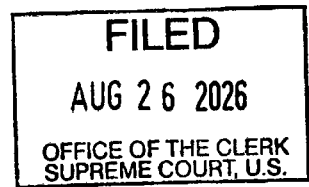


ORIGINAL

No. 26-508



In the Supreme Court of the United States

MICHAEL G. BOUCHARD,
Petitioner,

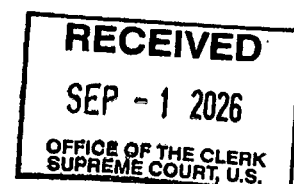
v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

Michael G. Bouchard
Pro-Se Petitioner
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QUESTIONS PRESENTED

On November 30, 2012 Michael Bouchard was convicted at a jury trial of conspiracy, 18 U.S.C. § 371, to violate the false statements statute, 18 U.S.C. § 1014, with aiding and abetting, 18 U.S.C. § 2(b). On February 10, 2014, after considering the trial transcripts of testimony and the post-trial motions, the trial judge from The U.S. District Court for The Northern District of New York issued a Memorandum Decision and Order which contained findings of fact and a conclusion of law that an innocent act occurred as opposed to the conspiratorial "overt act" alleged in the indictment. Despite the irrefutable proof of Bouchard's actual innocence, the trial judge then mistakenly affirmed the erroneous conspiracy conviction.

The first question presented is whether the trial evidence which proves Michael Bouchard's actual innocence entitles him to a writ of *coram nobis* vacating the conspiracy conviction under Count 1 of the indictment?

The second and related question presented is whether Michael Bouchard's actual innocence serves as a gateway through which he may pass the impediment of an alleged procedural time bar?

PARTIES TO THE PROCEEDING

Petitioner, who was the Defendant-Appellant in the Second Circuit, is Michael G. Bouchard.

Respondent, who was the Appellee in the Second Circuit, is the United States.

RELATED PROCEEDINGS

United States of America v. Bouchard, No. 1:12-cr-381, U.S. District Court for the Northern District of New York. Judgments entered on October 23, 2014, October 30, 2014 and October 27, 2016. Memorandum-Decision and Order denying a writ of *coram nobis* entered on September 26, 2024.

United States of America v. Bouchard, No. 24-2687-cv, U.S. Court of Appeals for the Second Circuit. Summary Order entered March 30, 2026 affirming the district court's order denial of the writ of *coram nobis*. Order denying panel rehearing and rehearing *en banc* entered on June 2, 2026.

United States of America v. Bouchard, No. 14-4156, U.S. Court of Appeals for the Second Circuit. Judgment entered on July 7, 2016.

United States of America v. Bouchard, No. 19-1037, U.S. Court of Appeals for the Second Circuit. Judgment entered on July 8, 2019.

United States of America v. Bouchard, No. 19-1913, U.S. Court of Appeals for the Second Circuit. Judgment entered on November 14, 2019 and December 27, 2019.

In re Gaspar Castillo, Attorney, No. 14-9008-am, (Bouchard's trial lawyer), U.S. Court of Appeals for the Second Circuit. Judgment entered on January 18, 2018.

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INTRODUCTION

When a U.S. district court renders a post-trial decision exonerating a defendant based on the trial evidence, but then inexplicably affirms the jury's erroneous guilty verdict in the same decision, it presents an unusual and erroneous standard that offers no way to separate lawful behavior from criminal acts. The end result is that defendants like Michael Bouchard – an innocent man – will remain burdened by an unjust conviction. This aberrant result offers prosecutors with immense discretion to ignore a judicial acquittal and pretend that its trial burden was met beyond a reasonable doubt. Justice must be delivered to derail this genuine risk of abuse from being entrenched into the fabric of American jurisprudence.

Michael Bouchard suffers from 1 fundamentally unfair conviction from a 24 count indictment, an alleged conspiracy under Count 1 to submit false statements to “mortgage lenders” and “financial institutions”. As we will see with 100% certainty, the government failed to prove a conspiratorial “overt act” at trial. Furthermore, since Michael Bouchard is “actually innocent”, his *coram nobis* petition was timely filed.

SUMMARY ORDER BELOW

The Second Circuit's summary order affirming the district court's dismissal of the *coram nobis* petition is at App.3a-8a. The Second Circuit's order denying the petition for panel rehearing, or, in the alternative, for rehearing *en banc* is at App.1a-2a.

JURISDICTION

On March 30, 2026, The Second Circuit affirmed the District Court's order that Bouchard lacked sound reasons for his alleged delay in filing a *coram nobis* petition. Thereafter, the Second Circuit denied Bouchard's petition for panel rehearing, or, in the alternative, for rehearing *en banc* on June 2, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

PROVISIONS INVOLVED

Relevant statutory provisions are at App.19a-22a. Relevant constitutional provisions are at App.23a.

STATEMENT

On July 25, 2012, a federal grand jury in the Northern District of New York returned a 24 count indictment charging Bouchard with conspiracy to submit false statements to "mortgage lenders" and "financial institutions" in violation of 18 U.S.C. § 371, 18 U.S.C. § 1014, and U.S.C. § 2(b) (Count 1),

bank fraud in violation of 18 U.S.C. § 1344 and 18 U.S.C. § 2(a) & (b), (Counts 2-23), and submitting a false statement to a financial institution in violation of 18 U.S.C. § 1014 (Count 24). The alleged false document was a HUD-I Settlement Statement, which details the purchase price, loan amount, closing costs, and adjustments related to a real estate transaction.

After the government rested its case at trial, Bouchard's trial lawyer filed a Rule 29 motion for an acquittal based on the government's failure to prove its case. N.D.N.Y. Dkt. 30.

At trial on "Day 2" of deliberations, the jury provided the Court with a note that said: "*We are at an impasse*". The jury was hung for 3 days. On "Day 3" of deliberations, the district court gave the jury an *Allen* (or "dynamite") charge, and the jury rendered its verdict at the end of the day. Bouchard was convicted of Counts 1, 7, 19 and 24, and acquitted of the remaining 20 counts.

After the jury's verdict, Bouchard's trial lawyer filed a Second Rule 29 motion for an acquittal, again based on the government's failure to prove its case. N.D.N.Y. Dkt. 35.

On February 10, 2014, the district court issued a Memorandum Decision and Order denying defendant's motions for a judgment of acquittal and a motion for a new trial. Nevertheless, the Decision and Order contained clear language that acquitted Bouchard of conspiracy.

On October 22, 2014, Bouchard was sentenced to 48 months imprisonment, 36 months of supervised release and restitution in the amount of \$1,175,565.07. The U.S. Constitution's Fifth Amendment was violated because Bouchard was deprived of the guarantee of due process of law.

On July 7, 2016, the Second Circuit Court of Appeals reversed the convictions on Counts 7, 19 and 24, affirmed the conspiracy conviction on Count 1, and remanded for resentencing. *United States v. Bouchard*, 828 F.3d 116 (2d Cir. 2016). Without referencing any trial record, the Second Circuit speculated that a paralegal committed the indictment's "overt act" regarding the lender Fremont Investment & Loan:

"Without a special verdict form demonstrating that the jury convicted on a theory not supported by sufficient evidence, see *United States v. Frampton*, 382 F.3d 213, 224–25 (2d Cir. 2004), we can easily reconcile the jury's verdict to acquit on the substantive count involving Fremont [Count 17] with its finding that an overt act [Count 1] involving Fremont occurred as part of the conspiracy. The differing verdicts might, for example, simply reflect the fact that the Fremont closing was attended by one of Bouchard's paralegals rather than Bouchard, and the jury may reasonably have declined to find Bouchard guilty of the substantive count and simultaneously determined that his and co-

conspirator (the paralegal) committed the overt act charged in the conspiracy count. *See United States v. Palmieri*, 456 F.2d 9, 12 (2d Cir. 1972). *Bouchard* at 128.

On October 16, 2016, Bouchard was resentenced to the same 48 months imprisonment. The amended judgment imposed no restitution because the “mortgage lenders” were not victim “financial institutions” under the applicable law during the time period of the alleged conduct between 2002-2005. Years later Congress enacted the Fraud Enforcement Recovery Act of 2009 which amended the statutory definition of a “financial institution” to include a “mortgage lending business”.

Bouchard served the 48 month sentence and then 36 months of supervised release.

REASONS FOR GRANTING THE PETITION

Bouchard filed a timely *coram nobis* petition on June 22, 2023. The petition was filed within forty-three (43) days of Bouchard receiving and reviewing two large boxes of relevant files from his appellate attorney Nathaniel Marmur on May 10, 2023. App.26a-30a. It was not until Bouchard received and examined his files on May 10, 2023 (App.29a), that he learned that there was documentary proof that he was “actually innocent”.

Per the closing instructions of mortgage lender Fremont Investment & Loan (App.25a), Bouchard’s

office was required to send the completed documents (including the completed HUD-I) to Fremont by FAX during the closing at the time funds are requested and before the funds can be disbursed.

No such evidence of a FAX was introduced at trial. Furthermore, per the trial testimony of government witness Irma Valdez of Fremont, the HUD Statement was sent to Fremont after the closing. This renders the indictment's overt act that a false statement was sent to Fremont in the closing to be completely false. The HUD Statement was not sent to Fremont "in the closing to influence Fremont to fund the mortgage loan" as alleged in the indictment.

I. MICHAEL BOUCHARD IS ACTUALLY INNOCENT AND IS THEREFORE ENTITLED TO THE WRIT OF CORAM NOBIS.

In the landmark decision *United States v. Morgan*, 346 U.S. 502 (1954), this Court reaffirmed the writ of *coram nobis* as a valid legal remedy for individuals who have completed their incarceration but wish to challenge the validity of a federal criminal conviction.

The facts of actual innocence are clear in this case. As to the remaining Count 1 (conspiracy), the government failed to prove an overt act at trial.

The indictment alleged four (4) overt acts involving three (3) lenders.

The first alleged overt act from the year 2002 involved a lender named Washington Mutual Bank. At trial, the government failed to call a witness from this lender, no proof was offered that the lender was FDIC insured, no proof was offered that the loan was funded by the lender, and no proof was offered that a false document was submitted to this lender.

The third and fourth overt acts from the year 2007 involved a lender named Citimortgage Inc. At trial, the government failed to call a witness from this lender and no proof was offered that the lender was FDIC insured. Since this attempted transaction occurred before the 2009 Congressional amendments, this lender did not qualify as a "victim" under the false statements statute, 18 U.S.C. § 1014. At trial, the government introduced evidence of numerous transactions with ordinary mortgage lenders in violation of the Constitution's Ex Post Facto Clause. The transactions pre-dated the 2009 Congressional passage of FERA which amended the definition of a "financial institution" to include a "mortgage lending business".

This leaves the second alleged "overt act" involving Fremont Investment and Loan in 2005. The indictment alleged the following conduct regarding Fremont:

Indictment ¶46:

"It was further part of the conspiracy that defendant MICHAEL G. BOUCHARD submitted false and fraudulent HUD-1's to the victim mortgage lenders, for the purpose of influencing the lenders in connection with the mortgage loans that were being funded in the closings."

Indictment ¶47(b) alleges the overt act:

"On or about March 30, 2005, defendant MICHAEL G. BOUCHARD submitted, and caused a coconspirator to submit to Fremont, a HUD-1 statement in connection with an \$88,000.00 mortgage relating to 147 Fifth Avenue, Troy, New York, which HUD-1 misrepresented the amount the buyer would provide at closing, and misrepresented the manner in which the disbursements would be made".

Indictment ¶46 and ¶47(b) allege an immediate cause and effect that never occurred: the submission of the HUD statement to Fremont by FAX during the closing influenced Fremont to review and approve the HUD statement and then "fund" the mortgage loan in the closing as the closing occurred.

At trial government witness Irma Valdez of Fremont identified the unfaxed HUD-1 for this transaction. Valdez testified that the "closing

instructions" for the transaction at "147 Fifth Avenue" (Count 17 - the alleged "overt act") were the same as instructions for a different transaction for which she previously testified.

Per Fremont's closing instructions (Ap-25a), Bouchard's office was required to send the completed documents (including the completed HUD-1) to Fremont **by FAX during the closing** at the time funds are requested and before the funds can be disbursed. **No such evidence of a FAX was introduced at trial.**

In fact, no evidence whatsoever can prove the indictment's fabricated "overt act". According to Valdez's testimony and the district court's post-trial Memorandum Decision and Order dated February 10, 2014, the HUD Statement was sent to Fremont after the closing (not "in the closing" for the purpose of influencing Fremont to fund the loan while the closing was occurring as alleged in the indictment). That is not the "overt act", and, it is certainly not a crime.

The government failed to prove an overt act at trial. As the district court noted in a post-trial memorandum and decision:

"Valdez further testified that had Fremont known that the statements on the HUD-1s defendant's office returned to it after closing were false with respect to the funds the buyer brought to closing and the disbursement of the mortgage proceeds, it would have defunded the loan." App.17a.

Again, that is not the “overt act”, and, it is certainly not a crime. But the district court did not use the word “acquittal”.

This leads to the question: What is an acquittal? In *McElrath v. Georgia*, 144 S. Ct. 651, 658 (2024), this Court answered that question:

“What, then, is an acquittal? “[O]ur cases have defined an acquittal to encompass any ruling that the prosecution’s proof is insufficient to establish criminal liability for an offense.” *Evans v. Michigan*, 568 U.S. 313, 318, 133 S.Ct. 1069, 185 L.Ed.2d 124 (2013). “[L]abels do not control our analysis in this context; rather, the substance of [the ruling] does.” *Id.*, at 322, 133 S.Ct. 1069. In particular, we look to whether the ruling’s substance “relate[s] to the ultimate question of guilt or innocence.” *United States v. Scott*, 437 U.S. 82, 98, n. 11, 98 S.Ct. 2187, 57 L.Ed.2d 65 (1978) (internal quotation marks omitted).”

The district court’s February 10, 2014 Memorandum Decision and Order equates to an acquittal of Bouchard on conspiracy under Count 1 and negates the jury’s misguided guilty verdict. App-16a, 17a. An acquittal bars further prosecution on any aspect of the count. *United States v. Martin Linen Supply*, 430 U.S. 564 (1977). “[W]e have emphasized that what constitutes an “acquittal” is not to be controlled by the form of the judge’s action. Rather, we must determine whether the

ruling of the judge, whatever its label, actually represents a resolution, correct or not, of some or all of the factual elements of the offense charged.” *Id.* at 571.

Bouchard is entitled to relief because “it is found that upon the record evidence adduced at the trial no rational trier of fact could have found proof of guilt beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 324 (1979).

Bouchard, his lawyers, and, presumably the government’s lawyers, all overlooked the acquittal in the district court’s February 10, 2014 decision that declared Bouchard innocent. But merely overlooking that decision does not somehow erase the record of Bouchard’s “actual innocence”. An acquittal is an acquittal, not a conviction.

II. MICHAEL BOUCHARD’S CORAM NOBIS PETITION WAS TIMELY

The Second Circuit erred by denying Bouchard’s motion to file additional pages to the appendix. App.8a, footnote 1. The footnote decision denies the fact-based evidence that Bouchard’s coram nobis petition was timely.

On February 17, 2023 Michael Bouchard received an email from his lawyer Nathaniel Marmur. The full contents of the email are stated below.

Attorney Nathaniel Marmur's February 17, 2023 email to Michael Bouchard:

-----Original Message-----

From: Nathaniel Marmur

<narmur@marmurlaw.com>

Sent: Friday, February 17, 2023 3:30 PM

To: bouchard@nycap.rr.com

Subject: Hey

How are you? I see your bother [brother] more than you. Is there a chance we can get together in the city sometime?

I am writing because we are moving offices and I am trying to clean out my files. I wanted to check with you to see if there is anything you want or I should just toss (other than court-filed documents, which I will preserve)

Best, Nate

Shortly thereafter, Mr. Marmur and Michael Bouchard spoke by phone. Mr. Marmur shipped the two (2) boxes of files to Bouchard with a letter to be signed by Bouchard acknowledging receipt of the boxed files.

Attorney Nathaniel Marmur's April 28, 2023 letter to Michael Bouchard:

April 28, 2023

Dear Michael:

It was great speaking with you last month. As discussed, I am returning your files (two

boxes) to you for all matters on which I worked. I would appreciate it if you could sign and return below for my records.

Please give my best to your wonderful family. I hope we can get together soon – either in NYC, or when I am in Albany.

Best,
Nate

Acknowledged:

Michael Bouchard	Date
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On May 10, 2023 Bouchard sent the countersigned letter to Mr. Marmur:

Contents of email:

May 10, 2023

Hi Nate:

I received the 2 file boxes. Thank you!

I signed your letter at the bottom (see attached).

Please let me know your cost for shipping so I can reimburse you.

Take Care,
Michael

It was not until May 10, 2023 that Bouchard received his files back from Mr. Marmur. Bouchard reviewed the 2 boxes of files, discovered the information related to the Fremont transaction,

prepared the *coram nobis* petition, and then timely filed the petition on June 22, 2023.

In any event, Bouchard's *coram nobis* petition was timely. Because this is a case of actual innocence, a delay in seeking relief does not bar relief. *See McQuiggin v. Perkins*, 569 U.S. 383, 386 (2013) ("actual innocence, if proved, serves as a gateway through which a petitioner may pass whether the impediment is a procedural bar ... or, as in this case, expiration of the statute of limitations.").

CONCLUSION

This case has all the hallmarks for certiorari. The court of appeals' decision is wrong and conflicts with this Court's precedents regarding *coram nobis* proceedings. The decision also ignored the district court's 2014 post-trial decision which analyzed the trial testimony and concluded that an event separate and distinct from a conspiratorial overt act occurred.

The Petition should be granted.

Respectfully Submitted,

Michael G. Bouchard

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