

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF MASSACHUSETTS

3 )  
4 SECURITIES AND EXCHANGE )  
COMMISSION, )

5 )  
6 Plaintiff, )

7 v. )

8 MANPREET SINGH KOHLI, )

9 Defendant. )

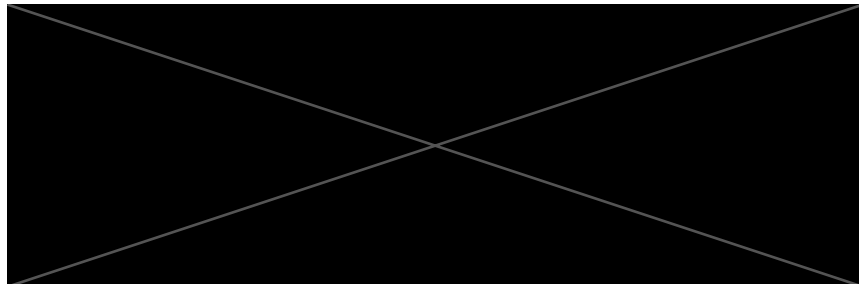
) Civil Action  
) No. 1:24-cv-12586-AK  
) Pages 1 to 25  
)

10  
11 BEFORE THE HONORABLE ANGEL KELLEY  
12 UNITED STATES DISTRICT JUDGE

13  
14 MOTION HEARING

15  
16 April 14, 2025  
11:02 a.m.

17  
18 John J. Moakley United States Courthouse  
Courtroom No. 8  
19 One Courthouse Way  
Boston, Massachusetts 02210  
20



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## P R O C E E D I N G S

THE CLERK: All rise.

THE COURT: You can have a seat.

Okay. You can call it.

11:02 THE CLERK: Thank you, Your Honor.

6 The United States District Court for the District of  
7 Massachusetts is now in session, the Honorable Angel Kelley  
8 presiding. Today is April 14th, 2025. Civil Action 24-12586,  
9 the Commission versus Armand, et al., will now be heard before  
11:02 10 this Court.

11 THE COURT: Good morning, Counsel. Would you please  
12 state your appearances for the record.

13 MR. D'ADDIO: Good morning, Your Honor. David D'Addio  
14 for the Securities and Exchange Commission.

11:02 15 THE COURT: Thank you.

16 MR. HOLCOMB: Good morning, Your Honor. David Holcomb  
17 for the intervenor Department of Justice.

18 MR. ROSEN: Good morning, Your Honor. Eric Rosen and  
19 my colleague Douglas Stephens for the defendant Manpreet Kholi.

11:03 20 THE COURT: Eric Rosen and Douglas Stephens. All  
21 right. Thank you.

22 So a couple of things -- let me just double-check. So  
23 there's a total of four outstanding motions. Two are  
24 assented-to motions to approve consent judgment, one by  
11:03 25 defendant Hernandez and the other defendant Armand. Neither of

1 those defendants are present here today. But I have not acted  
2 on those yet, but I assume that there's no reason why I can't  
3 act on them at this time.

4 MR. D'ADDIO: No reason that the Commission can  
11:04 5 consider, Your Honor.

6 THE COURT: All right. So those two assented-to  
7 motions for entry of proposed judgment will be allowed. That's  
8 dockets 4 and 5.

9 And then we have defendant Kholi's motion to dismiss,  
11:04 10 which is paper 16, and then the government or Department of  
11 Justice's motion to intervene and stay, which is paper 19. I  
12 think that that motion sort of leads our conversation today.  
13 So why don't I have AUSA Holcomb speak to that, and Counsel,  
14 I'll give you an opportunity to respond.

11:04 15 MR. HOLCOMB: Thank you, Your Honor.

16 And just as an additional matter, I believe that the  
17 motion to intervene is unopposed, that portion of the motion,  
18 and so I won't address that unless the Court would like me to,  
19 and I'll instead focus on the motion to stay.

11:05 20 THE COURT: Okay. Is that accurate, Counsel?

21 MR. ROSEN: Yes.

22 THE COURT: All right. Very good. Thank you.

23 MR. HOLCOMB: Your Honor, I'll just highlight the two  
24 kind of main points why the government is moving to stay here  
11:05 25 and thinks the stay is appropriate.

1 First, what the government is requesting is a very  
2 common procedure in cases where there are parallel civil and  
3 criminal securities enforcement actions, and that's to allow  
4 the criminal case to be tried like any other criminal case  
11:05 5 first before allowing the SEC's enforcement action to proceed.

6 The defendant's briefing suggests that there is  
7 something somehow unfair or inappropriate about DOJ and the SEC  
8 bringing two cases at once, but there is nothing inappropriate  
9 about parallel actions. The securities laws provide for civil  
11:06 10 and criminal coordination and enforcement here. And so this is  
11 a fairly common case where the alleged conduct arises to the  
12 level of criminal violations, and therefore, both the  
13 Department of Justice and the Securities and Exchange  
14 Commission have brought parallel actions.

11:06 15 And the common thread throughout all of the cases that  
16 the government cites in its briefing is that courts can and  
17 should use their discretion to sequence the cases so that the  
18 cases don't work at cross purposes to each other. Most of the  
19 time what this means is that courts resolve the criminal case  
11:06 20 first and the civil case second because, first, it's the  
21 efficient way to resolve them, and second, also, because the  
22 criminal case should -- can then proceed like any other  
23 criminal case instead of proceeding under special rules where  
24 the defendant, just because there's a civil case pending, gets  
11:07 25 to put the government's witnesses under oath well before any

1 criminal trial happens.

2 The defendant's brief, as identified, really has just  
3 two exceptions to this general rule within this district in SEC  
4 enforcement actions, both of which issued from the same session  
11:07 5 in the same year, and that's the *Kanodia* and *O'Neill* cases, and  
6 those cases give essentially the same reasons for denying a  
7 stay.

8 My reading of those cases is that they really focus on  
9 the Court's --

11:07 10 THE COURT: Can you tell me which -- what page of your  
11 motion is that listed?

12 MR. HOLCOMB: Your Honor, the government addresses  
13 those cases in its response.

14 THE COURT: Reply, okay.

11:07 15 MR. HOLCOMB: But the defendant first raises them in  
16 its opposition, which is docket 22.

17 THE COURT: All right. Just point me to where you  
18 cite it. What is the case name again?

19 MR. HOLCOMB: *Kanodia*.

11:08 20 THE COURT: I see it, in note 2.

21 MR. HOLCOMB: It's page 4, footnote 2.

22 THE COURT: All right. Thank you. And I'll find it  
23 in the opposition papers. You may proceed.

24 MR. HOLCOMB: Okay. And the focus of that -- of the  
11:08 25 ruling in both of those cases was the Court's refusal to -- in

1 what the Court viewed as to generally delay the disclosure of  
2 relevant information. And respectfully, the issue and the  
3 government's concern goes far beyond merely delaying disclosure  
4 of relevant information that would need to be disclosed in any  
11:08 5 event. We're talking about a dramatically different set of  
6 procedures that discovery in the SEC case proceeds under and  
7 what the defendant is permitted to do under that.

8 And that's -- that would be essentially ex parte  
9 discovery for the criminal case because that's discovery in  
11:09 10 which the SEC could seek to depose witnesses for the  
11 government, victims, and engage in discovery that the  
12 Department of Justice can play no role in. They can't object,  
13 they can't refresh a witness's recollection, they can't correct  
14 the record, or rehabilitate a witness's credibility. The  
11:09 15 defendants would get to do all of that -- would get to do all  
16 of that under the SEC case -- discovery in that case, and the  
17 government could play no role until the government would have to  
18 live with those statements at an eventual trial, and that's far  
19 different from merely early disclosure of relevant information.

11:09 20 And so the numerous cases that the government cites in  
21 its filings recognize that that would be deeply unfair in that  
22 just because there is a parallel civil case should not mean  
23 that the criminal case needs to be tried under a different set  
24 of rules. Other sessions of this Court have not followed  
11:10 25 *Kanodia* and *O'Neill* since those orders.

1 Judge Saylor, for instance, explained why in the  
2 *Muraca* case in 2017. This is cited in the government's reply,  
3 docket 27. It's actually quoted at length on page 3, Your  
4 Honor. And there Judge Saylor noted that there are good  
11:10 5 reasons why the law provides for both criminal and civil  
6 enforcement, so that there's nothing nefarious or unfair about  
7 parallel cases being brought. He acknowledged that the  
8 concerns about this kind of what would be ex parte one-sided  
9 discovery are real concerns that the Court should be concerned  
11:10 10 with. And he said that there's really no fairness principle  
11 that is served by allowing the defendant to proceed with  
12 discovery in the civil case where the discovery could only be  
13 one-sided based on the defendant's Fifth Amendment rights. And  
14 that's where I think the efficiency point comes in.

11:11 15 I recognize that the efficiency argument often sounds  
16 self-serving when it's framed as, well, we should sit back and  
17 see if the DOJ wins its criminal case so that the SEC then has  
18 an easy case or, you know, little more to do after that. And  
19 the Court in *Kanodia* and *O'Neill* clearly thought it sounded  
11:11 20 self-serving. But I think the better way to think about the  
21 efficiency argument is that it just recognizes the practical  
22 reality that the SEC case cannot be resolved before the  
23 criminal case.

24 So long as Mr. Kholi has a Fifth Amendment right or a  
11:11 25 Fifth Amendment privilege, he won't be sitting for a



1 deposition, so -- and the defendant's briefing does not  
2 indicate that he's prepared to waive the Fifth Amendment and  
3 sit for a deposition or assert it and risk the adverse  
4 inference in the SEC case.

11:12 5 And so the efficiency point is just that there's no  
6 world in which the SEC case gets resolved before the criminal  
7 case. So where the criminal case likely would resolve some  
8 issues in the civil case and the criminal case has to proceed  
9 anyways, a stay just makes sense to resolve the criminal case  
11:12 10 first.

11 No session more recently in this district has followed  
12 *Kanodia* and *O'Neill* either. In the most recent case that the  
13 government is aware of where there was a contested motion by  
14 the government to stay the parallel SEC case, that's the *Forte*  
11:12 15 case in 2023, I believe, the defendants relied on *Kanodia* and  
16 *O'Neill*, and Judge Sorokin granted the DOJ's motion to stay  
17 without any oral argument.

18 So on this larger first point, Courts have recognized  
19 that the government's concerns are real concerns, and the way  
11:12 20 to address those concerns is simply to allow the criminal case  
21 to proceed first. The alternative that the defendant suggests  
22 is that the SEC can dismiss its case to avoid these concerns,  
23 and there's no serious support for the idea that the main civil  
24 securities regulator should have to forgo its remedies in cases  
11:13 25 where the conduct also arises to a criminal violation. That's

1 just not in the public interest. By contrast, all the  
2 government is asking is to be permitted to proceed with its  
3 case like any other criminal case.

4 Your Honor, the second point is that the defendant  
11:13 5 still has not articulated any prejudice from a stay that the  
6 Court should recognize. He's not prejudiced by having already  
7 filed a motion to dismiss. He was on notice that the  
8 government was going to file -- or was going to move to stay  
9 this case. He did not need to file his motion before alerting  
11:13 10 the government of his opposition to a stay. He was not up  
11 against an immovable deadline to file that motion. He chose to  
12 get it on the docket. So that's not a prejudice.

13 He's not prejudiced by a delay in resolving the civil  
14 case because, as I've already noted, it can't be resolved  
11:14 15 before the criminal case anyways. Instead, his main argument  
16 is he is prejudiced because if he can't seek discovery in the  
17 SEC case, he can't use that discovery to fight his extradition  
18 in the United Kingdom. That's a really remarkable claim.

19 First, it assumes that he's entitled in the first  
11:14 20 place to get discovery from the SEC not to use in his defense  
21 of the SEC case but to use in a wholly foreign jurisdiction to  
22 fight extradition, and he's not entitled to that. So staying  
23 this case does not somehow put him in any worse position in his  
24 extradition proceedings than he otherwise would be or should be  
11:14 25 in the U.K. court.

1           And second, it assumes that the Court has any interest  
2 at all in helping him avoid extradition on charges in another  
3 criminal case -- in a criminal case before this same session of  
4 this Court. In our last filing, the government cited cases  
11:15 5 showing how courts actually actively discouraged criminal  
6 defendants who are outside the U.S., whether they're fugitives  
7 or merely contesting extradition, how courts discouraged them  
8 from avoiding criminal charges in U.S. Federal Courts. And  
9 those cases are just meant to illustrate that the defendant's  
11:15 10 interest in avoiding extradition is not one that the Court  
11 should be asked to recognize or to protect here. And the  
12 defendant has offered no support at all for why the Court  
13 should be concerned with his extradition proceedings.

14           So setting that argument aside, there really isn't any  
11:15 15 other prejudice argument remaining. So in summary, Your Honor,  
16 a stay is warranted because it would permit the criminal case  
17 to proceed under the rules applicable to any other criminal  
18 case, because the civil case can't proceed to resolution in the  
19 meantime anyways, and because the defendant should not be  
11:16 20 permitted to use civil discovery here to fish for material that  
21 might somehow be helpful to him in fighting extradition.

22           THE COURT: Thank you. The government makes a  
23 compelling argument, Counsel, so I'll hear from you.

24           MR. ROSEN: Your Honor, the government here is asking  
11:16 25 this Court to delay justice in a civil case it chose to bring.

1 The SEC filed this complaint. It served Mr. Kholi overseas.  
2 He's choosing to defend himself. We have not articulated one  
3 way or another whether the Fifth Amendment would or would not  
4 apply. And now they want to freeze it without articulating any  
11:16 5 prejudice that's specific to this actual case. That's  
6 unfairness to Mr. Kholi. That's gamesmanship. And a stay  
7 would reward that and prejudice him because he's done nothing  
8 more than asking this Court to allow his case that the  
9 regulators chose to bring to go forward.

11:17 10 Mr. Holcomb obviously is a very intelligent,  
11 well-spoken AUSA, but he forgot the government's standing. And  
12 that's the First Circuit case of *Microfinacial versus Premier*  
13 *Holidays*. And what is that? The movant looking for the stay  
14 must demonstrate a clear case of hardship to be entitled to a  
11:17 15 discretionary stay, a clear case of hardship. Where is that  
16 showing besides generic talking about witnesses or discovery or  
17 anything else? That's boilerplate arguments about discovery  
18 risk without identifying any witness or any evidence  
19 threatened. We have no idea who the witnesses are going to be.  
11:17 20 We have no idea who we're going to seek to depose. Two of the  
21 defendants in this case, Armand and Russell, have already  
22 entered into consent decrees with the SEC, and in doing so,  
23 they're not even allowed to contradict the fact that they have  
24 committed the charged conduct.

11:18 25 So I don't know where this -- you know, the Fifth

1 Amendment, it's not gamesmanship. It's these people have  
2 already effectively waived it. There is nothing particularized  
3 about anything, anything that the government suggests, and  
4 that's the standard that the First Circuit has held. It can't  
11:18 5 be generic, it has to be particular to this case, and there are  
6 many reasons why a stay should not go forward.

7 What Mr. Holcomb didn't mention is that Mr. Kholi is  
8 not alone in the criminal indictment. There's another  
9 co-defendant who is proceeding, Mr. Haroon Mohsini. What does  
11:18 10 that mean? Why is that important? It's critical because the  
11 discovery, the documents that the government's holding back and  
12 doesn't want Mr. Kholi to see, those are getting produced  
13 anyway. To the extent that there's witnesses testifying while  
14 Mr. Kholi fights extradition, he'll have access to those  
11:19 15 transcripts. This is an open court system.

16 The main reason is just -- you know, in a  
17 single-defendant case it could make sense. In a  
18 multi-defendant case where one person is proceeding with their  
19 case, it makes no sense. We've heard a lot about civil  
11:19 20 discovery and things like that, but let's remember where we  
21 are. It's unprecedented. I haven't found a single case, and  
22 apparently neither has the government, where the U.S. Attorney  
23 after a defendant files a motion to dismiss, they intervene to  
24 stay and torpedo that motion to dismiss.

11:19 25 The idea that we had some opportunity not to file

1 anything is a myth. We were served in the United Kingdom. We  
2 negotiated an answer or motion date with the SEC, as  
3 Mr. D'Addio will tell the Court, and we filed. That was our  
4 requirement under the Rules of Civil Procedure. There was no  
11:20 5 gamesmanship. We didn't bring this case ourselves. We're not  
6 intervening in anything. We're responding to serious  
7 accusations from the Nation's securities regulator, and we have  
8 an absolute requirement to do that.

9 Mr. Kholi is sitting there in the United Kingdom  
11:20 10 wearing an ankle monitor, which he may be for the next couple  
11 of years. He can't travel, he can't do anything as this case  
12 plays out, and the idea that he can just sit there for those  
13 years and not allow anything to transpire, not allow him to  
14 dismiss a case that he's put time, effort and money into on  
11:20 15 jurisdictional extraterritorial grounds is absurd. I don't  
16 know of any court that's ever allowed that to happen, and I  
17 don't suggest that this Court should be the first one to do so.

18 Your Honor, civil discovery, to the extent it ever  
19 takes place, the SEC knows what to do, to the extent they don't  
11:21 20 want discovery to get out or be spilled over into other cases.  
21 They can file for a protective order. That's the remedy. The  
22 remedy is not to allow the SEC to get its press release and  
23 then prevent Mr. Kholi from fighting back. That's not what our  
24 justice system is about. It's not the way we work.

11:21 25 The DOJ expressed credulity as a fact that we want to

1 use potentially -- and again, potentially, because we don't  
2 know what's in the discovery -- but potentially discovery to  
3 help Mr. Kholi fight extradition. We're transparent because we  
4 have no need not to be transparent. We're fighting the SEC  
11:22 5 case. That's what we're doing. To the extent that there's  
6 discovery that can help Mr. Kholi with extradition, of course  
7 we'd use it. We'd be ineffective if we didn't use it. There's  
8 nothing preventing that. And again, the SEC can get a  
9 protective order if they can convince this Court that a  
11:22 10 protective order is needed to prevent anything from being used.

11 And I found it deeply ironic for the DOJ, which worked  
12 in parallel, which typically takes on a lot of voluminous SEC  
13 discovery for its own case, to say that Mr. Kholi is the one  
14 engaging in gamesmanship here. He is not. He is playing the  
11:22 15 cards that he was dealt, and he is doing it within the rules of  
16 the Federal Rules of Civil Procedure.

17 It is not Mr. Kholi's burden to show prejudice. It is  
18 the government's burden to show a clear case of hardship, which  
19 they've failed, but Mr. Kholi will suffer prejudice. Again,  
11:23 20 the SEC has brought a case, and they're depriving him of an  
21 opportunity to fight the charges, his due process right to do  
22 so. He is entitled to clear his name and discuss what happens.

23 He intends to fight both the criminal case and the  
24 civil case as well. He's spent time and resources. This  
11:23 25 would -- a stay now would waste those complete resources, and

1 of course it would deprive Mr. Kholi of evidence needed to  
2 challenge his extradition, to show that what he is alleged to  
3 have done took place within the U.K.

4 As you know from our motion to dismiss, we have  
11:23 5 serious and significant extraterritoriality arguments that the SEC  
6 after ten weeks has not responded to, as well as personal  
7 jurisdictional arguments, and we're entitled to make those  
8 arguments.

9 And in recent case law in the United Kingdom -- I have  
11:24 10 attached a case called *El-Khoury* -- is critical because  
11 *El-Khoury* talks about these extradition issues and how U.K.  
12 courts just can't extradite people whose conduct took place  
13 entirely or almost entirely within a third-party country under  
14 its own dual prosecution principles. Not to mention the fact  
11:24 15 that, Your Honor, extradition can take years. The charges are  
16 already somewhat old, and the charges require Mr. Kholi  
17 potentially to have witnesses' memories be fresh and be  
18 accurate and be able -- and we're talking about not a stay of a  
19 typical criminal case of a year potentially. We're talking  
11:24 20 about maybe a five-, six-year stay. If extradition takes three  
21 years and then he comes over and if --

22 THE COURT: Is that what it normally takes? Is that  
23 what you're saying?

24 MR. ROSEN: Extradition would normally take three or  
11:25 25 four years if we challenge to the U.S. Supreme Court, yes.



1 THE COURT: Any comment?

2 MR. HOLCOMB: Your Honor, I don't know that it would  
3 take that long. I know that there are proceedings scheduled  
4 for June. From there, you know, it could take years, it could  
11:25 5 take a shorter time. I don't have reason to think it would be  
6 as long as three to four years.

7 THE COURT: Okay. Thank you.

8 MR. ROSEN: If we're dealing with criminal cases, it  
9 could take a year or two to play out. So we're talking about a  
11:25 10 minimum, I would say, three- to six-year delay before  
11 depositions. People of course don't remember what happened a  
12 year ago, let alone three, six years. It's important to  
13 preserve people's recollections because of that.

14 And I do note that none of the cases cited by the  
11:25 15 government involved a situation like here where, A, there's  
16 already an ongoing criminal case that is not stayed, and B, the  
17 defendant is overseas, therefore severely delaying the stay.  
18 We're talking about a very long stay that is needed.

19 The government, we don't believe, is correct that it's  
11:26 20 standard practice to stay parallel SEC and DOJ cases. We've  
21 obviously pointed to a number of cases that they disagree with,  
22 I understand that. But footnote 3, the government -- in the  
23 government's opposition -- reply brief, sorry. It's docket 27  
24 and it's page 4. Footnote 3 lists string cites, a list of  
11:26 25 cases, but those were all when the parties agreed to stay the

1 case. And certainly in 90 percent of cases a stay could make  
2 sense, and we're not disputing that. But we have to show a  
3 clear case of hardship in this case, not other cases.

4 Footnote 4 is allegedly where courts have granted  
11:27 5 opposed motions to stay, but if you look at that footnote --

6 THE COURT: You said number 4?

7 MR. ROSEN: Yeah, it's footnote 4. It cites one, two,  
8 three, four, five cases. Starting on the bottom there with  
9 *DFRF Enterprises*, as the government points out, it granted the  
11:27 10 DOJ's motion to stay before the defendant even appeared.

11 *Padilla* and *Kawuba*, it granted the DOJ's motion where defendant  
12 took no position. *Muraca*, I understand Judge Saylor, obviously  
13 very well respected, we're not disputing sometimes his logic is  
14 completely appropriate, but that was a situation where the  
11:27 15 criminal case was proceeding rapidly in the SDNY. And I don't  
16 believe the defense actually filed a brief in that matter, but  
17 it was obviously nothing like that here.

18 And *Forte*, the *Forte* case that the government relies  
19 upon with Judge Sorokin, there's no opinion that was issued,  
11:28 20 although, unless the government is correct that Judge Sorokin  
21 did grant that stay. But the, again, criminal case was  
22 proceeding rapidly and the prejudice to defendant was minimal.  
23 There is no case that -- in their briefing, I believe, that  
24 they've cited where the stay is granted in a situation like  
11:28 25 this here where we face perhaps interminable delay. And I know

1 the government thinks he's a fugitive. He's not. He was  
2 arrested at his home in the United Kingdom. We are debating --  
3 as I sort of hinted in our opposition to their motion to --  
4 against our motion for oral argument, there is case law in the  
11:29 5 Second Circuit, the *Bescond* case, allowing people who are not  
6 fugitives but happen to be charged while living overseas,  
7 didn't flee from anywhere, to challenge their criminal case,  
8 and we're thinking of doing that here in the near future.

9 So I would submit, Your Honor, that the case law here  
11:29 10 is not favorable to the government. It was highly favorable to  
11 the defense.

12 There's one other topic that I would --

13 THE COURT: Is there some middle ground where some  
14 discovery would be appropriate in the civil action to address  
11:29 15 the concerns that you have?

16 MR. ROSEN: Certainly. And I think, you know -- and  
17 I'm not asking for the government's motion to be denied with  
18 prejudice. Certainly they can always, you know -- you know, I  
19 assume that the SEC will amend their complaint or reply to our  
11:30 20 opposition -- reply to our motion to dismiss. It will take  
21 Your Honor some time of course to rule upon that. Depending on  
22 what the outcome is, discovery will then kick off, and that  
23 could be six months from now. I would encourage document  
24 discovery. I think we're entitled to that. Certainly I have  
11:30 25 no problem revisiting the issue of the depositions, to the

1 extent there are any, later on down the road. I'm -- again,  
2 I'm not asking for Mr. Holcomb's motion to be denied with  
3 prejudice. I'm saying right now where discovery is so far away  
4 it's entirely premature to grant it.

11:30 5 And one other final issue that's more of a policy and  
6 public interest issue is that, as you know -- I don't know if  
7 it's been litigated here yet in this courtroom, but there's  
8 been a lot of changes to government crypto policy from both the  
9 DOJ and SEC side. Particularly from the SEC, I know they're  
11:31 10 reconsidering these cases.

11 I do think a freeze of the case, you know, perhaps it's  
12 Not the -- perhaps they would still consider it even with the  
13 freeze, but certainly it takes away the momentum of a case  
14 moving forward. If a case is frozen, we're asking the SEC to  
11:31 15 reconsider based on whatever policies the Commission comes up  
16 with.

17 And so for all those reasons, we think a stay is  
18 premature, Your Honor, and can be revisited when it becomes  
19 necessary.

11:31 20 THE COURT: Anything further? You don't have to, but  
21 if you have --

22 MR. HOLCOMB: I'll try to be brief, Your Honor, and  
23 just respond to the points made.

24 On the governing standard, I think the defense is  
11:31 25 being a little selective in terms of the governing standard.

1 He's citing a case of two civil litigants, private parties, for  
2 this principle that there should be a specific hardship to the  
3 government. That's nowhere to be found in the articulation of  
4 the standard in SEC cases. And I think that we should stay  
11:32 5 focused on SEC cases here because that's the kind of case this  
6 is.

7 As to, you know, the assertion that there's no  
8 specific prejudice to the government here, the government's  
9 laid out how --

11:32 10 THE COURT: But what about -- so you said that the  
11 standard that they're relying on involved two civil cases. But  
12 what about civil and criminal where not necessarily the SEC is  
13 involved?

14 MR. HOLCOMB: Your Honor, I meant that -- the  
11:32 15 *Microfinancial* case is not an enforcement action. That's all I  
16 meant by that.

17 THE COURT: Okay.

18 MR. HOLCOMB: The cases, the standard that the  
19 government has cited to in its motion are SEC cases. That's  
11:32 20 where the factors to be considered are. The extent of the  
21 overlap between the civil and criminal cases, the status of the  
22 cases, the interests of the civil litigants, and any potential  
23 prejudice or hardship they might suffer, that's not a question  
24 of what the government's hardship is, that's the civil  
11:33 25 litigants' hardship, the convenience of both the civil and

1 criminal courts and the interests of the public and third  
2 parties and the good faith of the litigants. So here I think  
3 we have laid out -- or the government has laid out why -- the  
4 interests of the public and it's to the interest of the  
11:33 5 government to favor a stay.

6 As to, you know, if there was some type of higher  
7 standard for a specific showing of prejudice that the  
8 government needs to show, the government has laid out how  
9 proceeding to discovery in the SEC case would expose its case  
11:33 10 to ex parte discovery essentially. And just because that's a  
11 prejudice that applies in a lot of criminal cases doesn't mean  
12 that it's not a specific prejudice here.

13 As to the Fifth Amendment and, you know, the claim  
14 that they don't know -- defense doesn't know who its witnesses  
11:34 15 might be and who it might depose, it's already highlighted to  
16 the two co-defendants who were subject to the consent judgments  
17 here. And just to point out, their Fifth Amendment rights or  
18 the Fifth Amendment privilege they retain up until the time  
19 they're sentenced. They haven't been sentenced yet. And so  
11:34 20 it's not like their Fifth Amendment privilege has gone away.

21 As to Mr. Mohsini, the defense has raised as, you  
22 know, a potential co-defendant in the criminal case, he will  
23 proceed to trial in all likelihood before Mr. Kholi. There's a  
24 huge difference between Mr. Mohsini going to trial and  
11:34 25 transcripts becoming available of, you know, Mohsini's

1 counsel's cross-examination of the government witnesses and  
2 allowing Mr. Kholi to take depositions of those same witnesses  
3 two or three years, you know, in the defense's telling, before  
4 any criminal trial of Mr. Kholi without the Department of  
11:35 5 Justice being present for those depositions. That is a huge  
6 difference in the kind of discovery that will become available  
7 to Mr. Kholi if -- absent a stay.

8 On the timing of the motion to dismiss, the Court only  
9 needs to look at the docket to see that the defense and the SEC  
11:35 10 have negotiated deadlines for answers and filing motions to  
11 dismiss. I think it's preposterous that -- to argue that  
12 Mr. Kholi had to proceed with his motion to dismiss here and  
13 expend those time and resources when the government went to  
14 Mr. Kholi's counsel, said, hey, we anticipate seeking a stay.  
11:35 15 What is your position? They said, we'll get back to you, never  
16 got back to us, filed this motion to dismiss, and then said we  
17 oppose a stay. That's not -- that didn't need to happen that  
18 way, and so that argument should not be credited.

19 And it's also sort of confusing why the defense is  
11:36 20 arguing that their prejudice is not being able to use the  
21 materials in an extradition proceeding but then they say, oh,  
22 well, the government -- or the SEC should seek a protective  
23 order. Well, that's, you know, the SEC's business. They can  
24 decide if in the normal course this is a case where they would  
11:36 25 seek a protective order. I don't know whether it is or isn't.

1 And I don't know whether the Court would be inclined to grant  
2 one, but I don't think the idea of a protective order here  
3 should be used as both a sword and shield.

4 So as to Your Honor's question as to whether there's a  
11:36 5 middle ground, I don't believe that there is one here because  
6 allowing the case to proceed and then just leaving open the  
7 possibility of government objections is a very haphazard way of  
8 allowing the civil case to hurry up and go when the civil case  
9 can't ultimately proceed past a certain point, and it's all  
11:36 10 going to be one-sided.

11 And the very immediate concern is that proceeding with  
12 the case will lead to a hearing on the motion to dismiss,  
13 presumably, and at that hearing the Court would either -- well,  
14 I should say that the SEC would either be required to proffer  
11:37 15 its evidence as to extraterritoriality or put on witnesses, and  
16 so we would already be at a point where defendant Kholi would  
17 have the opportunity to be questioning future government  
18 witnesses under oath; needlessly, really, because the bottom  
19 line is the civil case cannot proceed to resolution before the  
11:37 20 criminal case.

21 I'll rest on that, Your Honor.

22 THE COURT: All right. Thank you. I'm going to take  
23 it under advisement. You'll be notified. Thank you very much.

24 THE CLERK: We're adjourned. All rise.

11:37 25 (Adjourned at 11:37 a.m.)



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