

No. 15-1511

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**In the Supreme Court of the United States**

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DAVID RILEY, PETITIONER

*v.*

UNITED STATES OF AMERICA

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*ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT*

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**MEMORANDUM FOR THE UNITED STATES**

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Petitioner contends that the court of appeals misapplied this Court's decision in *Dirks v. SEC*, 463 U.S. 646 (1983), by holding that he "personally benefit[ed]" as a result of his disclosure of material, nonpublic information to another person, *id.* at 664, when he received "investment advice" in return for the tips. Pet. App. 7. According to petitioner (Pet. 13), the correct standard for assessing personal benefit in an inside-trading case is whether the insider realized "pecuniary gain" by making the disclosure, and that standard was neither incorporated in the jury instructions nor satisfied by the evidence in this case.

As petitioner acknowledges (Pet. 14), the court of appeals held that a "pecuniary gain" standard was satisfied on the facts of this case. As a result of petitioner's tips, the court explained, petitioner "received an immediately pecuniary tangible benefit \* \* \* in the form of investment advice from [the tippee]." Pet.

App. 7; see *id.* at 10 (noting “evidence that [petitioner] exchanged nonpublic information for an immediate pecuniary benefit”); see also *id.* at 8. The fact-specific question of whether those stock tips from the tippee, which yielded profits for petitioner, see Pet. 13, constituted a personal benefit under *Dirks* does not warrant this Court’s review. See *Dirks*, 463 U.S. at 664 (“[d]etermining whether an insider personally benefits from a particular disclosure” is “a question of fact”).

Nevertheless, as petitioner notes (Pet. 10-11), this Court’s decision in *Salman v. United States*, No. 15-628 (to be argued Oct. 5, 2016), is likely to illuminate the proper standard for determining securities-fraud liability in a tipping case like this one. Accordingly, the petition for a writ of certiorari should be held pending the Court’s resolution of *Salman*, and then disposed of as appropriate in light of the decision in that case.

Respectfully submitted.

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*Acting Solicitor General*

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