27, 2022), *reh’g denied* (Feb. 20, 2024).

In January 2024, when Bates first moved for rehearing, he argued that it was years after the wrongs at issue, that a limitations period might be running, and that the U.S. Department of Justice (“DOJ”) had failed to bring an important civil claim.

Since then, events have confirmed that certiorari should have been granted.

Enabled by this Court's decisions last Term allowing him ballot access and limiting liability for presidential crimes, Respondent is again our Chief Executive. Entrusted with that office, not only has he effectively squelched the prosecution of his own self, but he has also pardoned 1,500 others of crimes that they committed during their violent and insurrectionist attack on the United States Congress.

The way now for the Republic to obtain justice for that attack is for the Court to grant this Motion, to grant rehearing and certiorari, and to allow this litigation to proceed as a derivative action on behalf of the United States. Otherwise, as Petitioner has warned, justice will be evaded—an unaccountable Chief Executive will continue to abuse power and to breach fiduciary duties for his own ends.

Faced with such recurring faithlessness, private stakeholders long have had a traditional remedy: derivative standing. For centuries, courts of equity allowed derivative plaintiffs to avert intolerable grievances and to protect private entities.

Here, the entity to be protected is nothing less than the United States. And especially in cases where public interests are at stake, this Court has inherent and equitable power to protect the Nation and to prevent failures of justice. The failures of justice for the January 6, 2021 insurrection have become catastrophic.

It falls to this Court to hold this Executive to account. The Court should rule that civil justice will be done. Executive faithlessness must have a remedy. And as this degree of presidential abuse is novel, so too—in Lincoln's words—this Court now must think anew and act anew. It must tailor a remedy to the circumstances.

The petition for certiorari here points to a remedy and may now be reheard.

## **Background**

This Motion would revive a derivative, fiduciary-duty claim that was filed against then-President Donald Trump on January 19, 2021. Pet. App. 10, 37.

The claim arose in part out of Trump’s false narrative of election fraud and the resulting attack on the Capitol on January 6, 2021, as Congress was meeting to certify the 2020 election. Pet. App. 33–34. The Complaint demands damages for the United States, including punitive damages, of at least \$2.1 billion. Pet. App. 38.

DOJ removed and then moved to dismiss under Rules 12(b)(1) and 12(b)(6). Pet. App. 9. The Southern District of New York (Kaplan, J.) tersely dismissed. *Id.*

The Second Circuit affirmed, reasoning that Bates lacked standing to sue a sitting President derivatively on behalf of the United States. Pet. App. 4.

Bates petitioned for certiorari, arguing that the Nation had a claim but was failing to act. The Solicitor General waived any right to respond, arguably also waiving 28 U.S.C. §§ 516 and 518. The Court denied certiorari in June 2022.

Aware that the claim might have a three-year limitations period, in January 2024 Bates moved for leave to file a petition for rehearing. He noted that although DOJ had begun to prosecute Respondent criminally, nothing suggested that DOJ was advancing any civil claim. The Court denied that motion in February 2024.

Then the Court granted review in the criminal case, *United States v. Trump*, No. 23-939. In June 2024, the Court issued a decision on presidential immunity that Respondent described as a “big win.” And in November 2024, Respondent was again elected to the Office of Trust from which he had betrayed the United States.

### **Reasons for Granting This Motion**

The demise of the criminal case against Respondent, and his pardons and Executive Orders related to the criminal case against himself, are matters of public record. (So too is Respondent's flouting in 2025 of enacted laws and court orders.)

The petition may be filed, and this consecutive Motion for leave to file out of time may be granted, because this Court's Rule 44 is a claims-processing rule and is not jurisdictional. As this Court has often held, a statutory procedural rule is jurisdictional only if Congress clearly states that it is. *Harrow v. Dep't of Defense*, 601 U.S. 480, 482 (2024) (holding that 60-day limit in 5 USC § 7703(b)(1), "like most filing deadlines, is not jurisdictional"); *accord Santos-Zacaria v. Garland*, 598 U.S. 411, 416 (2023); *Wilkins v. United States*, 598 U.S. 152, 157 (2023).

The Court should apply this clear-statement standard to its own Rules.

Rule 44 does not contain any jurisdictional language; instead, Rule 44 contrasts with another Rule that does contain such language. *Compare* S. Ct. Rules 44.2 (providing that time in which to petition for rehearing "will not be extended," without stating by whom) & 44.4 *with* S. Ct. Rule 13.2 ("*The Clerk* will not file any petition for a writ of certiorari that is *jurisdictionally* out of time.") (italics added).

So the Court has the power to consider a consecutive petition for rehearing out of time. *See United States v. Ohio Power Co.*, 353 U.S. 98 (1957) (granting certiorari out of time so that the "case might be disposed of consistently with [ ] companion cases"); *id.* at 99 ("We have consistently ruled that the interests in

finality of litigation must yield where the interests of justice would make unfair the strict application of our rules.”); *Gondeck v. Pan Am. World Airways, Inc.*, 382 U.S. 25, 26–27 (1965) (granting untimely petition for rehearing where “intervening circumstances of substantial . . . effect” merited grant of certiorari).

### **Attempts To Elicit DOJ’s Position**

At 8:30 a.m. on August 29, 2025, Bates e-mailed the Solicitor General’s Office, stated that he would file this Motion, and requested the position of the United States by 1:00 p.m. that day. DOJ did not respond by that time.

Respondent Trump was not served successfully in the district court. So he was not made a party and did not appear below. Nor did he appear in this Court. He is being served with these papers by regular mail to several addresses.

### **Conclusion**

Using powers inherent and equitable, the Court should grant this Motion, should order that the petition for rehearing out of time may be filed, should grant that petition, and should grant the petition for certiorari. Then the Court should either (i) schedule the case for briefing and argument or (ii) summarily remand.

Dated: New York, New York  
August 31, 2025

Respectfully submitted,

Jeremy Bates  
21 West Street Apt. 21J  
New York, New York 10006  
917-626-2473  
jeremybates3@gmail.com  
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