

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 15<sup>th</sup> day of August, two thousand fourteen.

PRESENT: ROBERT A. KATZMANN,  
Chief Judge,  
DENNIS JACOBS,  
JOSÉ A. CABRANES,  
ROSEMARY S. POOLER,  
REENA RAGGI,  
RICHARD C. WESLEY,  
PETER W. HALL,  
GERARD E. LYNCH,  
DENNY CHIN,  
RAYMOND J. LOHIER, JR.,  
SUSAN L. CARNEY,  
CHRISTOPHER F. DRONEY,  
Circuit Judges.\*

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UNITED STATES OF AMERICA,

Appellee,

- v.-

12-4310 (Lead)  
12-4365 (Con)  
12-4371 (Con)

PETER S. GRIMM, DOMINICK P. CAROLLO,  
STEVEN E. GOLDBERG,

Defendants-Appellants,

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\* Circuit Judge Debra Ann Livingston recused herself from these proceedings.

**UBS AG, UBS SECURITIES LLC, UBS  
FINANCIAL SERVICES, INC.,**

**Intervenors.**

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For Appellee: James J. Fredericks, United States Department of Justice, Washington, DC, (Brent Snyder, Deputy Assistant Attorney General, Finnuala K. Tessier, United States Department of Justice, Washington, DC; Antonia R. Hill, Steven Tugander, United States Department of Justice, New York, NY, on the brief).

For Defendant-Appellant Grimm: Howard E. Heiss, O'Melveny & Myers LLP, New York, NY (Jonathan D. Hacker, Anton Metlitsky, Deanna M. Rice, Mark A. Racanelli, on the brief).

For Defendant-Appellant Carollo: James R. Smart, McElroy, Deutsch, Mulvaney & Carpenter LLP, Morristown, NJ (Walter F. Timpone, on the brief).

For Defendant-Appellant Goldberg: David C. Frederick, Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C., Washington, DC (Brendan J. Crimmins, Emily T.P. Rosen, Andrew E. Goldsmith, Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C., Washington, DC; John S. Siffert, Daniel M. Gitner, Lanker Siffert & Wohl LLP, New York, NY, on the brief).

**ORDER**

Following disposition of this appeal on December 9, 2013, an active judge of the Court requested a poll on whether to rehear the case en banc. A poll having been conducted and there being no majority favoring en banc review, rehearing en banc is hereby **DENIED**.

Gerard E. Lynch, Circuit Judge, joined by Reena Raggi, Peter W. Hall, and Raymond J. Lohier, Jr., Circuit Judges, dissents by opinion from the denial of rehearing en banc.

FOR THE COURT:  
CATHERINE O'HAGAN WOLFE, CLERK

GERARD E. LYNCH, Circuit Judge, with whom Judge RAGGI, Judge HALL, and Judge LOHIER join, dissenting from the denial of rehearing en banc:

For the reasons stated by Judge Kearse in her dissent from the panel's decision, United States v. Grimm, 738 F.3d 498, 504-09 (2d Cir. 2013), I believe that the majority opinion in this case is inconsistent with United States v. Salmonese, 352 F.3d 608 (2d Cir. 2003), and that en banc review is appropriate to settle the law of the Circuit. I therefore respectfully dissent from the denial of rehearing en banc.