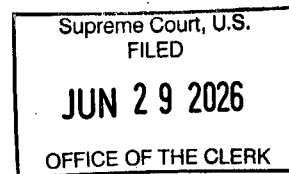


No. 26-466



IN THE
SUPREME COURT OF THE UNITED STATES

NORMAN CARL RABIN, CATHERINE E. RYAN,
LISA R. WALLER, J. CHAD VANDERGRIFF,
PETITIONERS,

v.

UNITED STATES DEPARTMENT OF HEALTH
AND HUMAN SERVICES, ET AL.,
RESPONDENTS.

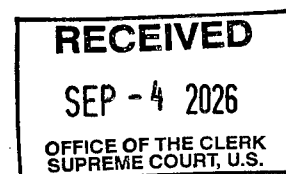
ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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June 29, 2026



QUESTIONS PRESENTED

The questions presented are:

Whether a Federal Court of Appeals departs from the accepted and usual course of judicial proceedings by denying a motion to reinstate a plausibly meritorious appeal involving constitutional challenges to federal human-experimentation rules, and where the Court issued its mandate prior to the expiration of the filing deadline set by its own Local Rules?

Whether not reinstating this type of appeal also creates a 'Manifest Injustice'—as defined by the Court's own precedents in *Lattanzio v. COMTA*, 481 F.3d 137 (2d Cir. 2007) and grounded upon the 1967 enactment notes to FRAP Rule 2?

Whether the standard of 'Proof' absent jurisdictional discovery as applied to Plaintiffs-Appellants, in the U.S. District Court (in the context of legal standing), but also in the federal Appellate Court (concerning making a showing of Extraordinary Circumstances), is unjust or inappropriately too high, for this particular case, which is a non-monetary federal rulemaking case, challenging the Revised Common Rule rulemaking's failure to enact more protective federal rules to protect citizens from non-consensual human experimentation, and also where Petitioners' "Claim 1" involves a violation of procedural rights by the rulemaking?

PARTIES TO THE PROCEEDING

The parties to the proceedings below were as follows:

Petitioners Norman Carl Rabin, Catherine E. Ryan, Lisa R. Waller, and J. Chad Vandergriff were plaintiff-appellants in the 2nd Circuit, and plaintiffs in the E.D.N.Y. federal district court.

Peter D. Rosenholm was a plaintiff-appellant in the 2nd Circuit, but did not join our application for an extension of time to file this Petition.

The U.S.A., and the agencies and the head officials of the Revised Common Rule rulemaking agencies were each defendants in the federal district court, and appellees (with no filings to date), in the 2nd Circuit. They are: U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, and HHS Secretary Xavier Becerra, [in his official capacity,] U.S. DEPT. OF HOMELAND SECURITY, and DHS Secretary Alejandro Mayorkas, U.S. DEPT. OF AGRICULTURE, and DOA Secretary Thomas J. Vilsack, U.S. DEPT. OF ENERGY, and DOE Secretary Jennifer M. Granholm, NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, and NASA Administrator Bill Nelson, U.S. DEPT. OF COMMERCE, and DOC Secretary Gina M. Raimondo, SOCIAL SECURITY ADMINISTRATION, and SSA Acting Commissioner Dr. Kilolo Kijakazi, U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT, and USAID Administrator Samantha Power, U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT, and HUD Secretary Marsha L. Fudge, U.S. DEPT. OF LABOR, and DOL Secretary Martin J. Walsh, U.S. DEPARTMENT OF DEFENSE, DOD Secretary

Lloyd J. Austin III, U.S. DEPARTMENT OF EDUCATION, and DOEdu Secretary Dr. Miguel Cardona, U.S. DEPARTMENT OF VETERANS AFFAIRS, and DVA Secretary Denis R. McDonough, ENVIRONMENTAL PROTECTION AGENCY, and EPA Administrator Michael S. Regan, NATIONAL SCIENCE FOUNDATION, and NSF Director Dr. Sethuraman Panchanathan, U.S. DEPARTMENT OF TRANSPORTATION, and DOT Secretary Pete Buttigieg, U.S. DEPARTMENT OF JUSTICE, and U.S. Attorney General Merrick B. Garland, HHS OFFICE FOR HUMAN RESEARCH PROTECTIONS, and OHRP Acting Director Julie Kaneshiro, [all officials are in their official capacity], and U.S.A..

Rule 14.1(b)(iii) Statement - Related Proceedings

The proceedings in the U.S. District Court for Eastern District of New York ["EDNY"], and in the U.S. Court of Appeals for the 2nd Circuit ["ca2"] identified below are directly related to this case:

Rabin, et al. v. U.S. Department of Health and Human Services, et al., Case No. 23-CV-00402 (JMA), EDNY:

July 21, 2023 Docket Sheet Order waiving the usual pre-motion Conference set forth under the Judge's individual rules, and issuing a scheduling order for Defendant's proposed Motion to Dismiss. [at Appendix A];

July 9, 2024 Decision and Order granting Defendants' Motion to dismiss Plaintiffs' Amended Complaint, and with Prejudice as requested by Defendants' Motion. [at Appendix B];

Rabin et al. v. U.S. Department of Health and Human Services, et al., (ca2) Appeal 24-2971:

May 9, 2025 Order of Dismissal for failure to file Appellant Brief, but stating that Appellants could move to Reinstate the Appeal, without prejudice, under the 2nd Circuit's local rule 27.1 (which provides 14 days to file a Brief with a motion to Reinstate). [at Appendix C];

May 23, 2025 (about 12:30pm, on day 14) Mandate issued upon May 9, 2025 dismissal. [at Appendix D];

May 30, 2025 docket entry deeming defects cured for: Brief originally filed May 23, 2025 and for Motions to Recall Mandate and to Reinstate Appeal. [at Appendix E];

June 12, 2025, Appellate application Judge denial of Appellants' Motion to Reinstate and to Recall Mandate. [at Appendix F];

July 23, 2025, Appellate application Judge referral, of Appellants' FRAP Rule 27(c) Motion for Panel Review of Denial to Recall Mandate and to Reinstate Appeal, to a 3-Judge Panel, but Denying

Appellants' Motion to allow a smaller than previously submitted Oversized Brief. [at Appendix G];

July 30, 2025 docket entry deeming defect as cured for size of Brief, for Appellants' size-compliant Brief filed July 29, 2025. [at Appendix H];

November 14, 2025 Appellate 3-Judge Panel Decision and Order denying Appellants' Motions to Recall Mandate and to Reinstate Appeal. [at Appendix I];

January 28, 2026 Order of (same) Appellate 3-Judge Panel denying Appellants' Motion to Recall Mandate and for 'leave to file' Appellants' FRAP Rule 40 Petition for Rehearing, after Appellants sought review of Appellants' Rule 40 Petition under FRAP Rule 40(a). [at Appendix J];

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The January 28, 2026 Order of the United States Court of Appeals for the Second Circuit denied the Plaintiffs-Appellants' Motion for Leave to File our timely-filed Petition for Rehearing, and to Recall the Mandate. This Order is unreported and is reproduced at Appendix J.

The November 14, 2025 Order of the United States Court of Appeals for the Second Circuit denied Plaintiffs-Appellants' Motion for Reconsideration under FRAP Rule 27(c) for Panel Review of an Application Judge's denial of our Motion to Reinstate our Appeal, and to Recall the Mandate. This Order and Opinion is unreported and is reproduced at Appendix I.

The July 9, 2024 Memorandum and Order of the United States District Court for the Eastern District of New York granted Defendants' motion to dismiss. This Memorandum and Order is unreported and is reproduced at Appendix B.

JURISDICTION

The 2nd Circuit's Order whose review is here sought was entered on January 28, 2026 (Appendix J). Additionally, Petitioners also offer as a legal 'prayer' that this Court review the 2nd Circuit's initial (and only prior) panel decision of November 14, 2025 (Appendix I), because of the apparent legal issue noted *infra* (which was presented in our second Corrected Application for an extension of time, which Application was granted, but our legal 'prayer' was not ruled upon).

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1). By order dated June 22, 2026 (Application No. 25A1415), Justice Sotomayor granted an extension of time to file the petition to and including June 29, 2026. This petition is timely filed under 28 U.S.C. § 2101(c).

Legal 'Prayer' and Apparent Legal Issue:

In response to Petitioners' first Corrected Application for an Extension of Time to Petition for a Writ of Certiorari, a letter from the Office of the Clerk dated May 1, 2026 stated that Supreme Court Rule 13.3 does not allow us to petition for certiorari upon the Second Circuit's initial 3-Judge Panel's Order of November 14, 2025. Pro Se, non-attorney, Petitioners very respectfully disagree. Therefore, we Petitioners here obey the Clerk and seek certiorari regarding the Second Circuit's Order dated January 28, 2026; And, we very respectfully request as a legal 'prayer' that this Court evaluate if we can seek review of the initial panel decision, because: our Second Circuit docket item 87 (amended at docket item 88) was a timely filed petition for rehearing (on day 45 of 45, under the FRAP [Federal Rules of Appellate Procedure] Rule 40 (a), (d)(1)(A, B, C)); and, also because this Court's decision in *Hibbs v. Winn*, 542 U.S. 88, 98 (2004) appears to support our position. That decision, in part, interprets 28 U.S.C. § 2101(c).

STATUTES AND RULES INVOLVED

Federal Rule of Appellate Procedure Rule 2(a):

Rule 2. Suspension of Rules

(a) In a Particular Case. On its own or a party's motion, a court of appeals may—to

expedite its decision or for other good cause—suspend any provision of these rules in a particular case and order proceedings as it directs, except as otherwise provided in Rule 26(b).

Federal Rule of Appellate Procedure Rule 40(a) and (d)(1)(A)(B)(C):

Rule 40. Panel Rehearing; En Banc Determination

“(a) A Party's Options. A party may seek rehearing of a decision through a petition for panel rehearing, a petition for rehearing en banc, or both. Unless a local rule provides otherwise, a party seeking both forms of rehearing must file the petitions as a single document. Panel rehearing is the ordinary means of reconsidering a panel decision; rehearing en banc is not favored.”

“(d) Time to File; Form; Length; Response; Oral Argument.

(1) Time. Unless the time is shortened or extended by order or local rule, any petition for panel rehearing or rehearing en banc must be filed within 14 days after judgment is entered-or, if the panel later amends its decision (on rehearing or otherwise), within 14 days after the amended decision is entered. But in a civil case, unless an order shortens or extends the time, the petition may be filed by any party within 45 days after entry of

judgment or of an amended decision if one of the parties is:

- (A) the United States;
- (B) a United States agency;
- (C) a United States officer or employee sued in an official capacity; or ..."

Statement of the Case brought to the Second Circuit

Petitioners' case is a federal rulemaking challenge of the Revised Common Rule - the federal Policy for the Protection of Human Subjects, which was the first major revision of the governmentwide policy since it was first enacted in June 1991. The Common Rule is based upon a legislative history, where Congress enacted two laws, in 1974 and 1978, which sought to protect citizens from human research abuses after the HEW/HHS's [Public Health Service] Tuskegee Experiment scandal, and after Congressional attention to other government experiments, including C.I.A. and Defense Department testing of LSD upon unwitting citizens. The 1974 law was the National Research Act of 1974, Public Law 93-348, at its Title II "Protection of Human Subjects of Biomedical and Behavioral Research". The 1978 Law was Public Law 95-622, at its Title III: "President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research".

Statement of Petitioners' Second Circuit Case here Petitioned for Review

Petitioners' by law are enabled to seek review of at least the January 28, 2026 denial of Plaintiffs-

Appellants' Motion to Recall the Mandate and a Court required 'Motion for Leave to file a Rule 40 Petition for Rehearing', despite Petitioners' having filed a timely-e-filed FRAP [Federal Rules of Appellate Procedure] Rule 40 Petition [docket item 87, shortly amended at docket item 88]. Petitioners believed that the plain English meaning of FRAP Rule 40 allowed us to file a Rule 40 Petition for Rehearing of the initial decision of a three judge panel in our case, issued November 14, 2025. We believed that FRAP Rule 40 applied whether a Mandate was issued (erroneously, or properly) or not.

But the Second Circuit Clerk's Office saw it differently, and required us to re-file our e-retained Rule 40 Petition together with a Motion to Recall the Mandate, but also with a Motion requesting 'Leave to File'.

Petitioners' Motion for Leave to file [docket items 91, and 93] clearly stated (at its statement 3) that we believed that Rule 40 itself enabled us to file our Rule 40 Petition. [Petitioners' one submission containing the 2 Motions, and the Rule 40 Petition, were submitted by email, twice, on December 31, 2025, and January 2, 2026, respectively.]

Petitioners hope that this Court will accept this Petition for a Writ of Certiorari. We hope that this Court will choose to rule upon whether FRAP Rule 40 itself, independent of any Mandate, allows a timely-filed Rule 40 Petition to be considered.

If this Court interprets Rule 40 as itself enabling a Petition for Rehearing, then one option would be for this Court to formally require the Second Circuit to consider our Rule 40 Petition.

Additionally, Petitioners offer as a legal 'prayer' the proposition that this Court also has jurisdiction, under U.S. Supreme Court Rule 13.3 or under 28 U.S.C. §2101(c) [as per *Hibbs v. Winn*, 542 U.S. 88, 98 (2004)], to review the Second Circuit's prior, initial, and substantive, ruling of the same three judge panel, of November 14, 2025.

Background to our 'legal prayer': a prematurely issued Mandate was issued;

In the Second Circuit, local rule 27.1 allows Appellants whose appeal is dismissed for "failure to timely file" their Appellant Brief, 14 days to file their Brief with a motion for reinstatement.

The Court's May 9, 2025 order [at docket entry 56], which dismissed our Appeal for "failure to file", stated that we could file for reinstatement "without prejudice".

However, the Second Circuit (we believe) prematurely issued a Mandate (of May 23, 2025) at about 12:30pm of our day 14 (of 14). We filed our Appellants' Brief about 8pm, that same day, on our day 14 of 14 to file that Brief.

But, the (we believe) prematurely issued Mandate prejudiced our case, because in all filings we needed to include a Motion to Recall the Mandate.

But the Second Circuit did not Recall its mandate.

Petitioners also believe that the early issuance of this Mandate is not consistent with the usual public rule of FRAP Rule 41, which states: "The court's

mandate must issue 7 days after the time to file a petition for rehearing expires.”

Having described the (we believe) premature Mandate, we here present our legal ‘prayer’: that this Court also has jurisdiction, under Rule 13.3 or under *Hibbs v. Winn*, to review the Second Circuit’s prior, initial, and substantive, ruling of the very same three judge panel, of November 14, 2025

1) The First of the two branches of our legal ‘prayer’ is:

this Court could rule that because Appellants’ Motion for ‘Leave to File’ had clearly asserted that Rule 40 itself appeared to enable our Rule 40 Petition to be heard, therefore: the Second Circuit’s denial of our Motion represented a Procedural Denial of a timely-filed Petition for Rehearing.

Thereupon, this Court could decide whether or not to rule upon whether U.S. Supreme Court Rule 13.3 encompasses Procedural “denials of rehearing” as well as a substantive denial of rehearing.

If this Court were to find that Rule 13.3 includes Procedural “denials of rehearing”, then this Court would have jurisdiction to review the Second Circuit’s substantive ruling of November 14, 2025.

2) The Second of the two branches of our legal ‘prayer’ is:

This Court may (we hope) determine that under this Court’s ruling in *Hibbs v. Winn* (supra), we Plaintiffs-Appellants did not yet have finality concerning the November 14, 2025 ruling, because of our expectation based upon the (correct or incorrect)

plain English meaning of FRAP Rule 40. And, therefore, only did the January 28, 2026 ruling supply such finality.

Thereupon, this Court would have jurisdiction to review the Second Circuit's substantive ruling of November 14, 2025, under this Court's ruling in *Hibbs v. Winn*:

“Were we to read Rule 13 as our sole guide, so that only a rehearing petition filed by a party could reset the statute's 90-day count, we would lose sight of the congressional objective underpinning §2101(c): An appellate court's final adjudication, Congress indicated, marks the time from which the period allowed for a certiorari petition begins to run.”

The November 14, 2025 substantive, initial, three judge panel decision of our case, issued a brief Order with opinion, denying Plaintiffs-Appellants' motion to recall the mandate and reinstate this appeal “because the Appellants do not present “exceptional circumstances” warranting the recall of the mandate and the reinstatement of their appeal. See *Taylor v. United States*, 822 F.3d 84, 90 (2d Cir. 2016) (citation omitted).”.

In the event that this Court were to act upon our Petition for Certiorari, this Court might choose to require the Second Circuit to re-hear the Motion to Reinstate as if there were no Mandate.

Or, this Court could grant Certiorari, to review whether our Appellants' Brief should or should not go forward in the Second Circuit.

REASONS FOR GRANTING THE PETITION

Point 1: Petitioners' Rulemaking Challenge Case is Meritorious and it would be a Manifest Injustice to not let it be Considered on its Merits by the Second Circuit

The five Plaintiffs-Appellants are each long term victims (even: for over 20 or 30 years !) among the estimated 500 to 2000+ complaining U.S. citizen victims, who allege they [we] are targeted by yet Ongoing non-consensual, apparently human research related, activities involving - now very well developed - electromagnetic signals monitoring and harassment, of the human body and brain, typically day and night. Petitioners Rabin and Ryan were among the U.S. victims who were most actively involved in promoting participation of victims in the main federal rulemaking [NPRM - "Notice of Proposed Rulemaking"] Public Comment period, and in (afterwards) urging fair treatment of victims' issues by the rulemaking.

Our case, filed under the APA [the Administrative Procedure Act, 5 U.S.C. § 701-706] challenges a few enactments, and also challenges a few arguably arbitrary non-enactments, of the rulemaking. Our case also challenges the absence of responses to significant Public Comments, by the Revised Common Rule rulemaking. These alleged APA violations were in the presence of numerous Victims' Public Comments, and in the presence of Congressional Mandates for Protective policies.

Most glaringly in law (and multiple APA experienced attorneys agreed) the government

without Notice (and without any 'logical outgrowth') improperly enacted a grandfathering clause upon an obscure, but major change in the policy. The new Policy [at 45 CFR 46.101(i)¹] newly requires that Agency Head waivers of parts of the Policy (which could even include Informed Consent requirements) be consistent with the ethical principles of the [1974 Congressionally mandated] Belmont Report. This is a major change because: the Belmont Report appears to require Informed Consent. The challenged Grandfathering Clause [at 45 CFR 46.101(L)(3)(ii)] allows pre-2019 initiated human research, under Agency Head waivers, to continue without any restrictions and without this new major protection! (Further, this Grandfathering Clause enables continued violation of the 4th and 5th Amendment Constitutional Rights of non-consenting human subjects.)

But Petitioners' other APA claims also have at least plausible Merit. The rulemaking acted as if the Congressional Mandates which led to the creation of the governmentwide human subjects protections policy did not obligate the rulemaking to acknowledge and to address allegations of ongoing non-consensual human testing, which were sufficiently presented in the 2011 ANPRM [Advance Notice of Proposed Rulemaking] Public Comments and in rulemaking admitted 2011 Public Comments to the Presidential Bioethics Commission [Presidential Commission for

¹ The CFR reference given is to the HHS Policy. But the Policy for the other agencies follows parallel numbering, for their human subjects protections policy, e.g.: U.S. Dept. of Energy policy is at 10 CFR 745.101 et seq. ;

the Study of Bioethical Issues, "PCSB"], and in about ninety NPRM victims' Public Comments from about seventy to seventy-five victims of alleged non-consensual human testing.

In the "Notes of Advisory Committee on Rules—1967" to FRAP 2 (a), which provides that: ".. a court of appeals may .. suspend any provision of these rules in a particular case", the Advisory Committee was clear to note that:

"The rule also contains a general authorization to the courts to relieve litigants of the consequences of default where manifest injustice would otherwise result."

In Petitioner's FRAP Rule 27(c) Motion for a Panel Review [docket item 78, at statement 9], for Reconsideration upon an Application Judge's Denial of our Motion for Reinstatement, we cited the Second Circuit's holding in *Lattanzio v. COMTA*, 481 F.3d 137, 139 (2d Cir. 2007) (per curiam), which we here quote more fully:

"If we dismiss an appeal for appellate "default," we generally may reinstate it for good cause shown or "where manifest injustice would otherwise result." Fed. R. App. P. 2 advisory committee's note to 1967 adoption; ... Manifest injustice can result when the denial of the motion to reinstate bars an otherwise meritorious claim. See *Calloway*, 854 F.2d at 1475-76 (examining merits of underlying claim)."

As mentioned below (under Point 2: Exceptional Circumstances):

In our Motion for Reinstatement to the three-judge Panel [docket item 78] (at statements 9. and 2.), we Plaintiffs-Appellants asserted that: dismissal of our case would represent a "manifest injustice" because it would dismiss a "meritorious case", and further, because the persons adversely affected by such an injustice plausibly include hundreds or even a very high percentage of the 500 to 2000+ complaining U.S. victims of (day and night) alleged, ongoing non-consensual, human research related activities.

Non-attorney Petitioners, with limited legal research skills and resources, found few court rulings from among the circuits regarding "manifest injustice" in the context of reinstating a federal Appeal. The most definite statement appeared to be the Second Circuit's statement noted above, in *Lattanzio v. COMTA*.

Notwithstanding, its importance should not be easily minimized, including because it was grounded in the cited 1967 Advisory Committee notes.

Plaintiffs-Appellants made clear to the Appellate Court in our presentations that there was no absence of diligence by Appellants. Rather, the lead-Appellant and main drafter of the Appellate Brief was very actively working on the Brief for months. As a non-attorney, and actively debilitated by the alleged, day and night, federal government wrongdoing, the lead Appellant was simply not capable of completing the complex Appellants' Brief within the time frame that the Second Circuit believed was reasonable.

Point 2: Extraordinary Circumstances

In Petitioners' Appeal, non-lawyer Pro Se, Appellants failed to timely file our Appellate Brief in the 2nd Circuit (even after multiple extensions) under their Extraordinary Circumstances, and also due to the complexity of the Appeal. Because Petitioners believe that their federal rulemaking challenge is a case of 'First Impression', regarding the Federal Policy being challenged, we believed that it was important to research, and try to express in writing, the legislative and regulatory history related to this federal policy.

Plaintiff-Appellant Rabin, the primary draftsperson for our Appellate Brief, presented a Declaration to the 2nd Circuit, under Penalty of Perjury, that the (alleged) non-consensual human research related operations significantly interfered with, and significantly delayed, Appellant Rabin's more timely progress, and more timely completion, of our Plaintiffs-Appellants' Brief. And, the U.S. District Court's dismissal included a rejection of Plaintiffs' request for Jurisdictional Discovery, if needed to establish Plaintiffs' Legal Standing. (The narrowly focused Jurisdictional Discovery was proposed to be mainly In Camera, because it involves confirmation of currently classified human testing, at least concerning the Plaintiffs, so as to confirm Plaintiffs' Legal Standing.) In the District Court, an attorney (and legal scholar) was willing to represent the Petitioners [Plaintiffs] for "limited-scope representation for .. pre-trial discovery".

Notwithstanding, our Plaintiffs-Appellants' Brief asserted that the Plaintiffs' [under penalty of perjury]

Affirmations of Standing in the U.S. District Court, together with our fellow victims' federal rulemaking Public Comments, render as 'more likely than not' that the alleged non-consensual activities upon one or more Plaintiffs-Appellants have occurred and are occurring.

In our Motions to Reinstate our Appeal in the Second Circuit, we cited: that Plaintiffs-Appellants had exceptional circumstances; that our case was meritorious (and with a detailed elaboration concerning our case's merits in Appellants' late-June 2025 Motion for a Panel Review); and we cited [at docket item 78, at statements 9. and 2.] that dismissal of our case would represent a "manifest injustice" because it would dismiss a "meritorious case", and further, because the persons adversely affected by such an injustice plausibly include hundreds or even a very high percentage of the 500 to 2000+ complaining U.S. victims of (day and night) alleged, ongoing non-consensual, human research related activities.

The 'lead' Pro Se Appellant Petitioner is the primary drafter and/or manager of the drafting of our Petition for Certiorari.

The 'lead' Pro Se Petitioner is a non-lawyer, and he is actively disabled by the alleged (and actual) non-consensual electromagnetic signals monitoring and harassment of his body and brain, day and night. Like many other fellow victims, he is under 'siege' to some degree; his sleep duration and quality are diminished; he is subjected to suggested thoughts and ideas; imposed distractions; imposed diversions. Perhaps most harmfully: he is sometimes subjected to

'time sabotage' operations, as if distracting him were some sort of training ground for distracting a 'terrorist' or perhaps a 'hostage taker'. Likely, software is used to manage a 'goal sabotage' operation: identify the goals and sub-goals, and various small steps, which are needed for the 'target' [victim] to successfully complete his/her tasks in a timely manner, and then: to systematically interfere with them. (Only since late 2022 with the advent of accessible 'GPT' [natural language, AI tools], has the notion of computer aided 'problem solving' and 'sub-goal' delineation, become familiar to the general Public.)

Lead Pro Se Appellant Rabin is an SSDI recipient with an SSDI accepted disability. In Rabin's presentations to all SSDI Reviews of his disability, Rabin has transparently depicted himself as being a victim of non-consensual human testing (and has presented that there are many other victims of related wrongdoing), and has cited that a federal policy change ordered by President Clinton [March 27, 1997 Memorandum / Administrative Order, "Strengthened Protections for Human Subjects of Classified Research" ²], attempted to require Informed Consent for all classified human research, but this important federal policy change has not yet been enacted. [Even though: most notably, starting in January 2016, the U.S. Department of Energy, as an individual agency, has implemented the 'Clinton

2 <https://www.federalregister.gov/documents/1997/05/13/97-12699/strengthened-protections-for-human-subjects-of-classified-research>

Memo' requirements through DOE Directives.] A copy of Appellant Rabin's SSDI resumption letter (dated January 2025) was presented in the 2nd Circuit as an Exhibit, as part of our Petitioners' Motion to Reinstate the Appeal, under the 2nd Circuit's local rule 27.1.

In our Motion to Reinstate in the Second Circuit, we cited: *RLI Ins. Co. v. JDJ Marine, Inc.*, 716 F.3d 41 (2d Cir. 2013) (per curiam), which discussed at length the Second Circuit's rationale for the Court there denying that appellant's motion to reinstate their appeal. Petitioners there explained and asserted to the Court that our case fulfilled the Criteria that that rare expository decision set forth about the matter. In contrast to that case, we showed that our case was Meritorious. And we asserted that we Plaintiffs-Appellants diligently, even laboriously over months, were working on our Appellate Brief. And, we mentioned and asserted (as if it wasn't obvious) that Appellants' circumstances are (needless to say) extraordinary.

Point 3: Motions to Reinstate among some of the Circuit Courts

As far as Petitioners' limited legal research to date has found, the 2nd Circuit has internet visible court decisions which are more detailed concerning Motions to Reinstate an Appeal than other Circuits.

The 2nd Circuit's 'case law' has required a showing that a case is Meritorious. Some circuits (including the First Circuit) do not require a showing concerning the Merits as being necessary for Reinstatement of an Appeal.

The 2nd Circuit also generally requires a showing of extraordinary circumstances. Accepted extraordinary circumstances have apparently included instances where a litigant (such as a prisoner) is interfered with so as to prevent him or her from timely filing required Court items. And, the 2nd Circuit has ordered limited purpose remands to the District Court for the purpose of allowing Discovery, and requesting a Judicial ruling thereupon, to verify if the interference plausibly prevented the timely required Court filings.

Additionally, the 2nd Circuit has stated that the Court should also consider whether a Manifest Injustice would occur as the result of an otherwise Meritorious case being dismissed, for a failure to timely file an Appellate Brief or other timely required Court items.

Point 4: The Standard of Proof for Legal Standing, and for a Showing of Exceptional Circumstances for our Appellate Brief, for this Particular Type of Case, Should be Lowered, and Jurisdictional Discovery for both Should be Granted

Human research, by the very nature of things, involves new things.

This is a non-monetary damages federal rulemaking case, which seeks to require that the federal human research protections policy, protectively, and erring on the side of caution, safeguard basic, physical, bodily U.S. Constitutional Rights.

The wide-reaching Congressional Mandates from the 1974 and 1978 laws, in reaction to federal government non-consensual human experimentation, identified (via the Belmont Report mandated by the 1974 law) that informed consent was required for interventional human research. And, the 1978 law specifically identified the government secrecy agencies, including Central Intelligence Agency, and U.S. Department of Defense, as being part of the Congressional Mandate that citizens be adequately protected from the research of all federal agencies.

Petitioners' Plaintiffs-Appellants' Brief has asserted that the Plaintiffs' [under penalty of perjury] Affirmations of Standing in the U.S. District Court, together with our fellow victims' federal rulemaking Public Comments, render as 'more likely than not' that the alleged non-consensual activities upon one or more Plaintiffs-Appellants has occurred and is occurring.

Our case's Claim 1 (described above under Point 1) identifies a shameless 'rulemaking switcheroo' procedural violation, which on its face enables any ongoing [pre-policy change] non-consensual human testing under the old, 'no restrictions' Agency Head Waivers of (parts or all of) the Common Rule, to continue without restrictions!.

As our Appellate Brief has presented, the alleged human experimentation adversely affecting Plaintiffs-Appellants, and numerous fellow citizen victims, involves so-called 'dual use' technology, involving major new civilian technologies (advanced, wireless thought reading, memory reading, brain computer interfacing, and wireless, comprehensive,

neurodiagnostics) , as well as (less frequently used) military and law-enforcement technologies (notably, mind affecting weapons, for military or 'SWAT team' situations).

But because our U.S. Government apparently has been able to maintain and impose governmental 'secrecy' upon the technology, Petitioners and other victims are unfairly legally disadvantaged: we are harmed by a government sponsored and/or conducted wrongdoing which [very likely] actively prevents government employees (or contractors) from coming forward, and speaking freely.

In our FRAP Rule 27(c) Motion for Panel Review (at statement 8b.), we cited two court decisions, which seemed to urge Courts to be hesitant to easily dismiss certain types of allegations.

"In a monetary-damages case involving medical experimentation by the HEW/HHS Public Health Service upon a person when he was in federal prison, in *Clay v. Martin*, 509 F.2d 109, at 113 (2d Cir. 1975), this Court wrote:

"Of particular concern to the drafters [of Public Law 93-348, the National Research Act of 1974] was that a subject's consent be based on full disclosure, free of any form of coercion. Id. at 2175. In view of these expressions of public policy, a court should not be quick to dismiss on pleading technicalities an action involving experimentation on humans." "

But here, concerning Plaintiffs-Appellants, would the Second Circuit be suggesting??: 'it's only human

experimentation on their bodies. How could it prevent the litigants from, with composure, and clarity, bringing their case, and promptly filing all of their laborious-to-develop court items?". Unless the human experimentation involved interactive and intrusive interference with the human mind and brain, as well as the human body. (Ah hah. How unfair that might be ...).

[In our Rule 27(c) Motion for Panel Review, statement 8b., continues:]

"In *Mitchell v. Forsyth*, 472 US 511, at 522 [(1985)], [a monetary-damages case involving questions of qualified immunity of the U.S. Attorney General concerning unconstitutional wiretaps]: the U.S. Supreme Court stated that:

'National security tasks, by contrast [to judicial or quasi-judicial tasks], are carried out in secret; open conflict and overt winners and losers are rare. Under such circumstances, it is far more likely that actual abuses will go uncovered than that fancied abuses will give rise to unfounded and burdensome litigation.' "

And, in our non-monetary damages case, what could a Court imagine to be the motive for 'fake' litigants, and what could a Court imagine might be the genuine, lawful, loss to the U.S. Government if any policy 'loophole' that might enable non-consensual human interventions, conducted for human research purposes, were to be stricken down as unconstitutional?

Or, must a Court wait until each particular identified loophole is attempted to be challenged by a citizen who is somehow able to sufficiently prove the new technology or substance being tested upon him/her, and to – all on their own – prove which policy loophole is enabling the non-consensual human testing?

Is there a legal principle of ‘erring on the side of caution’, where no fully-legal governmental purpose is threatened.

Being non-attorneys, and with limited legal research ability and resources, only as late as our (Amended) Rule 40 Petition for Rehearing [docket item 88, at statement 2b] did we find, and cite, a case where a litigant was (allegedly) actively interfered with in his timely filing court items:

“We have found case law from this Court, where, for example, a Prisoner [whose legal papers were taken by a prison employee] was granted a remand to District Court to develop or strengthen the factual record regarding how the [established] confiscation actual DID (or not?) prevent him from timely filing [there, filing in the District Court?]; see: *Valverde v. Stinson*, 224 F.3d 129, 134 (2d Cir. 2000)

“We therefore remand to the district court with instructions for it to develop further the facts relevant to Valverde's claim that his legal papers were confiscated, that the confiscation prevented him from filing on time, and that he filed his petition within an acceptable time after the confiscation. ... A petitioner should not be faulted, however, for

failing to file early or to take other extraordinary precautions early in the limitations period against what are, by definition, rare and exceptional circumstances that occur later in that period.”

If this Appeals Court does not believe my/our Affirmations alleging active Interference .., then —along the lines of *Valverde* - this Court could similarly relieve Appellants of their (unfair) ‘Catch 22’ situation, and allow narrow limited discovery to establish that the Exceptional Circumstance DID significantly delay our completing our Appellants’ Brief.”

[The ‘Catch-22’ here is: ‘you can’t 100% prove that you are victims, and therefore we don’t 80% believe you, and therefore we say that you are not entitled to Jurisdictional Discovery. But, you can’t reach that 70%, 80%, 90%, 100% likelihood of being victims until you are able to show the Court information which is uniquely in Defendants’ possession.’]

We non-attorney Petitioners very respectfully posit that the Standard of Proof, for this particular case, concerning rulemaking related to non-consensual (and therefore unconstitutional) federal government human testing, including but not limited to an APA procedural violation, should be a lower Standard of Proof. This type of rulemaking should have high scrutiny by the federal courts.

CONCLUSION

This Petition, by non-attorney, interfered-with, Petitioners, has adequately presented that our federal rulemaking case is Meritorious; our failures to timely file our (now waiting to be answered and heard) Appellants' Brief were due to excusable, Exceptional circumstances; and, it would be a Manifest Injustice if our case did not go forward (in the absence of acceptable Congressional action to address the matter).

The petition for a writ of certiorari should be granted.

Respectfully Submitted, dated: June 29, 2026

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[Pro Se Petitioners' signatures appear below, in the Signatures Appendix to this Petition]

Respectfully Submitted, dated: June 29, 2026

/s/ Norman Carl Rabin

Norman Carl Rabin June 29, 2026

Norman Carl Rabin, Petitioner, interfered-with Pro
Se Petitioner, and 'coordinating Pro Se Petitioner'
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We each, as undersigned, are: an 'interfered-
with Petitioner', and we each wish to join in the
filing of our June 29, 2026 filed Petition for a Writ of
Certiorari, in the Supreme Court of the United
States, to the U.S. Court of Appeals for the Second
Circuit (case number: 24-2971). Also, we each
agree that, for Pro Se filed items, Petitioner Norman
C. Rabin can serve as a 'coordinating Pro Se
Petitioner' for this case.

Respectfully,

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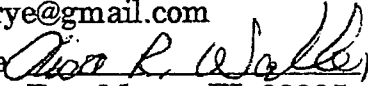
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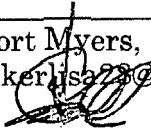
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