

---

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

---

RACHEL CHERWITZ, *et al.*,

*Applicants,*

*v.*

UNITED STATES,

*Respondent.*

---

ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

---

**APPLICATION TO FILE OVERSIZED PETITION**

---

MICHAEL P. ROBOTTI  
*Counsel of Record*

CELIA A. COHEN  
BALLARD SPAHR LLP  
1675 Broadway, 19th Floor  
New York, NY 10019  
(212) 223-0200  
robottim@ballardspahr.com

*Counsel for Applicant*  
*Rachel Cherwitz*

JENNIFER BONJEAN  
*Counsel of Record*  
BONJEAN LAW GROUP PLLC  
303 Van Brunt Street  
Brooklyn, NY 11231  
(718) 875-1850  
jennifer@bonjeanlaw.com

*Counsel for Applicant*  
*Nicole Daedone*



**TO THE HONORABLE SONIA SOTOMAYOR, ASSOCIATE JUSTICE OF THE  
UNITED STATES SUPREME COURT AND CIRCUIT JUSTICE FOR THE  
SECOND CIRCUIT:**

**INTRODUCTION**

Pursuant to Supreme Court Rule 33.1(d), Petitioner-Defendants Rachel Cherwitz and Nicole Daedone respectfully request that the word limit for their certiorari petition, being filed concurrently with this application, be increased by 1,433 words, from the default limit of 9,000 words to a total of 10,433 words.<sup>1</sup> The defendants have concurrently filed a petition for a writ of certiorari from the Second Circuit’s order (the “Order”) denying defendants’ Petition for a Writ of Mandamus, dated April 10, 2025 in *In re Rachel Cherwitz and Nicole Daedone*, No. No. 25-553.<sup>2</sup>

The defendants petition this Court for a writ of certiorari pursuant to Supreme Court Rule 10 and the All Writs Act, *see* 28 U.S.C. § 1651(a), respectfully requesting that this Court reverse the Second Circuit’s denial of mandamus relief. In their petition, defendants requested the Second Circuit to direct the district court to

---

<sup>1</sup> “DE” and “CDE” mean district court docket entry and circuit court docket entry, respectively. Unless otherwise noted, case text quotations omit all internal quotation marks, citations, alterations and footnotes.

<sup>2</sup> The defendants are filing this motion simultaneously with their petition for a writ of certiorari and motion for stay. The Second Circuit issued its order denying the defendants’ mandamus petition on April 10, 2025. CDE:41.1. Trial is scheduled to begin before the district court on May 5, 2025. The defendants are seeking this Court’s intervention as expeditiously as possible, in light of the upcoming May 5<sup>th</sup> trial date. Given the timing, the defendants are filing this motion simultaneously. *See* Rule 33.1(d). Notably, the Second Circuit granted the defendants’ simultaneous motion to submit an oversized mandamus petition below. *See* CDE:11.1; *see also In re City of New York*, No. 10-237, DE:36 (2d Cir.) (granting motion to file oversized petition filed simultaneously with mandamus petition); *United States v. Prevezon Holdings Ltd.*, No. 16-132, DE:73 (2d Cir.) (same).

dismiss the indictment based on undisputed facts demonstrating that the government's case is irrevocably tainted or, in the alternative, direct it to (1) permit the defendants to submit *ex parte* affidavits in support of their privilege claim, which the government will be precluded from using, and (2) hold a *Kastigar* hearing, to determine the full extent of the government's tainted evidence and appropriate relief.

The issue of whether the government can use stolen privileged corporate material to prosecute a company's executives, without notifying the company and/or over the company's objections, as well as evidence derived therefrom, is legally and factually complex and warrants the extension to fully and adequately brief this Court.

The extensive litigation over this issue since September 2024 in the district court demonstrates the need for the extension to fully explain the legal issues and the record. This petition follows two motions to dismiss before the district court based on the government's improper use of stolen privileged documents. The first motion related to a stolen privileged document that the government had produced to the defense prior to the motion to dismiss. *See* DE:95; DE:113; DE:118; DE:141. The second motion to dismiss related to additional stolen privileged documents that the government disclosed it had in its possession after the first motion to dismiss was fully briefed. DE:261; DE:269, DE:270. The briefing on the motions was lengthy and complex. *See* DE:95; DE:113; DE:118; DE:141; DE:261; DE:269, DE:270. Indeed, with respect to the first motion to dismiss, the district court granted the parties' joint request for leave to file 40-page briefs, due to the complexity of the issues surrounding the privilege issue. *See* District Court's Aug. 5, 2024 Order. That was before the

government disclosed the two additional privileged documents. The district court ultimately denied both motions.

The defendants then filed a mandamus petition with the Second Circuit on March 7, 2025. *See* CDE: 1.1. Given the complexity of the issues, the Second Circuit granted the defendants' motion to file an oversized brief, permitting them 10,800 words for their petition for a writ of mandamus (an increase from the default 7,800 word limit). The Second Circuit subsequently denied the defendants' mandamus petition on April 10, 2025. CDE:42.1.

As discussed above, and as set forth in more detail in the defendants' petition, given the extensive record and procedural history, as well as the complex legal arguments of first impression related to the attorney-client privilege, the petition cannot be fully and adequately briefed with the 9,000 word limit set forth in Rule 33.1(d). We respectfully request that the Court grant the defendants' request for an additional 1,433 words.

## CONCLUSION

For the reasons set forth above, the defendants respectfully request that the Court grant this application, authorizing them to file a petition for a writ of certiorari in this matter that exceeds the word limit prescribed by Supreme Court Rule 33.1(d).

RESPECTFULLY SUBMITTED,

Date: April 21, 2025

/s/ Michael P. Robotti

Michael P. Robotti

*Counsel of Record*

Celia A. Cohen

BALLARD SPAHR LLP

1675 Broadway, 19<sup>th</sup> Floor

New York, NY 10019-5820

Tel: (646) 346-8020

robottim@ballardspahr.com

*Counsel for Applicant Rachel Cherwitz*

/s/ Jennifer Bonjean

Jennifer Bonjean, Esq.

*Counsel of Record*

BONJEAN LAW GROUP PLLC

303 Van Brunt Street

Brooklyn, New York 11231

Tel: 718.875.1850

Jennifer@bonjeanlaw.com

*Counsel for Applicant Nicole Daedone*