

No.

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

ABDUR RAHIM ISLAM,

PETITIONER,

UNITED STATES OF AMERICA,

RESPONDENT.

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

PETITION FOR A WRIT OF CERTORARI

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QUESTION(S) PRESENTED

1. Whether the Double Jeopardy Clause permits a trial court to declare a mistrial based on juror unavailability without scrutinizing a prior, contested juror excusal that foreseeably created the juror shortage giving rise to the mistrial.

2. Whether a defendant's refusal to waive his constitutional right to a twelve-person jury under Fed. R. Crim. P. 23(b)(2) may be used to justify a mistrial over his objection under the "manifest necessity" standard.

3. Whether U.S.S.G. 2C1.1(b)(2), cross-referencing § 2B1.1, permits sentencing courts to equate temporary deferral of payment obligations with permanent economic loss or benefit and to attribute subsequent nonpayment to a bribery offense absent rigorous proof of proximate causation, particularly where independent governmental decisions intervened.

PARTIES TO THE PROCEEDING

Petitioner is Abdur Rahim Islam.

Respondent is the United States of America.

RELATED PROCEEDINGS

United States District Court (E.D.Pa.):

*United States of America v. Abdur Rahim
Islam, 2-20-cr-00045-001*

United States Court of Appeals (3d Cir.):

*United States of America v. Abdur Rahim
Islam, No. 23-2306*

*United States of America v. Abdur Rahim
Islam, No. 24-2331*

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as justification for terminating his trial over his objection.

This Court has repeatedly emphasized that a defendant possesses a 'valued right to have his trial completed by a particular tribunal.' *Arizona v. Washington*, 434 U.S. 497, 98 S. Ct. 824, 54 L. Ed. 2d 717 (1978); *United States v. Jorn*, 400 U.S. 470, 91 S. Ct. 547, 27 L. Ed. 2d 543 (1971). A mistrial declared over objection must be supported by 'manifest necessity.' *United States v. Perez*, 22 U.S. 579, 6 L. Ed. 165 (1824). That demanding standard is meant to ensure that retrial remains the rare exception, not the routine consequence of mid-trial developments. The Third Circuit's decision dilutes that protection by isolating the final juror unavailability from the antecedent judicial action that created the juror shortage.

This case also presents a substantial federal sentencing question. The court below affirmed a fourteen-level enhancement under U.S.S.G. 2C1.1(b)(2) by treating deferred lease payments as full economic loss or benefit and attributing later nonpayment of the lease payments to bribery despite independent governmental policy decisions.

OPINIONS BELOW

The District Court Opinion entered on July 7, 2023, and reproduced at App. 1.

The District Court Opinion entered on August 14, 2023, and reproduced at App. 13.

The Third Circuit Opinion entered on May 16, 2024, and reproduced at App. 17.

The Third Circuit Opinion entered on January 8, 2026, and reproduced at App. 35.

JURISDICTION

The judgment of the court of appeals was entered on February 19, 2026. Therefore, this Court has jurisdiction under Supreme Court Rule 13.3, 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND REGULATORY PROVISIONS INVOLVED

U.S. Const. amend. V (Double Jeopardy Clause). Fed. R. Crim. P. 23(b)(2). U.S.S.G. 2C1.1(b)(2).

STATEMENT

A. Proceedings in the District Court (First Appeal)

On January 28, 2020, a federal grand jury returned a twenty-two count indictment against Defendant-Appellant Abdur Rahim Islam alongside co-defendants, Shahied Dawan, Kenyatta Johnson and Dawn Chavous. The original indictment included counts against Islam for conspiracy to commit racketeering under 18 U.S.C. § 1962(d) as well as six counts of wire fraud, one count of use of an interstate facility to further racketeering, six counts of tax fraud, and eight counts of honest services wire fraud. When the case first went to trial in March 2022, the jury hung. Retrial began in September 2022. On November 2, 2022, the jury acquitted all four defendants of the honest services wire fraud charges, ending the

prosecution of Johnson and Chavous. During Phase Two, adjudicating counts involving Islam and Dawan only, the court excused Juror No. 7 without objection due to a death in the partner's family and later excused Juror No. 6 *over defense objections* following the death of a first cousin; the court noted representativeness concerns and that African-American jurors, including the foreperson, remained. On Saturday, November 5, one of the remaining jurors, Juror 3, contacted the District Court and reported she had tested positive for COVID-19 and was symptomatic. Defense counsel informed the District Court that Islam and Dawan would not consent to proceeding with a jury of fewer than twelve people. Concluding there was "no alternative," the District Court found manifest necessity to declare a mistrial, and scheduled the retrial for February 2023. The court stated: "in the absence of consent by the defendants to proceeding with a jury of eleven, I have no alternative but to declare a mistrial" and "I think there is a manifest necessity under the circumstances to declare this a mistrial."

B. Motion to Dismiss on Double Jeopardy Grounds

On December 21, 2022, Islam, later joined by Dawan, filed a motion to dismiss the indictment based on double jeopardy. The District Court denied the motion on July 7, 2023. On appeal, Islam argued "there was no 'manifest necessity' for the mistrial declared in this case on November 7, 2022," and that any retrial would violate the Double Jeopardy Clause. The Third Circuit held "the District Court considered and exhausted all reasonably available alternatives

such that its decision to declare a mistrial was manifestly necessary,” and affirmed as to Islam.

C. Superseding Indictment, Trial, (Second Appeal)

On September 5, 2023, the grand jury returned a superseding indictment replacing the conspiracy to commit racketeering charge with a charge of conspiracy to defraud the United States, 18 U.S.C. § 371. Retrial began on March 4, 2024. On March 20, 2024, the jury found Islam guilty on all counts and Dawan guilty only as to the charge of conspiracy to defraud the United States. The District Court then sentenced Islam to 84 months in prison, followed by three years of supervised release. On direct appeal, petitioner Islam renewed his double jeopardy claim and challenged the admission of testimony concerning the specific reason for a witness’s immunity and the Guidelines “loss/benefit” calculations under U.S.S.G. 2C1.1(b)(2). The court of appeals affirmed.

REASONS FOR GRANTING THE PETITION

A. Novel Issue: Whether Antecedent Judicial Actions Must Be Integrated into the Manifest Necessity Analysis.

This Court’s precedents make clear that manifest necessity demands ‘the greatest caution.’ *Arizona*, 434 U.S. at 506. In *Jorn*, 400 U.S. 470, the Court reversed a conviction where the trial judge *sua sponte* declared a mistrial without adequate exploration of alternatives. Similarly, in *Wade v. Hunter*, 336 U.S. 684, 69 S. Ct. 834, 93 L. Ed. 974

(1949), the Court emphasized the contextual and fact-specific nature of the inquiry.

The juror shortage was not a random occurrence. It was the foreseeable result of the court's earlier contested removal of a seated juror. Whether that antecedent action must be scrutinized as part of the manifest necessity analysis is a novel and important federal issue warranting this Court's review.

B. The Decision Below Permits A Defendant's Exercise Of One Constitutional Right To Undermine Another.

Fed. R. Crim. P. 23(b)(2) permits a defendant to consent to proceed with fewer than twelve jurors. It does not compel waiver. The constitutional right to a jury trial historically contemplates twelve jurors unless properly waived.

The court below reasoned that because Petitioner declined to proceed with eleven jurors, no alternative remained but mistrial. That reasoning effectively transforms a defendant's assertion of one constitutional safeguard into grounds for extinguishing another, the right to proceed to verdict before the empaneled jury.

This Court has long rejected the notion that constitutional rights may be conditioned upon surrender of other protections. *See, e.g., Simmons v. United States*, 390 U.S. 377, 88 S. Ct. 967, 19 L. Ed. 2d 1247 (1968). The question of whether refusal to

waive Fed. R. Crim. P. 23(b)(2) may be weighed against a defendant in the Double Jeopardy analysis requires guidance from this Court to prevent erosion of structural trial guarantees.

C. The Circuits Require Clarification on Loss and Causation Under § 2C1.1(b)(2)

Section 2C1.1(b)(2) directs courts to increase offense levels based on the greater of payment value, benefit received, or loss. It cross-references U.S.S.G. § 2B1.1, which incorporates principles of proximate causation and reasonably foreseeable harm. Yet courts have struggled to define the boundaries of 'loss' and 'benefit' in bribery cases involving deferred obligations.

Some circuits have emphasized rigorous causation analysis and have declined to equate a temporary deferral with permanent economic loss. Others have permitted sentencing courts to attribute subsequent economic outcomes to earlier misconduct under a more expansive view of proximate cause.

The decision below affirmed a fourteen-level increase by equating deferred lease payments with approximately one million dollars in loss or benefit and attributing later nonpayment to bribery despite evidence of independent policy decisions and unanimous governmental action. The resulting enhancement substantially increased Petitioner's advisory range.

Absent clarification, sentencing courts will continue to diverge in their treatment of deferral, gain, and causation under § 2C1.1(b)(2). Given the frequency of public corruption prosecutions in federal courts, uniform guidance from this Court is essential.

CONCLUSION

For the reasons stated above, the petition for certiorari should be granted.

Respectfully submitted:

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