

Nicholas J. Genovese  
[REDACTED]  
[REDACTED]



April 14, 2025

Office of the Secretary  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549

Re: In the Matter of Nicholas J. Genovese, File No. 3-19733

MAILED US FIRST CLASS MAIL - CERTIFIED

Dear Sir or Madam,

Enclosed for filing in the above-referenced matter are the following documents:

1. Respondent's Motion in Opposition to Division of Enforcement's Motion to Strike, dated April 13, 2025.
2. Respondent's Motion to Dismiss or Stay Proceedings, dated April 13, 2025.
3. Exhibit A: Declaration of Nicholas J. Genovese, dated April 13, 2025, supporting both motions.

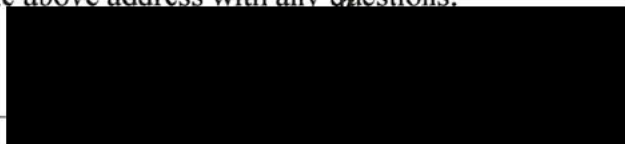
Exhibits B (Medical Records, sealed), E (SEC FOIA Request, February 29, 2024), F (SEC FOIA Response, April 24, 2024), G (SEC FOIA Denial, July 30, 2024), H (FBI FOIA Response, October 16, 2023), I (SEC Privilege Log Refusal, December 11, 2024), and J (Redacted Medical Records, public) were filed with my opposition on March 25, 2025, and are referenced in both motions. Exhibit B remains confidential under Rule 322 (17 C.F.R. § 201.322).

Pursuant to Rule 152, I have served copies US MAIL – CERTIFIED of these documents on the Division of Enforcement at:

- U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549
- Alexander Vasilescu, Division of Enforcement, New York Regional Office, 100 Pearl Street, Suite 20-100, New York, NY 10004

Please contact me at the above address with any questions.

Respectfully,  
Nicholas J. Genovese  
Pro Se Respondent



**UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
ADMINISTRATIVE PROCEEDING**

In the Matter of Nicholas J. Genovese  
File No. 3-19733

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**RESPONDENT'S MOTION IN OPPOSITION TO DIVISION OF ENFORCEMENT'S  
MOTION TO STRIKE**

**INTRODUCTION**

Respondent Nicholas J. Genovese, pro se, opposes the Division of Enforcement's Motion to Strike (March 31, 2025) my opposition (March 25, 2025) to their Motion for Summary Disposition (March 22, 2024), filed 26 days late (February 27, 2025, deadline). Good cause exists due to medical incapacity (surgery, March 3, 2025, Exhibit B, filed March 25, 2025) and Bureau of Prisons (BOP) constraints (28 C.F.R. § 549.12). Striking my opposition violates due process, as this proceeding (OIP, Release No. 5468, March 24, 2020) seeks a punitive bar for securities fraud (Section II.B), requiring a jury trial under SEC v. Jarkesy, 144 S. Ct. 2117 (2024). Markowitz v. SEC, No. 1:23-cv-04495 (SDNY, March 15, 2024), stayed a similar action, noting "Jarkesy raises serious questions about the constitutionality of the SEC's administrative tribunal." The SEC's triple prosecutions (criminal, USA v. Genovese, 18-cr-183, SDNY; civil, SEC v. Genovese, 18-cv-00942, SDNY; administrative, 3-19733), \$18 million sanctions (\$11 million restitution, 18-cr-183; \$1 million fine, \$6 million disgorgement, 18-cv-00942) despite indigence and SEC offset requests, denied DOJ cooperation (\$10 million fraud), and no scienter proof suggest vindictive prosecution, with no prejudice from delay. I request denial of the motion to strike, sealing of Exhibit B, and dismissal or stay of File No. 3-19733 pending SDNY review (Genovese v. SEC, 25-cv-2704).

**BACKGROUND**

1. On March 24, 2020, the Commission issued the OIP (Release No. 5468) under Section 203(f) of the Investment Advisers Act (15 U.S.C. § 80b-3(f)), seeking "remedial action" (Section III.B) for fraud (Section II.B), based on my Section 10(b) conviction (18-cr-183, February 12, 2020, Exhibit A, Declaration, para. 6). The OIP followed \$18 million sanctions: \$11 million restitution (18-cr-183) and \$1 million fine plus \$6 million disgorgement (18-cv-00942, February 11, 2020), all without jury trials (Exhibit A, para. 6).



2. On February 11, 2020, I pleaded guilty (18-cr-183) under coercion (DOJ threats of decades more prison, Exhibit A, para. 8). I provided substantial assistance on a \$10 million fraud, leading to a hedge fund owner's arrest and conviction, but Judge Pauley and the AUSA denied credit, imposing 140 months (Exhibit A, para. 8). That day, in 18-cv-00942, Judge John G. Koeltl denied all discovery (including privilege log), rejected my legal arguments despite SEC's failure to rebut, imposed a \$1 million fine despite indigence (15 U.S.C. § 78u(d)(3)(B)(i)), kept \$6 million disgorgement despite SEC's request to offset against 18-cr-183's \$11 million, and ruled with prejudice to bar appeal (Exhibit A, para. 9).
3. On March 22, 2024, the Division moved for summary disposition, seeking a permanent industry bar. I opposed on March 25, 2025, delayed by surgery (March 3, 2025, Exhibit B) and BOP delays (January 15–February 20, 2025, Exhibit A, para. 4). The Division moved to strike (March 31, 2025).
4. I filed an injunction/stay in SDNY (25-cv-2704, ECF Nos. 1, 3, March 24–25, 2025), citing Jarkesy and Markowitz. Judge Furman deferred ruling (April 4, 2025, ECF No. [X]), pending SEC service.

## **LEGAL STANDARD**

5. Rule 161(a) (17 C.F.R. § 201.161(a)) allows extensions for good cause, including medical incapacity and pro se constraints (In re Rapoport, Admin. Proc. File No. 3-14368, 2013 SEC LEXIS 1590, at \*3). Striking an opposition risks due process by barring constitutional defenses (McCarthy v. SEC, 406 F.3d 179, 187, 2d Cir. 2005). Jarkesy (144 S. Ct. 2117, 2132–33, 2024) voids fraud-based proceedings absent jury trials, as affirmed by Markowitz (1:23-cv-04495, March 15, 2024).

## **ARGUMENT**

### **A. Good Cause Excuses 26-Day Delay**

6. From February 20 to March 20, 2025, I was incapacitated by surgery (March 3, 2025, Exhibit B; Exhibit A, para. 3). Discharge instructions barred activity (Exhibit B), causing pain, medication effects, and no computer access (Exhibit A, para. 3). BOP delayed medical approval (January 15–February 20, 2025, 28 C.F.R. § 549.12), limiting legal access (Exhibit A, para. 4).

7. As a pro se respondent in BOP custody on home confinement, with severely limited movement, I lacked counsel and faced restrictions (Exhibit A, para. 5). The Division's claim that instructions (Exhibit B) only limit bathing and lifting ignores un rebutted evidence of incapacity (Rapoport, 2013 SEC LEXIS 1590, at \*3).

### **B. No Prejudice to the Division**

8. A 26-day delay in a five-year case (OIP, March 24, 2020) causes no harm, unlike my risk of a career-ending bar atop \$18 million sanctions (18-cr-183, 18-cv-00942, Exhibit A, para. 7). The

Division received prior extensions (e.g., Adv. Act Rel. Nos. 5468, 6289). Public reports suggest leniency in similar cases, minimizing urgency (Exhibit A, para. 10). Striking my opposition denies Jarkesy rights (McCarthy, 406 F.3d at 187).

### **C. Jarkesy Requires Dismissal or Stay**

9. Jarkesy (144 S. Ct. 2117, 2132–33, 2024) mandates jury trials for fraud-based penalties. The OIP (Release No. 5468, Section II.B) seeks a bar for Section 10(b) fraud (18-cr-183), implying penalties, as the SEC sought \$7 million in 18-cv-00942 (\$1 million fine, \$6 million disgorgement, February 11, 2020, Exhibit A, para. 6). Post-Jarkesy (June 27, 2024), the Division pivoted to a “remedial” bar (March 31, 2025), but *Saad v. SEC* (980 F.3d 103, D.C. Cir. 2020) deems bars punitive, ending my livelihood (Exhibit A, para. 7).

10. *Markowitz v. SEC* (1:23-cv-04495, SDNY, March 15, 2024) stayed File No. 3-21314, holding: “Jarkesy raises serious questions about the constitutionality of the SEC’s administrative tribunal.” I request judicial notice of this order (*Staehr v. Hartford Fin. Servs. Grp.*, 547 F.3d 406, 425, 2d Cir. 2008). Like *Markowitz*, 3-19733 lacks a jury, violating the Seventh Amendment for fraud (OIP Section II.B).

11. *Hochfelder* (425 U.S. 185, 1976) requires scienter for Section 10(b). My coerced plea (18-cr-183, DOJ threats of decades more prison, Exhibit A, para. 8) and no discovery (18-cv-00942, Exhibit A, para. 9) denied scienter review, needing a jury per *Jarkesy* (*Blackledge v. Allison*, 431 U.S. 63, 1977).

12. Triple prosecutions (18-cr-183, 140 months, \$11 million; 18-cv-00942, \$1 million fine, \$6 million disgorgement despite SEC offset request; 3-19733, bar), denied DOJ cooperation (\$10 million fraud, Exhibit A, para. 8), and FOIA denials (14 GB, SEC, Exhibits E–G; 21,523 pages, FBI, Exhibit H; privilege log refusal, Exhibit I, all filed March 25, 2025) suggest vindictive prosecution and withheld evidence, compounding due process violations (*Blackledge v. Perry*, 417 U.S. 21, 1974; *Mathews v. Eldridge*, 424 U.S. 319, 1976; Exhibit A, para. 9).

13. The Commission, not ALJ, runs 3-19733 (OIP Section IV), but Jarkesy applies to punitive remedies (144 S. Ct. at 2138). My SDNY case (25-cv-2704) seeks an injunction (*Axon Enterprise v. FTC*, 143 S. Ct. 890, 2023), supporting stay.

### **D. Motion to Seal**

14. I move to seal Exhibit B (medical records) under Rule 322 (17 C.F.R. § 201.322), protecting privacy (In re Sealed Documents, Admin. Proc. File No. 3-12345, 2010 SEC LEXIS 987, at \*5). Exhibit J (redacted) is public, filed March 25, 2025.

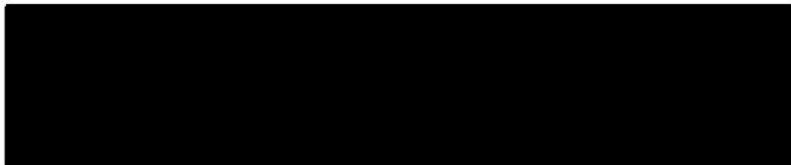
**RELIEF REQUESTED**

WHEREFORE, I request:

1. Deny the Division's Motion to Strike (March 31, 2025).
2. Seal Exhibit B under Rule 322.
3. Dismiss File No. 3-19733 for violating Jarkesy (144 S. Ct. 2117), or stay pending SDNY (25-cv-2704).
4. Other just relief.

Dated: April 13, 2025

Respectfully submitted,

A large black rectangular redaction box covering the signature of Nicholas J. Genovese.

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Nicholas J. Genovese



## **CERTIFICATE OF SERVICE**

I certify that on April 14, 2025, I served the foregoing Motion in Opposition to Division of Enforcement's Motion to Strike and Exhibit A on the Division of Enforcement by mailing copies via Certified Mail to:

- Office of the Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549
- Alexander Vasilescu, Division of Enforcement, 100 Pearl Street, Suite 20-100, New York, NY 10004



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Nicholas J. Genovese Pro Se,     April 14, 2025

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
ADMINISTRATIVE PROCEEDING**

In the Matter of Nicholas J. Genovese  
File No. 3-19733

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**RESPONDENT'S MOTION TO DISMISS OR STAY PROCEEDINGS**

**INTRODUCTION**

Respondent Nicholas J. Genovese, pro se, moves to dismiss this proceeding (File No. 3-19733, OIP, Release No. 5468, March 24, 2020) under SEC v. Jarkesy, 144 S. Ct. 2117 (2024), which mandates jury trials for fraud-based penalties, including the permanent industry bar sought here (OIP Section III.B, Section II.B, Section 10(b) fraud). Alternatively, I request a stay pending resolution of my SDNY action (Genovese v. SEC, 25-cv-2704, injunction/stay, ECF Nos. 1, 3, March 24–25, 2025). The SEC's bar, atop \$18 million sanctions (\$11 million restitution, USA v. Genovese, 18-cr-183, SDNY; \$1 million fine, \$6 million disgorgement, SEC v. Genovese, 18-cv-00942, SDNY, February 11, 2020), denied DOJ cooperation (\$10 million fraud conviction), coerced plea (18-cr-183), no scienter proof, and FOIA denials (Exhibits E–I, filed March 25, 2025), suggests vindictive prosecution across triple actions (18-cr-183, 18-cv-00942, 3-19733). Markowitz v. SEC, No. 1:23-cv-04495 (SDNY, March 15, 2024), stayed a similar case, noting “Jarkesy raises serious questions about the constitutionality of the SEC’s administrative tribunal.” As a pro se respondent in BOP custody on home confinement, with severely limited movement, I face irreparable harm without dismissal or stay.

**BACKGROUND**

1. On March 24, 2020, the SEC issued the OIP (Release No. 5468) under Section 203(f) of the Investment Advisers Act (15 U.S.C. § 80b-3(f)), alleging securities fraud (Section II.B, Section 10(b), 18-cr-183 conviction, February 12, 2020) and seeking “remedial action” (Section III.B), a permanent industry bar (Exhibit A, Declaration, para. 6). This followed \$18 million sanctions: \$11 million restitution (18-cr-183) and \$1 million fine plus \$6 million disgorgement (18-cv-00942, Judge John G. Koeltl, February 11, 2020), all without jury trials (Exhibit A, para. 6).
2. On February 11, 2020, I pleaded guilty (18-cr-183) under DOJ coercion (threats of decades more prison, Exhibit A, para. 8). I provided substantial assistance on a \$10

million fraud, leading to a hedge fund owner's arrest and conviction, but Judge Pauley and the AUSA denied credit, imposing 140 months (Exhibit A, para. 8). In 18-cv-00942, Judge Koeltl denied all discovery (including privilege log), rejected my legal arguments despite SEC's failure to rebut, imposed a \$1 million fine despite indigence (15 U.S.C. § 78u(d)(3)(B)(i)), kept \$6 million disgorgement despite SEC's request to offset against 18-cr-183's \$11 million, and ruled with prejudice, barring appeal (Exhibit A, para. 9).

3. On June 27, 2024, Jarkesy (144 S. Ct. 2117) held SEC fraud penalties require jury trials. On March 22, 2024, the Division sought summary disposition (permanent bar). I opposed (March 25, 2025), delayed by surgery (Exhibit B, filed March 25, 2025) and BOP restrictions (Exhibit A, para. 4). The Division moved to strike (March 31, 2025).
4. I filed an injunction/stay in SDNY (25-cv-2704, ECF Nos. 1, 3, March 24–25, 2025), citing Jarkesy and Markowitz. Judge Furman deferred ruling (April 4, 2025, ECF No. [X]), pending SEC service.

## **LEGAL STANDARD**

5. The Commission may dismiss proceedings lacking jurisdiction or legal basis (Rule 220(f), 17 C.F.R. § 201.220(f); Jarkesy, 144 S. Ct. 2117, 2132–33). Stays are granted to avoid irreparable harm or duplicative litigation (*In re Gorman*, Admin. Proc. File No. 3-18567, 2018 SEC LEXIS 1614, at \*5). Jarkesy requires jury trials for fraud-based penalties, and *Axon Enterprise v. FTC*, 143 S. Ct. 890 (2023), permits district court challenges to agency structure. Vindictive prosecution violates due process (*Blackledge v. Perry*, 417 U.S. 21, 1974).

## **ARGUMENT**

### **A. Jarkesy Mandates Dismissal**

6. Jarkesy (144 S. Ct. 2117, 2132–33) voids SEC administrative proceedings seeking fraud-based penalties without jury trials. The OIP (Release No. 5468, Section II.B) alleges Section 10(b) fraud (18-cr-183), seeking a bar (Section III.B), which *Saad v. SEC* (980 F.3d 103, D.C. Cir. 2020) deems punitive, ending my livelihood (Exhibit A, para. 7). The SEC's prior penalties—\$7 million in 18-cv-00942 (\$1 million fine, \$6 million disgorgement, Exhibit A, para. 6)—confirm punitive intent, requiring a jury. Without one, 3-19733 is unconstitutional (Exhibit A, para. 6).

7. *Hochfelder* (425 U.S. 185, 1976) mandates scienter for Section 10(b). My coerced plea (18-cr-183, DOJ threats, Exhibit A, para. 8) and no discovery (18-cv-00942, Exhibit A, para. 9) denied scienter review, needing a jury per Jarkesy (*Blackledge v. Allison*, 431 U.S. 63, 1977). The OIP's fraud basis (Section II.B) collapses without scienter evidence (Exhibit A, para. 8).

8. *Markowitz v. SEC* (1:23-cv-04495, SDNY, March 15, 2024) stayed File No. 3-21314: “Jarkesy raises serious questions about the constitutionality of the SEC’s administrative tribunal.” I request judicial notice (*Staehr v. Hartford Fin. Servs. Grp.*, 547 F.3d 406, 425, 2d Cir.



2008). Like Markowitz, 3-19733's bar violates the Seventh Amendment (OIP Section II.B, Exhibit A, para. 6).

#### **B. Vindictive Prosecution Supports Dismissal**

9. Triple prosecutions—18-cr-183 (140 months, \$11 million), 18-cv-00942 (\$1 million fine, \$6 million disgorgement despite SEC offset request), and 3-19733 (bar)—suggest vindictive prosecution (Blackledge, 417 U.S. 21). I cooperated with DOJ on a \$10 million fraud conviction, yet received no credit (Exhibit A, para. 8). In 18-cv-00942, Judge Koeltl denied discovery, ignored SEC's failure to rebut appropriately, and fined me despite indigence (Exhibit A, para. 9). FOIA denials (Exhibits E–I, filed March 25, 2025: 14 GB, SEC; 21,523 pages, FBI; privilege log refusal) hide evidence, violating due process (Mathews v. Eldridge, 424 U.S. 319, 1976; Exhibit A, para. 9). This pattern warrants dismissal.

#### **C. Alternatively, Stay Pending SDNY**

10. A stay avoids harm while 25-cv-2704 (SDNY) resolves Jarkesy's impact (Axon, 143 S. Ct. 890). Filed March 24, 2025 (ECF Nos. 1, 3), 25-cv-2704 seeks to enjoin 3-19733's bar, citing Jarkesy and Markowitz. Judge Furman's deferral (April 4, 2025) awaits SEC response (~June 2025). A bar risks my career atop \$18 million sanctions, while a stay causes no prejudice in a five-year case (OIP, March 24, 2020; Exhibit A, para. 7). Public reports suggest leniency in similar cases (Exhibit A, para. 10).

11. As a pro se respondent in BOP custody on home confinement, with severely limited movement, I face barriers (surgery, Exhibit B; BOP delays, Exhibit A, paras. 3–4). A stay ensures fairness (In re Gorman, 2018 SEC LEXIS 1614, at \*5).

#### **D. Motion to Seal**

12. I move to seal Exhibit B (medical records) under Rule 322 (17 C.F.R. § 201.322), protecting privacy (In re Sealed Documents, Admin. Proc. File No. 3-12345, 2010 SEC LEXIS 987, at \*5). Exhibit J (redacted) is public, filed March 25, 2025.

#### **RELIEF REQUESTED**

WHEREFORE, I request:

1. Dismiss File No. 3-19733 under Jarkesy (144 S. Ct. 2117).
2. Alternatively, stay proceedings pending SDNY (25-cv-2704).
3. Seal Exhibit B under Rule 322.
4. Other just relief.

Dated: April 13, 2025  
Respectfully submitted,



Nicholas J. Genovese

## **CERTIFICATE OF SERVICE**

I certify that on April 14, 2025, I served the foregoing Motion to Dismiss or Stay Proceedings and Exhibit A on the Division of Enforcement by mailing copies via Certified Mail to:

- Office of the Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549
- Alexander Vasilescu, Division of Enforcement, 100 Pearl Street, Suite 20-100, New York, NY 10004



Nicholas J. Genovese Pro Se,     April 14, 2025