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No. 10-98

IN THE

United States Supreme Court

JOHN ASHCROFT,

Petitioner,

v.

ABDULLAH AL-KIDD,

Respondent.

*On Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit*

BRIEF FOR FORMER FEDERAL PROSECUTORS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICUS CURIAE*

This brief is submitted on behalf of the former federal prosecutors identified in the Appendix.[1] *Amici* have all worked as federal prosecutors. We submit this brief in support of Respondent.

Collectively, *amici* have decades of experience in federal criminal prosecution, including prosecuting domestic and international terrorists. *Amici* are familiar with both the protocols and historical practices of the Department of Justice regarding material witness arrests and detention. *Amici* set forth their understanding of the purpose and proper use of the federal material witness statute in an effort to provide helpful context for the issues to be decided by the Court.

SUMMARY OF ARGUMENT

The federal material witness statute, 18 U.S.C. § 3144, gives prosecutors the power to secure a witness's presence in order to obtain the witness's testimony in a criminal proceeding. The statute's singular purpose is clear both from its structure and its plain language. First, an individual may be arrested only if the prosecutor shows that the individual's "testimony . . . is material in a criminal proceeding." This predicate for issuance of a material witness warrant confirms that the purpose of the statute is to enable a prosecutor to

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[1] The parties have consented to the filing of this brief and such consents have been lodged with the Court. No counsel for a party authored this brief in whole or in part. No person or entity other than the *amicus curiae* and their counsel made a monetary contribution to the preparation and submission of this brief.

obtain evidence from a witness for a criminal case. Second, the prosecutor must show that "it may become impracticable to secure the presence of the person by subpoena." This second predicate is designed to enable the prosecutor to secure a witness's presence at a time when the witness is accessible to the prosecution, under circumstances where the witness might later be unavailable. The conditions for a material witness's release also confirm the statute's purpose: a prosecutor must release the witness once she is deposed. The statute does not permit continued detention of an individual to achieve some other aim.

Petitioner argues that a prosecutor may detain an individual under Section 3144 even if the prosecutor has no intention of using that individual's testimony in a criminal proceeding. The argument implies that a prosecutor could request a material witness warrant from a magistrate judge without disclosing to the judge that the prosecutor has no intention of obtaining testimony from the witness at all. Accepting this argument would authorize prosecutors to withhold material information from an issuing court.

Petitioner claims that if the material witness statute's only legitimate use is to secure a witness's testimony, prosecutors' ability to investigate individuals for criminal wrongdoing will be impeded. Nothing in the statute, however, prevents a prosecutor who arrests an individual as a material witness from continuing her investigation and later charging the witness criminally if the evidence supports the charge. Equally, however, the statute does not authorize prosecutors to detain an individual under the false label of

"material witness" if the prosecutor in fact has no intention of using the individual as a witness.

ARGUMENT

Respondent's factual allegations, which must be taken as true at this stage of the proceedings, *see Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009), are set out in the First Amended Complaint. *See* J.A. 11-58. Respondent is a native-born U.S. citizen and a graduate of the University of Idaho. J.A. 22-3. While in college, Respondent converted to Islam. J.A. 23. In the wake of September 11, the FBI allegedly "conducted surveillance of Mr. al-Kidd and his then-wife (also a native-born United States citizen) as part of their broad terrorism investigation" in Idaho. J.A. 23.

In March of 2003, Respondent was preparing to travel to Saudi Arabia on an academic scholarship. While Respondent was at the ticket counter at Dulles International Airport, FBI agents arrested him on a material witness warrant. The warrant had been issued by an Idaho magistrate judge on the basis of an FBI agent's affidavit stating that Respondent was needed as a witness in the trial of Sami Al-Hussayen, a graduate student at the University of Idaho who had been indicted for visa fraud and making false statements to the government. J.A. 23-4, 29, 38-9.

Respondent alleges that prior to his arrest, he had cooperated with the FBI's requests for interviews, that he had never missed a meeting with the FBI agents, and that he had not heard from the FBI for approximately six months. J.A. 26-7. He also alleges that the FBI never told him "that

he would be needed as a witness in the Al-Hussayen trial (or any other proceeding) or ask[ed] him if he would agree to testify," and never told him "that he could not travel abroad or that he must consult with the government before he scheduled a trip abroad." J.A. 26. Respondent further alleges that he was never asked to relinquish his passport, as another witness in the Al-Hussayen trial was asked to do. J.A. 26-7.

Respondent alleges that upon his arrest, he was handcuffed, taken to a "police substation at the airport," and interrogated about his own religious beliefs, conversion to Islam, and past travels. J.A. 30. In all, Respondent spent fifteen nights in various jails, during which time he was placed in the jails' high-security wings with convicted criminals, strip-searched, and shackled. J.A. 13, 31-5. Even after Respondent's release from detention, he was subject to significant supervisory conditions limiting his freedom for more than a year. J.A. 38. The government never moved to vacate these conditions; Respondent himself petitioned an Idaho court to have them removed once Al-Hussayen's trial ended. J.A. 14, 38-9. In all the time that passed between Respondent's arrest and the trial of Al-Hussayen, the prosecution never called Respondent as a witness at that or any other trial; nor did the prosecution ever seek to depose him. J.A. 38-9.

Respondent contends that the prosecutors and FBI agents did not view him as a witness. Rather, Respondent alleges that their "purpose in arresting and detaining [him] was not to secure his testimony, but to preventively hold and investigate him for possible criminal wrongdoing." J.A. 40; *see*

also J.A. 52 (alleging that Respondent "was arrested for the unlawful purpose of detaining him preventively and/or for further investigation, and not because his testimony was needed"); Resp't's Br. 32 (discussing allegations). Among other things, Respondent points to FBI Director Robert Mueller's testimony before Congress regarding the government's anti-terrorism efforts, where Director Mueller specifically cited Respondent's arrest as one of the federal government's successes in the War on Terror. J.A. 37. Director Mueller did not inform Congress that Respondent had been arrested on a material witness warrant, and not as a criminal suspect. In sum, Respondent alleges that he was arrested pursuant to a "nationwide policy instituted by [P]etitioner," former Attorney General John Ashcroft, which directed federal law enforcement officials to "use[] the material witness statute to detain and investigate suspects for whom the government lacked probable cause of wrongdoing, and not to secure testimony." Resp't's Br. at 5.

I. THE ONLY LEGITIMATE USE OF THE MATERIAL WITNESS STATUTE IS TO SECURE THE PRESENCE OF A MATERIAL WITNESS TO TESTIFY IN A CRIMINAL PROCEEDING

A. The Material Witness Statute Is An Important Law-Enforcement Tool For The Successful Prosecution Of Federal Crimes

Congress enacted the current material witness statute as part of the Bail Reform Act of 1984. *See* Pub. L. No. 98-473, 98 Stat. 1837, 1976-81 (1984). The statute, codified at 18 U.S.C. § 3144 and specifically entitled "[r]elease or detention of a material witness," provides:

> If it appears from an affidavit filed by a party that the testimony of a person is material in a criminal proceeding, and if it is shown that it may become impracticable to secure the presence of the person by subpoena, a judicial officer may order the arrest of the person and treat the person in accordance with the provisions of section 3142 of this title. No material witness may be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition, and if further detention is not necessary to prevent a failure of justice. Release of a material witness may be delayed for a reasonable period of time until the deposition of the witness can be taken pursuant to the Federal Rules of Criminal Procedure.

18 U.S.C. § 3144.

The material witness statute is a powerful, effective, and necessary law-enforcement tool. Its use can be indispensable to the successful prosecution of federal crimes, particularly where there is probable cause to believe that the witness is contemplating leaving the jurisdiction or otherwise refusing to comply with a subpoena. For example, prosecutors often rely on the statute to secure the presence of aliens as witnesses in the prosecution of alleged human traffickers and smugglers. *See Aguilar-Ayala v. Ruiz*, 973 F.2d 411, 413 (5th Cir. 1992) ("To successfully prosecute persons unlawfully transporting undocumented aliens into the United States, the Department of Justice . . . engaged in the practice of detaining some undocumented aliens as material witnesses for the criminal prosecution of the alleged alien smugglers."); *see also United States v. Lai Fa Chen*, 214 F.R.D. 578 (N.D. Cal. 2003); *United States v. Mercedes*, 164 F. Supp. 2d 248 (D.P.R. 2001); *United States v. Huang*, 827 F. Supp. 945 (S.D.N.Y. 1993). In such cases, prosecutors may have a "legitimate concern" that, absent the power to seek their detention, it would be impracticable to obtain evidence from these undocumented aliens because they are subject to deportation and are "hardly motivated to stick around for trial to testify . . . ." *Aguilar-Ayala*, 973 F. 2d at 418-19.

Similarly, in *United States v. Nai Fook Li*, 949 F. Supp. 42 (D. Mass. 1996), the U.S. Coast Guard and the former Immigration and Naturalization Service seized a boat carrying Chinese citizens. Prosecutors charged the defendants with conspiring to smuggle the passengers into the United

States. *Id.* at 43. In order to secure the witnesses' presence at a criminal proceeding, prosecutors arrested five people from the boat on material witness warrants. *Id.* at 45. The court upheld the government's right to hold the witnesses until trial because they would be repatriated to China if they were not detained and would thus be unavailable to testify. *Id.* at 46.

B. The Material Witness Statute's Plain Text Makes Evident That It Should Be Used Only When A Prosecutor Is Genuinely Interested In Securing The Testimony Of A Witness

The material witness statute provides prosecutors with an important law-enforcement tool: the power to secure a witness's presence to testify in a criminal proceeding. It has no other legitimate purpose, and, in our experience, prosecutors understand that it should not be used to achieve some other, unauthorized objective. This understanding flows directly from the statute's plain language and structure.

Section 3144 contains two components. The first sets forth the circumstances under which a court may issue a warrant for a witness's arrest: specifically, where a prosecutor can show (1) that the individual's testimony is material in a criminal proceeding; and (2) that it may become impracticable to secure the individual's presence at those proceedings by subpoena. The statute's second component limits the amount of time that a witness can be held on a material witness warrant to only such time as required for a witness's testimony to be secured through deposition, and even

then, only for a "reasonable period of time" necessary to arrange the deposition.

The elements of Section 3144 make clear its sole purpose: empowering the prosecutor to seize and hold a witness to obtain that witness's testimony. The statute plainly provides that it will be invoked only where a prosecutor seeking a material witness warrant is genuinely interested in obtaining testimony from that witness.

To obtain court approval for a material witness warrant, a prosecutor must meet both tests, both of which confirm that the government's purpose in seeking a material witness warrant must be to obtain testimony from the individual being detained for use in some other criminal proceeding. First, an individual may be arrested as a material witness only if the prosecutor can show that the individual's testimony "is material in a criminal proceeding." This element plainly implies that when a prosecutor seeks a warrant for such an individual's arrest, the prosecutor genuinely believes that the individual possesses material testimony and genuinely intends to make use of that evidence in a pending criminal proceeding.

The prosecutor must also show that "it may become impracticable to secure the presence of the person by subpoena." A subpoena is the usual method by which a prosecutor will ensure that a witness will appear at a grand jury, deposition, or trial. *See Taylor v. Illinois*, 484 U.S. 400, 415-16 (1988) ("Routine preparation involves location and interrogation of potential witnesses and the serving of subpoenas on those whose testimony will be offered at trial."). The use of a material witness warrant is thus an extraordinary means of secur-

ing the presence of a witness, and it is only to be employed when the prosecutor can show that the witness may not later be subject to the court's jurisdiction or may refuse to comply with a subpoena. Thus, the second predicate for issuing the warrant also confirms that the statute's purpose is to secure an individual's presence at a criminal proceeding so that her testimony can be presented in that proceeding.

That the statute is meant to secure a witness's testimony is also clear from Section 3144's explicit direction relating to the release of a material witness. A prosecutor must release a material witness once the witness has given testimony. The statute nowhere suggests that the witness may be incarcerated further to achieve some other objective, such as an investigation of the witness as a criminal suspect. This limitation on the duration of a witness's detention is based on the statute's purpose of securing a witness's testimony so that it may be presented in a criminal proceeding. Once the witness has been detained and the witness's testimony secured, the witness must be released.

If there were any doubt about the statute's purpose, it is dispelled by the statute's explicit use of the word "witness." Before a prosecutor asks a judge to issue a warrant to arrest a material witness, the prosecutor must necessarily have concluded that the witness is someone who could provide testimony for use in another person's criminal proceedings. This is the obvious meaning of the word witness. *See Black's Law Dictionary* 1740 (9th ed. 2009) (defining "witness" as "[o]ne who sees, knows, or vouches for something; . . .

[o]ne who gives testimony under oath or affirmative . . . ."); *see also Melendez-Dias v. Massachusetts*, 129 S. Ct. 2527, 2551 (2009) (Kennedy, J., dissenting) (explaining that a "witness" is "one who witnesses (that is perceives) an event that gives him or her personal knowledge of some aspect of the defendant's guilt").

Prosecutors recognize that Section 3144's value is that it empowers a federal court to order a witness's arrest solely to obtain that witness's testimony, even where the witness has done nothing wrong or the prosecutor lacks evidence to support a traditional arrest warrant. Prosecutors are well aware of the Constitution's limitations on arrest and detention and they understand that these limitations must be observed rigorously. The material witness statute does not—and indeed cannot—offer prosecutors an end-run around the Fourth Amendment rule that the arrest and detention of a *suspect* must be supported by probable cause to believe that the arrestee herself has committed a crime.

II. De-Linking The Statute From Its Purpose Of Securing Testimony Would Undermine The Rule Of Law

Contrary to prosecutors' settled understanding about the material witness statute's legitimate use, Petitioner argues that a prosecutor seeking to detain an individual under Section 3144 need not have any genuine intention of using that individual's testimony in a criminal proceeding. *See* Pet'r's Br. 29-32. As long as a prosecutor can satisfy Section 3144's objective requirements, *i.e.*, materiality and impracticability, Petitioner con-

tends that it would not contravene the law for a prosecutor to seek a material witness warrant despite having no intention of using the so-called witness as a witness. *See id.*

Petitioner's argument ignores the statute's purpose. It is a clear practical reality that any judge would believe that she is issuing a Section 3144 warrant because the prosecutor needs the witness's testimony. This is the clear implication of Section 3144's text. Magistrate judges have a right to rely on the representations of prosecutors and other law enforcement officials who come before them seeking warrants. A prosecutor who obtains a material witness warrant without telling the issuing judge that she does *not* intend to use the witness's testimony in another proceeding has arguably omitted a material fact from her application to the magistrate, or at the very least misled the judge about the reason an individual is being arrested.

Even if such a material omission does not actually rise to the level of a false statement, it unquestionably undermines the rule of law and respect for the statute's plain language. *See United States v. Hasting*, 461 U.S. 499, 522 (1983) (Brennan, J., concurring in part, dissenting in part) (stating that prosecutors "are officers of the court charged with upholding the law . . . ."); *see also Lacy v. Cnty. of Maricopa*, 631 F. Supp. 2d 1183, 1196 (D. Ariz. 2008) (referring to prosecutors "who, through false statements, prevail[ ] upon a magistrate to issue a warrant" as "reprehensible" because the prosecutor "maliciously abuse[d] a position of trust" (quotations and citations omitted)). As this Court has observed, "jus-

tice must satisfy the appearance of justice." *Offut v. United States*, 348 U.S. 11, 14 (1954). Authorizing prosecutors to obtain court orders based on misleading applications would shake the faith of the judiciary in the prosecutors who appear before them, and the faith of the public in our system of justice.

This Court has repeatedly held that interpretations of statutes that lead to "absurd and unjust results" must be rejected because they could not reflect what Congress intended when it passed the statute. *Clinton v. City of New York*, 524 U.S. 417, 429 (1998) (quotations and citations omitted); *see also Wash. State Dep't of Soc. & Health Servs. v. Guardianship Estate of Danny Keffeler*, 537 U.S. 371, 388 n.11 (2003); *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 449-50 (2002); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 480 (1999). Petitioner's interpretation of the statute would lead to such a result. It is absurd to believe that Congress passed a statute that would permit prosecutors to materially mislead judges in a manner that would undermine general respect for the rule of law.

III. The Material Witness Statute Does Not Prevent Prosecutors From Investigating An Individual Detained As A Material Witness So Long As The Prosecutor Intends To Obtain Testimony From The Individual

Petitioner claims prosecutors' ability to investigate individuals for criminal wrongdoing would be unnecessarily hampered if the only legitimate use of the material witness statute is to secure a

witness's testimony for a criminal proceeding. This contention is without basis. Prosecutors may act with mixed motives when they seek a material witness warrant, so long as their intention to seek the witness's testimony for an independent criminal proceeding is genuine. Indeed, they may—and often do—view the same individual as both a material witness and as a potential criminal suspect without running afoul of the statute. So long as the motive of securing testimony is genuine, and not pretextual, use of the material witness statute is appropriate.

Petitioner argues that a prosecutor's fear of personal liability for acting pursuant to these dual motives will keep the prosecutor from arresting an individual as a material witness, thus depriving the prosecution of needed testimony. *See* Pet'r's Br. 39-40. This fear allegedly would "discourage prosecutors from employing the material-witness statute in situations for which it was designed and in which the public interest favors its use." *Id.* at 40.

Prosecutors, however, have never thought of Section 3144 as so limiting. A prosecutor can seek an individual's detention as a material witness and later decide to charge the individual criminally. That alone would not be a misuse of the statute, and Respondent does not claim it would be. Similarly, a prosecutor could seek someone's detention as a material witness even if she also simultaneously suspected the person of criminal wrongdoing. Standing alone, this would not be a violation of the statute. What would be an abuse of the statute would be for a prosecutor to seek the arrest of a person under Section 3144 when she

has no intention of using the person's testimony in a criminal proceeding or otherwise believes that the person's presence could adequately be secured by subpoena.

Prosecutors understand that they may investigate an individual arrested pursuant to a material witness warrant to determine if the individual committed a crime. This includes crimes related to the subject matter of the criminal proceedings at which the witness will testify. That prosecutors have this ability under the statute is only logical. It is possible that an individual who a prosecutor initially believes has important and material testimony may have this information because the individual actually participated in the crime. In such a case, the prosecutor may only become fully aware of the individual's involvement in the crime after she has legitimately detained the individual on a material witness warrant.

For example, in *United States v. Nichols*, 77 F.3d 1277 (10th Cir. 1996), cited by Petitioner, prosecutors initially arrested Nichols as a material witness. *Id.* at 1278. There is no suggestion in *Nichols* that the prosecutors did not genuinely want Nichols's testimony. Prosecutors initially believed that Nichols was a material witness because they had substantial information linking him to Timothy McVeigh, whom the FBI had already charged with blowing up the Murrah Federal Building by the time prosecutors obtained the Nichols warrant. *See United States v. McVeigh*, 940 F. Supp. 1541, 1546-50, 1562 (D. Colo. 1996). They also believed that it would be impracticable to secure Nichols's testimony by subpoena, because Nichols had renounced his U.S. citizen-

ship and thus was unlikely to respond to a subpoena. *See id.* at 1562. After prosecutors concluded that Nichols was a material witness, they continued to investigate his conduct. Prosecutors realized the full extent of Nichols's participation in the bombing only as a result of this further investigation, and they then charged him with offenses related to the bombing. *See Nichols*, 77 F.3d at 1278-79. Thus, Nichols's arrest would not have violated the material witness statute unless the prosecutors initiated the arrest solely to hold him while they continued their investigation of Nichols's own criminal offenses.

Compare *Nichols,* however, with a scenario that would run afoul of Section 3144: assume that prosecutors, having indicted one broker in a financial services firm for insider trading, come to suspect another broker of involvement in the scheme after uncovering suspiciously-timed phone calls between the two. Assume that the FBI questions this second broker on multiple occasions, and each time he fully cooperates in the questioning, never once missing a meeting. The prosecutor decides that the second broker's testimony is not needed for the case already under indictment, but continues to believe that the second broker is also guilty of insider trading, even though she lacks probable cause to charge him.

Assume that after conducting these interviews, the FBI learns that the second broker is about to be reassigned to a branch in China, a country that has no extradition treaty with the United States. Unless the prosecutor actually intends to present the second broker's testimony in the pending proceeding, and would be unable to obtain that tes-

timony absent an arrest, the prosecutor would have no basis for seeking a material witness warrant. Under Petitioner's interpretation of Section 3144, however, the prosecutor would be empowered to obtain a material witness warrant for the second broker simply by pointing to the objective facts that he had significant ties to the defendant and was about to be living abroad and beyond the reach of a subpoena. This position finds no support in the statute and cannot be reconciled with the Fourth Amendment's requirement of probable cause. Prosecutors understand that using the material witness statute as a means to hold an individual in the hope that further investigation will lead to probable cause—or worse, as a means to separate an individual from society without a trial, even when based on the government's well-intended suspicions—would violate the most basic protections guaranteed by the Fourth Amendment.

The difference between the insider-trading hypothetical and *Nichols* helps to demonstrate the limit imposed by Section 3144 on a prosecutor's ability to investigate. This limit is sensible: a prosecutor cannot arrest and detain individuals simply because she finds it easier to investigate them when they are detained, while all along operating under the pretense that they are material witnesses.

CONCLUSION

For the foregoing reasons, the *amicus curiae* urge this Court to affirm the Ninth Circuit's decision.

Respectfully submitted,

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APPENDIX

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Leland B. Altschuler served as Chief of the Silicon Valley Branch of the United States Attorney's Office for the Northern District of California from 1992 to 1998.

David Bancroft served as Chief of Special Projects in charge of fraud and terrorism prosecutions in the United States Attorney's Office for the Northern District of California from 1972 to 1978. Prior to that, he served as an Assistant United States Attorney in the Criminal Division of that Office from 1966 to 1972, and as a Trial Attorney in the Organized Crime and Racketeering Section of the United States Department of Justice from 1963 to 1966.

Martha Boersch served as an Assistant United States Attorney and Chief of the Organized Crime Strike Force in the United States Attorney's Office for the Northern District of California from 2002 to 2004. Prior to that, she served as that Office's Chief of the Securities Fraud Unit from 2001 to 2002.

Barry A. Bohrer served as Chief of the Major Crimes Unit in the United States Attorney's Office for the Southern District of New York from 1985 to 1986. Prior to that, he was Chief Appellate Attorney in that Office from 1984 to 1985, and an Assistant United States Attorney from 1982 to 1986.

Daniel Bookin served as an Assistant United States Attorney in the Southern District of New York from 1978 to 1982.

Leslie Caldwell served as Director of the United States Department of Justice's Enron Task Force from 2002 to 2004. From 1999 to 2002, she served in the United States Attorney's Office for the Northern District of California, where she was Chief of both the Criminal Division and the Securities Fraud Section. Prior to that, she was an Assistant United States Attorney in the Eastern District of New York.

John K. Carroll served as Chief of the Securities and Commodities Fraud Task Force in the United States Attorney's Office for the Southern District of New York from 1990 to 1992. Prior to that, he served as an Assistant United States Attorney in that Office from 1983 to 1992.

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Frederick P. Hafetz served as Chief of the Criminal Division in the United States Attorney's Office for the Southern District of New York from 1977 to 1979. Prior to that, he served for two years with the United States Department of Justice's Organized Crime Strike Force, was Special Counsel to the United States House of Representatives Select Committee on Crime, and was an Assistant District Attorney in New York County for five years.

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Emily Kingston served as an Assistant United States Attorney for the Northern District of California in San Francisco from 1995 to 2005. Prior to that, she served as a Special Assistant United States Attorney for the Office of the Chief Counsel of the Internal Revenue Service in San Jose from 1992 to 1995. From 1989 to 1992, she served as a Trial Attorney for the Tax Division of the United States Department of Justice, Western Region.

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Aaron R. Marcu served as Associate United States Attorney for the Southern District of New York in 1989, Chief of the Major Crimes Unit of that Office from 1988 to 1989, Chief Appellate Attorney from 1986 to 1988, and as an Assistant United States Attorney from 1983 to 1989.

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Mark F. Pomerantz served as Chief of the Criminal Division in the United States Attorney's Office for the Southern District of New York from 1997 to 1999. Prior to that, he served as Chief Appellate Attorney of that Office from 1981 to 1982, and as an Assistant United States Attorney from 1978 to 1982.

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Victor J. Rocco served as Chief of the Criminal Division in the United States Attorney's Office for the Eastern District of New York from 1980 to 1983, Chief of that Office's Narcotics Section from 1978 to 1980, and as an Assistant United States Attorney from 1976 to 1983.

Benito Romano served as United States Attorney for the Southern District of New York in 1989. Prior to that, he was that Office's Chief Appellate Attorney from 1986 to 1988, Chief of the Public Corruption Unit and Executive Assistant United States Attorney from 1984 to 1986, and an Assistant United States Attorney from 1980 to 1984.

David Shapiro served as United States Attorney for the Northern District of California from 2001 to 2002, and Chief of that Office's Criminal Division from 1998 to 2001. From 1992 to 1995, he was an Assistant United States Attorney for the District of Arizona (Tucson). Prior to that, he served as an Assistant United States Attorney for the Eastern District of New York from 1986 to 1992, where he was Chief of the Narcotics Division from 1989 to 1991.

Christopher J. Steskal served as an Assistant United States Attorney in the United States Attorney's Office for the Northern District of California from 2001 to 2007. He was a member of that Office's Securities Fraud Section from 2005 to 2007 and of the Office's Stock Options Backdating Task Force from 2006 to 2007.

Thomas Sullivan served as United States Attorney for the Northern District of Illinois from 1977 to 1981.

Jay R. Weill served as Chief of the Tax Division in the United States Attorney's Office in San Francisco from 1982 to 2007. From 1978 to 1982, he served as an Assistant United States Attorney in the Tax Division of that Office. Prior to that, he was a Trial Attorney with the Tax Division of the United States Department of Justice from 1970 to 1975.

Richard Weinberg served as Chief Appellate Attorney in the United States Attorney's Office for the Southern District of New York in 1979, and as an Assistant United States Attorney in that Office from 1975 to 1979. Prior to that, he served as an Assistant Special Prosecutor in the Watergate Special Prosecution Force from 1973 to 1975.

Andrew Weissmann served as Special Counsel to the Director of the Federal Bureau of Investigations in 2006. He was Director of the United States Department of Justice's Enron Task Force from 2004 to 2006 and Deputy Director from 2002 to 2004. From 1991 to 2002, he served as an Assistant United States Attorney and Chief of the Criminal Division for the Eastern District of New York.

Michael Li-Ming Wong served as an Assistant United States Attorney and Chief of the White Collar Crimes Section for the Northern District of California from 2005 to 2008. Prior to that, he served as Chief of the Major Crimes Section for that Office from 2004 to 2005.