

No. 25-_____

IN THE
SUPREME COURT OF THE UNITED STATES

THIAGO DE SOUZA PRADO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Does the Due Process Clause permit a United States Attorney's Office to prosecute a criminal defendant when the Acting U.S. Attorney previously served as defense counsel for that same defendant in that same case?

PARTIES TO THE PROCEEDING

Petitioner in this Court is defendant-appellant Thiago de Souza Prado.
Respondents in this Court are the United States of America.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Thiago de Souza Prado respectfully petitions this court for a writ of certiorari to review the decision of the United States Court of Appeals for the First Circuit.

OPINION BELOW

The decision of the First Circuit under review is reported at *United States v. Thiago de Souza Prado*, 142 F.4th 99 (1st Cir. 2025) and included in the Appendix at 1a – 21a. In its decision, the First Circuit affirmed the convictions of Mr. Prado on all counts.

STATEMENT OF JURISDICTION

The First Circuit issued its opinion on July 2, 2025. The Court denied Mr. Prado's Petition for Panel Rehearing or Rehearing En Banc on August 6, 2025. The time within which to petition for certiorari extends to November 4, 2025 (according to Rule 13 of the Rules of the Supreme Court of the United States). This Court has jurisdiction under 28 U.S.C. § 1254(1).

PROVISIONS INVOLVED

The Fifth Amendment of the U.S. Constitution provides:

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 offense 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.

STATEMENT OF THE CASE

I. Procedural History

When Thiago de Souza Prado's painting business began failing in 2019, he turned to driving for rideshare companies like Uber and Lyft. Unable to secure an account going through the regular process, he learned from the Brazilian immigrant community that he could pay to "rent" existing accounts from others. Prado eventually created his own fraudulent accounts using driver's licenses from former employees and associates, uploading these licenses with his own photo to company websites. Government witnesses testified that he purchased social security numbers and later accessed the "dark web" to obtain valid SSNs, leading to tax complications for the legitimate owners. Additionally, he received referral bonuses from the rideshare companies for bringing on new drivers through the fraudulent accounts he created and rented out. While the drivers operating under fake accounts bypassed the standard background screening requirements, the rideshare companies still profited from their rides.

On May 17, 2021, a grand jury indicted Prado and seventeen others in connection with a scheme to defraud those rideshare and food delivery companies. More than two years later, the grand jury issued a third superseding indictment charging Prado with one count of conspiracy to commit wire fraud under 18 U.S.C. § 1349, three counts of wire fraud under 18 U.S.C. § 1343, and three counts of aggravated identity theft under 18 U.S.C. § 1028A. Of those charged, only Prado went to trial.

Joshua Levy served as Prado's appointed counsel until August 2021, when he withdrew to join the Massachusetts U.S. Attorney's office ("MA USAO"). App. 10. Prado's motion for new counsel raised conflict-of-interest concerns, and new counsel was appointed on August 23, 2021. In January 2022, Levy became First Assistant U.S. Attorney, and in May 2023, became Acting U.S. Attorney. App. 10-11. Before assuming the First Assistant role, the office's ethics advisor determined Levy was conflicted in all cases where he had represented criminal defendants and would not interact with prosecutors on those cases in any way. App. 11.

On August 4, 2023, the Department of Justice formally recused the entire District of Massachusetts office from the case, moving supervision to the District of Rhode Island. *Id.* However, the Massachusetts attorneys working on the case were allowed to continue under Rhode Island supervision. *Id.* Four days later, Prado filed a pro se motion to dismiss the indictment for violation of his Sixth Amendment right to a fair trial and due process. App. 11-12.

At a September 6, 2023, pretrial hearing on Mr. Prado's motion, the AUSAs on the case testified they had no interaction with Levy about the case after he joined the office and that Levy had no access to case information. App. 12. Prado, on the other hand, testified about several concerns showing potential prejudice: the government knew of a defense he had discussed only with Levy; the government possessed an email address he had given only to Levy; his concern that Levy was working against his interests given their privileged communications; that his last interaction with Levy as his attorney ended in hostility; that a July 2023 filing used

Levy's name in the signature caption as U.S. Attorney; and that DOJ's removal of the case from Massachusetts proved a conflict always existed.

The District Court analyzed Prado's motion to dismiss through the lens of ineffective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668 (1984), though there appeared to be some confusion as Prado conflated concerns about Levy's conflict with the performance of his current attorney, John Palmer. The court explained that the applicable Massachusetts Rules of Professional Conduct governing conflicts of interest, particularly Rule 1.11, which addresses government lawyers, do not permit government attorneys to participate in matters where they have personally and substantially participated while in private practice. Their conflicts, however, are not automatically imputed to other government lawyers. Relying on First Circuit precedent, particularly *United States v. Mastroianni*, 749 F.2d 900 (1st Cir. 1984), the District Court required a showing of prejudice if attorney-client information was shared in violation of the Sixth Amendment. Finding no such showing, the District Court denied Prado's pro se motion to dismiss.

After a seven-day trial, a jury convicted him on all counts. The district court later sentenced Prado to concurrent forty-six-month prison terms on the wire fraud counts and concurrent twenty-four-month prison terms on the identity theft counts to run consecutively, producing a total term of seventy months in prison plus three years of supervised release. Prado appealed, challenging both his convictions and sentence.

II. The First Circuit decision

The First Circuit denied Mr. Prado's appeal. Addressing the conflict issue, the First Circuit accepted the parties' characterization of Mr. Prado's motion as a motion for recusal, rather than a motion to dismiss. App. 12. It noted Mr. Prado did not challenge any of the factual conclusions acting U.S. Attorney Levy had been "effectively walled off from the prosecution team." App. 12. It further noted Mr. Prado acknowledged the implication of a potential separation of powers issue if an entire office was disqualified without sufficient cause, App. 12-13, and that all other circuit courts have reversed disqualifications of entire offices. App. 13 (citing cases). It concluded there was no basis for excluding the entire MA USAO simply because Mr. Prado's former attorney now lead the office. Id.

Following the First Circuit's decision, Mr. Prado filed a motion for reconsideration on July 16, 2025, which was denied on August 6, 2025. App. 22.

REASONS FOR GRANTING THE WRIT

I. This Court Should Grant Review to Address the Limits of Improper Influence on Federal Prosecutions.

Federal prosecutors wield extraordinary power in the criminal justice system, exercising broad discretion in deciding whom to charge, what charges to bring, and what plea agreements to offer. They control access to investigative resources, grand jury proceedings, and the full weight of the federal government's law enforcement apparatus. This immense power makes the integrity and impartiality of federal prosecutors essential to ensuring fair trials and public confidence in the justice system. A U.S. Attorney is "the representative 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, 55 S.Ct. 629, 633, 79 L.Ed. 1314 (1935). “A prosecutor must be disinterested; a scheme injecting a personal interest, financial or otherwise, into the enforcement process may bring irrelevant or improper factors into the prosecutorial decision.” *Young v. United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 808, 107 S.Ct. 2124, 95 L.Ed.2d 740 (1987).

1. A defendant should not be prosecuted by his former attorney.

Mr. Prado was prosecuted by the Massachusetts United States Attorney’s Office, an office led by his former attorney, Joshua Levy. App.10. During Mr. Prado’s case, Mr. Levy withdrew as his attorney to become the First Assistant United States Attorney for the MA USAO, and shortly thereafter, became the acting U.S. Attorney. *Id.* That he might have been “walled off” from the case did not diminish the need for recusal for the office he led. This is because the need was not triggered merely by an individual conflict—it was institutional in nature. Continued participation by the AUSAs from that office, even under purported supervision from another office in Rhode Island, undermines a recusal’s core purpose: to protect both actual impartiality and the appearance of fairness.

The fact that Mr. Prado raised this issue pro se before the trial court and has insisted that Appellate Counsel find a way to present it to the panel, and now the entire court, highlights how problematic the continued involvement of the MA USAO in his case is from his perspective, and how it impacts an appearance of

fairness in how the Government carries out its prosecutorial powers. The First Circuit noted the case law in this area disfavors the disqualification of an entire office versus that of a single prosecutor. App. 12-13. The panel's mistake lies in viewing this issue only through that narrow perspective. The difference in this situation extends beyond the mere fact that Mr. Prado's lawyer works for the prosecuting entity and concerns about a single lawyer's actions. The real issue involves the entire prosecuting entity and Mr. Levy's role in running it.

2. Federal prosecutions should be free from conflicts of interest.

When a conflict of interest arises, such as when a prosecutor previously represented the defendant in the very same case, the risk of prejudice becomes acute. The concern is twofold: first, that confidential information obtained during the attorney-client relationship could be used against the former client, and second, that even the appearance of impropriety undermines the legitimacy of the prosecution and the fairness of the proceedings. Courts must therefore scrutinize conflicts of interest involving prosecutors to protect defendants' constitutional rights while also respecting the Executive Branch's authority to deploy its legal resources as it sees fit. This tension between individual fairness and prosecutorial independence makes conflict-of-interest claims particularly challenging to resolve. The problem identified in *Young* is not just actual bias, but the institutional appearance and risk of undue influence, particularly as prosecutors represent the executive branch's interest in impartial enforcement.

Courts have condemned this kind of structural issue in recusal cases. Mr. Prado is mindful that “the disqualification of Government counsel is a drastic measure, and a court should hesitate to impose it except where necessary.” *United States v. Bolden*, 353 F.3d 870, 878–79 (10th Cir. 2003) (cleaned up). However, that does not mean it is not a remedy available to the Court in cases where the appearance of conflict becomes too glaring to be ignored. *Young* at 807 (actual conflict of interest because appointed prosecutor also represented another party); *United States v. Heldt*, 668 F.2d 1238, 1275 (D.C.Cir. 1981) (bona fide allegations of bad faith performance of official duties by government counsel in a civil case); *United States v. Prantil*, 764 F.2d 548, 552-53 (9th Cir. 1985) (prosecutor who will act as a witness at trial). Such is the case when Mr. Prado’s attorney became the acting U.S. Attorney.

The First Circuit paid little attention to the fact that the Department of Justice (“DOJ”) recused the office from the case.¹ The panel’s error is in assuming there was no effect on the MA USAO attorney’s remaining on Mr. Prado’s case, given how an office shapes the nature of a prosecution. The MA USAO had: (1) strategic control over charging decisions; (2) a direct role in trial preparation and execution; (3) authority during critical pretrial stages, including discovery, motions, and plea negotiations; and (4) hands-on presence at trial, continuing even after reassignment to the Rhode Island USAO. These were not passive or ministerial

¹ DOJ Policy Manual lays out the procedure for when an entire office may be recused because of an actual or apparent conflict of interest. *See Justice Manual* § 1-3-1.140.

acts. They were core prosecutorial functions that shaped the case outcome. Given the scale and complexity of this prosecution—and its reliance on judgments about fairness, charging discretion, and trial theory—the identity of the prosecutors matters.

3. It is necessary and important for this Court to take this appeal so that the standard of reviewing conflict-of-interest cases is clear.

Allowing conflicted prosecutors to maintain such influence taints the integrity of the proceedings. The First Circuit’s decision sets a troubling precedent: recused offices may retain practical control of a prosecution if a nominal oversight is placed elsewhere. The Due Process Clause is implicated when an appearance of impropriety casts a long shadow over a federal prosecution. *See Young* at 814 (Blackmun, J. concurring). Given the implications for institutional integrity and public trust in federal prosecutions, this issue is of exceptional importance and warrants this Court granting the writ of certiorari.

CONCLUSION

The First Circuit failed to properly appreciate the fatal conflict of interest existing when a defendant’s former attorney leads the prosecutor’s office that has brought charges against him. This Court should take the opportunity to clarify the limits of the government’s ability to prosecute these types of charges.

This Court should grant the writ of certiorari.

Respectfully submitted,

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