No. 22-686

IN THE

Supreme Court of the United States

CROSLEY ALEXANDER GREEN,
Petitioner,

v.

RICKY D. DIXON, SECRETARY,
FLORIDA DEPARTMENT OF CORRECTIONS,
ASHLEY MOODY, ATTORNEY GENERAL,
STATE OF FLORIDA
Respondent.

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

BRIEF *AMICI CURIAE* OF CURRENT AND FORMER PROSECUTORS IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

Amici are former or current federal or state prosecutors who have dedicated decades of collective service to the criminal justice system and who share a continuing interest in preserving the fair and effective administration of criminal trials.[2] From their own experience, *amici* understand that the duty of prosecutors is "not of an ordinary party to a controversy, but of a sovereignty… whose interest… in a criminal prosecution is not that it shall win a case, but that justice shall be done," *Berger v. United States*, 295 U.S. 78, 88 (1935). That obligation includes making full and frank disclosures of exculpatory information under the *Brady* Rule.

As the Court recognized in *Brady v. Maryland*, 373 U.S. 83, 87 (1963), a prosecutor's failure to disclose exculpatory information to a criminal defendant prior to trial "violates due process… irrespective of the good faith or bad faith of the prosecution." *See also United States v. Agurs*, 427 U.S. 97, 107 (1976) (obligation of prosecutors to disclose exculpatory materials is grounded in "the defendant's right to a fair trial mandated by the Due Process Clause of the Fifth Amendment to the

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[1] Pursuant to Rule 37.6, counsel for *amici curiae* state that no counsel for a party authored this brief in whole or in part or made a monetary contribution to the preparation or submission of this brief. The required ten days' advance notice of intent to file was given to both parties in accordance with Rule 37.2(a).

[2] The full list of *amici* is set forth in Appendix at the end of this brief.

Constitution"). This affirmative duty, which imposes obligations on prosecutors beyond the demands of the purely adversarial trial model, is grounded in an understanding of the prosecutor's "special role… in the search for truth in criminal trials." *Banks v. Dretke*, 540 U.S. 668, 696 (2004) (citation and internal quotation marks omitted). *Amici* appreciate the challenging judgments prosecutors must often make under *Brady*, having made those calls themselves many times. But they also believe that fundamental fairness and public confidence in our judicial system can only be sustained where prosecutors are held to the highest standards of fairness.

Making a full and timely disclosure of all material and favorable evidence to the defense, without consideration of whether that material would be admissible in court, is fundamental to vindicating this responsibility. This Court's precedent does not recognize an exception to the *Brady* Rule based on whether the material in question would ultimately be admissible at trial, and reading such a restriction into *Brady* is unreasonable.

Amici submit this brief in order to emphasize to the Court the importance of clear and uniform guidance on this issue and urge the Court to grant review and to resolve an emerging split of authority in the lower courts on whether evidentiary admissibility matters in the context of *Brady* disclosures.

SUMMARY OF ARGUMENT

Amici urge the Court to grant *certiorari* for three important reasons. *First*, the Eleventh Circuit opinion blurs the division of responsibilities between litigants and the Court in criminal cases regarding whether evidence is subject to the *Brady* Rule. Admissibility determinations are properly the functions of courts, not parties, and public confidence in the criminal justice system could be compromised if the delineation of those responsibilities are blurred. *Second*, the Court needs to address and resolve a burgeoning circuit split on whether it is reasonable for a reviewing court to conclude its *Brady* analysis with a determination of whether the non-disclosed *Brady* materials were admissible. The Court has never limited the reach of *Brady* to evidence that would be admissible at trial, and should use this case to explicitly state that there is no such limitation. *Third*, the Eleventh Circuit's opinion can be read to limit the requirement of *Brady* disclosure to admissible evidence. State and federal prosecutors should not be forced to make evidentiary predictions regarding the admissibility of evidence prior to making their *Brady* disclosures. Leaving the law unsettled on this point would leave prosecutors, who are often less experienced practitioners, with the unenviable responsibility of making evidentiary calls that might be both professionally and personally harmful for the sake of the criminal justice system. Providing explicit guidance regarding what must be disclosed would relieve them of that burden and

firmly commit the responsibility for those determinations to the court.

ARGUMENT

I. The *Brady* Rule is Integral to the Public's Continuing Confidence in our Criminal Justice System.

A defendant's right to a fair trial is the bedrock of our criminal justice system. That system depends on public confidence; if the public lacks faith that the system reaches just results, it loses its moral force and cannot effectively teach respect for the criminal law. In the American system of criminal cases and trials, a fair trial is achieved in part through clear delineation of each party's role in the process. To a degree, the system functions as an adversarial one; the prosecutor and the defense both choose evidence that they think helps their cases and present the best version to the finder of fact, while the trial court makes evidentiary determinations regarding admissibility of the parties' evidence and can bar evidence it deems inadmissible, including evidence that is irrelevant, prejudicial, or cumulative in nature. Finally, a jury of the defendant's peers makes a determination of guilt or innocence based on the evidence the parties have chosen and the court has admitted.

Within that system, though, the prosecution's responsibility to foster the administration of justice is a solemn one – to pursue justice above winning. The

Brady Rule is fundamental to the principles of fairness and justice above all.

In *Brady*, the Court held that the right to due process of law guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution requires prosecutors to disclose to a charged criminal defendant material that "would tend to exculpate" the defendant. *Brady*, 373 U.S. at 87. The *Brady* Rule is fundamental to ensuring that those accused of crimes are treated fairly, specifically by providing them with more accurate information about the strength of the case against them. Indeed, as the Court has observed, "our system of the administration of justice suffers when any accused is treated unfairly." *Id.* That said, the constitution is not violated every time the government fails to disclose materials that might prove helpful. *Kyles v. Whitley*, 514 U.S. 419, 436-37 (1995). Rather, evidence is material under *Brady* only where there is a reasonable probability that, had the *Brady* materials been disclosed, the trial result would have been different.

To establish a *Brady* violation, "[t]he evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued." *Strickler v. Greene*, 527 U.S. 263, 281–82 (1999). Additionally, the evidence not disclosed must be "material," such that, had it been disclosed to the defense, there is a reasonable

probability that the result of the proceeding would have been different. *Id.* at 281.

When addressing that standard, it has been noted that *Brady* material need not be plainly or obviously exculpatory to qualify; rather, "the existence of any small piece of evidence favorable to the defense may, in a particular case, create just the doubt that prevents the jury from returning a verdict of guilty. The private whys and wherefores of jury deliberations pose an impenetrable barrier to our ability to know just which piece of information might make, or might have made, a difference." *United States v. Bagley*, 473 U.S. 667, 693 (1985) (Marshall, J., concurring). The Court thus does not ask "whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial." *Kyles*, 514 U.S. at 436-37.

In analyzing application of the *Brady* rule, the District Court below observed that the state court had stopped its analysis at the question of admissibility without undertaking a materiality analysis, which the District Court held to be a violation of *Brady*. Pet. App. 181a. The Eleventh Circuit majority opinion, while expressing dislike of Petitioner's post-conviction litigation tactics, reversed that ruling, holding instead that Petitioner had not exhausted his state-court remedies before focusing on the inadmissibility of the witness and investigator statements at issue as an additional reason to deny Petitioner's *habeas* petition. In so ruling, the panel

majority held that it was not unreasonable for the state court to have ended its *Brady* analysis at admissibility. Pet. App. 91a-100a. In his concurring opinion, Judge Jordan disagreed with the majority on the issue of exhaustion, but nonetheless voted in favor of reversal because he concluded that the non-disclosed evidence was cumulative of information already in Defendant's possession, while noting that "[w]hen a defendant 'prior to trial, had within [his] knowledge the information by which [he] could have ascertained the alleged *Brady* material… [the] non-disclosed evidence is not material under *Brady*.'" Pet. App. 159a (citing *Maharaj v. Sec'y Dep't of Corr.*, 432 F.3d 1292, 1315 (11th Cir. 2005)).

The opinion of the Court of Appeals essentially exempts from *Brady's* disclosure requirement information that is not itself admissible, and thereby inserted considerations properly committed to the courts into the calculations and considerations of the prosecution as it conducts itself in the case. While all parties to a case necessarily *consider* the likelihood that evidence they or their opponent will offer will be admitted at trial, *determinations* regarding the admissibility of evidence is a task traditionally assigned to courts, not parties. Transitioning that role to the prosecution in the context of *Brady* disclosures creates an appearance of unfairness that would undermine the foundation of our criminal justice system. The circuit split created by the Eleventh Circuit on the reasonableness of this determination

will have a dramatic impact on the day-to-day *Brady* decisions of prosecutors.

In urging the Court to grant review, *amici* ask the Court to provide clear guidance on the mandatory nature of *Brady* disclosures without the requirement that prosecutors make evidentiary determinations of the sort committed to the courts. Any *Brady*-based *habeas* petition stems from a decision made by a prosecutor at some point in time, and an appellate or habeas court's approach to the *Brady* analysis at the end of this long chain of litigation directly affects those initial decisions. Confirming that exculpatory material need not be admissible in evidence in order to qualify under *Brady* would impose no greater burden on the prosecution. To the contrary, it would relieve prosecutors of the requirement that they make a determination—really, a prediction—as to what a court will later do.

To the extent *Brady* material is inadmissible, the court would still be in the position to bar it from being presented to the jury. Importantly, though, counsel for the defense would have access to what was disclosed in it, and would thus be in a position to investigate further and to make an informed strategic decision about which facts they feel are material to their defense, as well as to use evidence that might not ultimately be admissible in court to gather evidence that may be. Such a rule would not impact the Court's analysis of materiality when undertaking a review of *Brady* disclosure violations.

II. The Court Should Grant Review To Consider Whether It Is Reasonable to Find That Evidence Must Be Admissible In Court to Be Covered by *Brady*.

In his petition, Petitioner notes a burgeoning circuit split between the Third Circuit's analysis of this issue and the Eleventh Circuit opinion below. See Pet. 32. *Amici* urge the Court to grant review in this case and resolve this conflict by addressing whether it is reasonable for courts to end their *Brady* analysis at admissibility, which in turn determines whether admissibility should be required before *Brady* obligations attach to evidence. The rules governing disclosure of *Brady* materials are important ones, rules that affect decisions prosecutors make every day. Both the importance of these considerations and the division of authority on the point are factors that favor granting review.

Before the decision below, the law of the Eleventh Circuit reflected the reality of the pre-trial and trial process in criminal matters: evidence that would itself be inadmissible in the form possessed by the prosecutor could still be material under *Brady* if it would have led to the discovery of admissible exculpatory evidence. *See Wright v. Hopper*, 169 F.3d 695, 703 & n.1 (11th Cir. 1999); *Bradley* v. *Nagle*, 212 F.3d 559, 567 (11th Cir. 2000).

In this case the Eleventh Circuit panel majority focused heavily on, and was plainly preoccupied by, the procedural history of Petitioner's appeals, as reflected in its holding that Petitioner had

not exhausted his state-court remedies. Pet. App. 91a-97a.[3] The panel majority went on, much more briefly, to address Petitioner's substantive *Brady* claims, rejecting them because, in the majority's view, the statements of the investigating officers expressing their belief that someone else had committed the crime would themselves have been inadmissible at Petitioner's trial. Pet. App. 100a. That belief led the majority to hold that the state court was reasonable in ending its analysis at admissibility. But the majority's brief analysis of the issue ignored the notion that those statements, while inadmissible themselves, might well have led to admissible exculpatory evidence, including (but not limited to) witnesses the defense might have found and called to support their contention that someone else committed the crime. Indeed, the District Court noted and relied on that very possibility.[4]

By contrast, Judge Jordan's concurring opinion at least focused on the potential import of the

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[3] *Amici* do not address whether the analysis of the Court of Appeals on that issue is correct, and limit their brief to its discussion and holding with respect to the application of the *Brady* rule.

[4] The District Court, after noting that "it is not only the admissibility of the note itself that determines the materiality of the withheld information, but what use might be made of its contents if known to the defense," identified several possible uses of the withheld information, including: 1) eliciting testimony at trial from the investigating officers that they suspected someone else; 2) confronting them in depositions with the same; and 3) impeaching the complainant's testimony on her claim that Petitioner tied the deceased's hands. Pet. App. 181a-185a.

statements of the initial responding officers. But while he noted that those officers believed that the complainant was the actual shooter (and told the prosecutor as much), he joined the majority in reversing the District Court because, while he disagreed with the majority's view that it was reasonable to end the inquiry at admissibility, he did not believe that Petitioner's defense counsel could have used the officers' statements to gather evidence to that effect that they could have used at Petitioner's trial. Pet. App. 160a-161a.

Whether the panel majority was reasonable in holding that a Brady analysis can reasonably end at admissibility merits the Court's review. From their experience as prosecutors, *amici* recognize that a split of authority on this issue will impact the daily decision-making process of federal and state prosecutors, in the Eleventh Circuit and across the country. *Amici* know, from their own substantial prosecutorial experience, that evidence that is exculpatory in some sense, which prosecutors sometimes think of, in a gut-feeling sort of way, as "hurting" their case, comes in all kinds of forms, especially early in an investigation. Under *Brady*, though, a prosecutor is required to turn over anything that is "material" and that tends to be exculpatory. 373 U.S. at 87. Whether what is "material" should be limited to information that is admissible is a question that implicates prosecutors and cases all the time, in every jurisdiction. When serving as prosecutors, *amici* often, as with all prosecutors, have had to consider the

potential exculpatory implications of information that came their way in many forms. The frequency with which these decisions arise in the work of prosecutors strongly militates in favor of guidance from the Court.

Nor do *amici* believe that drawing the *Brady* line at admissibility is the right result. The Court has never erected such a barrier to materiality based on whether *Brady* materials were admissible at trial, and in *Brady* cases it has often discussed the materiality of exculpatory but inadmissible evidence without addressing its admissibility. *See, e.g., Wood v. Bartholomew*, 516 U.S. 1 (1995) (polygraph test not material because not reasonably likely to change trial outcome). To the contrary, the Court has repeatedly addressed the *Brady* Rule in cases involving material that was not admissible on its face without placing such a limitation. One example is evidence that could be used at trial to challenge the credibility of a prosecution witness. *See, e.g.*, *Giglio v. United States*, 405 U.S. 150 (1972) (evidence that could only be used to impeach a witness if called at trial has to be disclosed); *United States v. Bagley*, 473 U.S. 667, 676 (1985) (otherwise inadmissible impeachment evidence had to be disclosed under *Brady* if, were it "disclosed and used effectively, it may make the difference between conviction and acquittal"). While considerations of whether and how such material *might* be used at trial would be *at best* uncertain prior to trial, before any witness had actually been called, the Court has required impeachment evidence to be

turned over even though it only had the potential to be used at trial.

The need for guidance on a question prosecutors consider all the time is especially warranted where, as here, it is subject to a division of authority in the lower courts. Indeed, the decision below not only departed from prior Eleventh Circuit precedent; it also added to a growing Circuit split on the issue. When it reversed the District Court in this case the Eleventh Circuit panel majority joined an existing split on this important question, as Petitioner explains, see Pet. at 32-34. The *en banc* Third Circuit has held that it is "an unreasonable application of, and contrary to, clearly established law" for a court to hold that inadmissible evidence is automatically immaterial under *Brady*. *Dennis v. Sec'y, Penn. Dep't of Corr.*, 834 F.3d 263, 307-311 (3d Cir. 2016) (*en banc*). By contrast, the Eleventh Circuit now holds that information which is not admissible is "not evidence at all" for *Brady* purposes. Pet. App. 100a (citing *Wood*). The Seventh Circuit is unsettled on the matter, recognizing that the approach to admissibility taken by the majority of the federal courts of appeals is more consistent with the Third Circuit's interpretation of *Brady* precedent, but holding repeatedly that only admissible evidence is material. *United States v. Morales*, 746 F.3d 310, 314-315 (7th Cir. 2014).[5] The remaining circuits which

[5] Several other circuits have taken both approaches at different times, indicating confusion over the role of admissibility in materiality not only between but even within circuits. *Compare*

have not directly addressed the split have nonetheless consistently held that evidence can be covered by *Brady* even if it is not itself admissible in court.[6]

Thus, the Seventh and Eleventh Circuits now stand for the proposition that state courts may end their *Brady* analysis after finding the material at issue to be inadmissible. The Third Circuit holds that

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Hoke v. Netherland, 92 F.3d 1350, 1356 n. 3 (4th Cir. 1996) ("these statements may well have been inadmissible at trial under Virginia's Rape Shield Statute, and therefore, as a matter of law, "immaterial" for *Brady* purposes"), *with Nicolas v. Att'y Gen. of Md.*, 820 F.3d 124, 130 n.4 (4th Cir. 2016) ("*Brady* material does not have to be admissible under state evidence rules as long as it could lead to admissible evidence") (*citing Kyles*).

[6] *See, e.g.*, *Ellsworth v. Warden*, 333 F.3d 1, 5 (1st Cir. 2003) ("evidence itself inadmissible *could* be so promising a lead to strong exculpatory evidence that there could be no justification for withholding it"); *United States v. Gil*, 297 F.3d 93, 104 (2d Cir. 2002) (evidence is *Brady* material if it is admissible, "could lead to admissible evidence," or "would be an effective tool in discipling witnesses during cross-examination"); *Johnson v. Folino*, 705 F.3d 117, 130 (3d Cir. 2013) ("inadmissible evidence may be material if it could have led to the discovery of admissible evidence"); *Nicolas v. Att'y Gen. of Md.*, 820 F.3d 124, 130 n.4 (4th Cir. 2016) ("*Brady* material does not have to be admissible under state evidence rules as long as it could lead to admissible evidence") (*citing Kyles*); *Spence v. Johnson*, 80 F.3d 989, 1005 n.14 (5th Cir. 1996) ("inadmissible evidence may be material under *Brady*"); *United States v. Phillip*, 948 F.2d 241, 249 (6th Cir. 1991) (information is not material unless it "consists of, or would lead directly to, evidence admissible at trial for either substantive or impeachment purposes"); *Coleman v. Calderon*, 150 F.3d 1105, 116-17 (9th Cir.) ("[t]o be material [under *Brady*], evidence must be admissible or must lead to admissible evidence"), *rev'd on other grounds*, 525 U.S. 141, 119 S.Ct. 500, 142 L.Ed. 2d 521 (1998).

it is unreasonable to end the analysis there. *Amici* urge this Court to take this cases and to provide guidance on whether requiring admissibility before *Brady* obligations attach represents a reasonable application of the law. That guidance will directly affect everyday choices prosecutors make on the weight to be afforded to the admissible nature of *Brady* material.

Division on a question that *amici* know affects prosecutors with great frequency is a situation that the Court needs to remedy. Granting review will give the Court the perfect opportunity to address this issue in the context of a matter with a fulsome factual record and a clearly delineated split in authority on how to treat originally inadmissible materials that could have a profound effect upon the trial strategies of both the prosecution and defense.

III. Prosecutors Should Not Make Admissibility Determinations When Considering their Obligations To Disclose Exculpatory Materials.

Under *Brady* the defense has the right to receive such exculpatory information as exists that it could potentially use to support its case. The Eleventh Circuit's ruling places that right at risk by holding that a reviewing court down the line can reasonably end its *Brady* analysis at the question of admissibility. *Amici* are concerned that many prosecutors will read this decision to mean that they are allowed to determine what materials *they* deem admissible prior to making *Brady* disclosures to the

defense and, as happened in this case, to withhold materials that suggest that the accused did not commit the charged crime. Such a rule would serve no legitimate interest, including any interests of any prosecutor.

To be sure, *amici* know from experience that, like any advocate, a prosecutor must consider the likelihood that evidence she may offer, or that may be offered by her opponent, will be admitted at trial. But those calculations are just that: estimates of the chances evidence will be admitted by the presiding judge at trial, which cannot reach a certainty until that judge rules. But the decision a prosecutor makes when considering whether something must be disclosed under *Brady*, that is, whether that material "would tend to exculpate" the defendant, *Brady*, 373 U.S. at 87, calls for a different sort of analysis based on the character of the evidence at the time. Admissibility should play no part in that determination.

Ultimately, it is the function of the courts to rule on the admissibility of evidence, not the parties or jury. *See Geders v. United States*, 425 U.S. 80, 86-87 (1976) (role judges play in a criminal trial includes power to "refuse to allow cumulative, repetitive, or irrelevant testimony"); Fed. R. Evid. 104(a) ("The court must decide any preliminary question about whether… evidence is admissible."). While all advocates, including prosecutors, take into account issues of admissibility in assessing the strengths and weaknesses of their case and in preparing for trial,

they do not make those determinations: courts do. Moreover, deciding whether a piece of evidence that would help a *prosecutor's* case is likely to be admitted is not the same thing as deciding that it is not admissible and suppressing it so that it never becomes available to help the *defendant's* case. Allowing prosecutors to make the latter sort of decision both invades the province of the court and violates the right of the defendant to make the same determinations prosecutor are entitled to make: Can this evidence, or something that can be derived from it, help my case?

That is why clear direction on prosecutors' duties and limiting their burden where possible is so important. Prosecutors are not some monolithic body composed of attorneys with similar skills, resources, experience, and training. Often at the start of their career, prosecutors, while tasked with pursuing justice over victory, are beset with pressures and motives to win. Promotions, re-elections, personal pride, and access to future employment all have the potential to distract from adherence to the tenet of justice. No one gets reelected for losing a case.

Further, while the Department of Justice and many state prosecutors' office devote attention to training their attorneys, including on their *Brady* obligations, prosecution on a nationwide basis takes place mostly in state courts in a wide array of departments and jurisdictions. Local prosecutors, who usually do not have the resources of the Department of Justice to support them, are

nonetheless subject to the very same *Brady* obligations. Inexperienced attorneys in any department often do not yet have the benefit of years of trial experience and may not be fully versed in all the rules of evidence that might bring *Brady* materials before the Court. An inexperienced or uncertain prosecutor may easily read the Eleventh Circuit's decision as an instruction to determine the admissibility of any *Brady* materials in her possession prior to making the required disclosures. In light of the basic human fact that winning is of paramount importance to a prosecutor's personal, professional success, prosecutors should not be required, or even permitted, to make evidentiary determinations before making *Brady* disclosures.

Clear guidance from the Court, especially if the Court should hold that disclosure of exculpatory material is required regardless of its ultimate admissibility, will not create a greater burden on prosecutors. Rather, it will relieve them, including those who have not yet garnered experience, of the burden of deciding in advance whether evidence is admissible as part of their *Brady* analysis. It will therefore relieve them of the need to essentially make judicial determinations on which evidence will be admitted. Such a rule will allow a prosecutor to fulfill her *Brady* obligations while, of course, leaving her free to object to the use of any such evidence (or the fruits thereof) at trial—and also leaving the court free to make that ultimate determination.

The criminal justice system, in which a person's life, liberty and reputation are at stake every day, is almost entirely an honor system when it comes to *Brady* disclosures. Courts do not, and should not, micromanage *Brady*. Rather, by providing guidance regarding this important aspect of *Brady* disclosures, the Court would remove personal incentives from the equation, and will thus greatly increasing the public's confidence in the integrity of the criminal justice system.

The division of roles in the criminal justice system is carefully balanced against the need for a fair trial, a balance that is disrupted when it is not clear to prosecutors what their *Brady* obligations are. *Amici* submit this brief to highlight the need for the Court to grant *certiorari* in order to achieve uniformity in the law related to this oft-arising issue, and to instruct prosecutors to turn over all *Brady* materials without consideration of their admissibility. *Amici* know from their experience in the job that such a holding will not burden prosecutors, and that it will also contribute materially to the fairness of the criminal trial process.

CONCLUSION

For the forgoing reasons, the Petition for a writ of *certiorari* should be granted.

Dated: February 22, 2023

Respectfully submitted,

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APPENDIX

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Christine Adams is a former Assistant U.S. Attorney in the Central District of California, where she served as the District's Defense Contractor Fraud Coordinator.

Emil Bove is a former Assistant U.S. Attorney in the Southern District of New York.

Joel M. Cohen is a former federal prosecutor from the U.S. Attorney's Office for the Eastern District of New York, where he supervised its Business/Securities Fraud unit. He was the first legal liaison officer from the US Department of Justice to the French Ministry of Justice, and a legal advisor to the OECD. He currently is a partner at White & Case.

Thomas Connolly is a former Assistant U.S. Attorney in the District of Columbia (1990 to 1995) and a former Assistant U.S. Attorney in the Eastern District of Virginia (1995 to 2000).

Adam Kamenstein is a former Assistant U.S. Attorney in the Central District of California, where he served as Deputy Chief of the Public Corruption and Government Fraud Section.

The Honorable Timothy K. Lewis is a former Assistant U.S. Attorney, Western District of Pennsylvania and a former Assistant District Attorney, Allegheny County, Pennsylvania. Judge Lewis also formerly served on the U.S. Court of Appeals for the Third Circuit and on the U.S. District Court for the Western District of Pennsylvania.

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Rachel Maimin is a former Assistant U.S. Attorney, Southern District of New York.

Sharon L. McCarthy is the former Chief of the Violent Gangs Unit and a Deputy Chief of the Criminal Division in the U.S. Attorney's Office for the Southern District of New York.

Rob Mohen is currently a Deputy District Attorney in Alameda County, California.

David W. Shapiro was a prosecutor for nearly sixteen years, including six years in the Eastern District of New York (positions included Chief of Narcotics), two and half years in the District of Arizona, and six and a half years in the Northern District of California (positions included Chief of Appeals and Criminal Division and U.S. Attorney for the District).

Efrat Sternberg-Urbelis is a former prosecutor. She worked in Special Victims, specializing in Domestic Violence prosecutions in the Kings County District Attorney's Office, and Child Abuse and Sex Crimes in the Bronx Country District Attorney's Office.

David A. Vicinanzo led the national white collar defense practice at Nixon Peabody LLP for a dozen years, after serving as a special prosecutor in the campaign finance investigation of the 1996 presidential election, Acting US Attorney in the District of New Jersey, and Criminal Chief and First Assistant U.S. Attorney in the District of New Hampshire.