No. 17-1059

In the Supreme Court of the United States

MAX JULIAN WRIGHT, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the district court violated the Confrontation Clause of the Sixth Amendment by preventing petitioner's counsel from cross-examining a cooperating witness about the specific lifetime term of the mandatory sentence the witness would have faced absent cooperation with the government, where petitioner's counsel had previously elicited facts that would have allowed the jury to deduce that petitioner faced the same mandatory sentence and where the court allowed counsel to cross-examine the witness about a mandatory sentence that would have cost him "decades of [his] life" in prison.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-26) is reported at 866 F.3d 899. The order of the district court (Pet. App. 27-96) is not published in the Federal Supplement but is available at 2016 WL 3676572.

JURISDICTION

The judgment of the court of appeals was entered on August 8, 2017. On November 8, 2017, Justice Gorsuch extended the time within which to file a petition for a writ of certiorari to and including November 13, 2017, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Northern District of Iowa, petitioner was convicted of conspiracy to distribute heroin, cocaine base, and fentanyl, resulting in death and serious bodily

injury, in violation of 21 U.S.C. 841(a)(1), (b)(1)(B) and (C), and 846, and two counts of distribution of fentanyl, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(C). Judgment 1. He was sentenced to life imprisonment. *Id.* at 2. The court of appeals affirmed. Pet. App. 1-26.

1. Between 2012 and 2015, petitioner sold heroin, fentanyl, and crack cocaine in Cedar Rapids, Iowa. Pet. App. 2-5; Gov't C.A. Br. 5-15. DeShaun Anderson worked for petitioner and often delivered drugs for him. Pet. App. 5, 22-23; Gov't C.A. Br. 5-12. On average, the two sold about 100 grams of heroin per week. Pet. App. 24. As a result of the drugs that petitioner and Anderson distributed, two of their customers died from overdoses and six others suffered serious injuries. *Ibid.*

2. A grand jury returned an indictment charging petitioner with conspiring to distribute 100 grams or more of heroin, 280 grams or more of cocaine base, and a mixture or substance containing fentanyl, resulting in six injuries and two deaths, in violation of 21 U.S.C. 841(a)(1), (b)(1)(B) and (C), and 846, and two counts of distribution of fentanyl, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(C). Pet. App. 2. Because petitioner had previously been convicted of felony drug offenses, the conspiracy charge carried a potential mandatory sentence of life imprisonment. *Id.* at 3. Before trial, the government filed an information under 21 U.S.C. 851(a) stating its intent to seek that increased sentence. Pet. App. 3.

At trial, the government called 13 witnesses who had purchased drugs from petitioner and Anderson. Pet. App. 5; Gov't C.A. Br. 6-11. Those witnesses testified "that they saw the two men selling drugs together or that Anderson would deliver drugs after they had contacted [petitioner]." Pet. App. 5; see Gov't C.A. Br. 6-11. "They also testified about the injuries and deaths

caused by the drugs distributed by [petitioner] and Anderson." Pet. App. 5; see Gov't C.A. Br. 6-10 nn.4-7.

The government also called Anderson, who testified that he had conspired with petitioner to sell drugs and that he sold drugs only at petitioner's direction. Pet. App. 3. Like petitioner, Anderson had been charged with distributing heroin and other drugs resulting in injuries and deaths, and he was likewise subject to a potential mandatory sentence of life imprisonment because he had previously been convicted of a felony drug offense. *Id.* at 4. Anderson agreed to plead guilty and to cooperate with the government pursuant to an agreement in which the government agreed not to file an information seeking the mandatory life sentence. *Ibid.*

In cross-examining Anderson, petitioner's counsel attempted to elicit testimony revealing that Anderson's prior drug conviction meant that he would have faced a mandatory sentence of life imprisonment absent his cooperation with the government:

Q. You had a prior drug dealing conviction, right?

A. Yes, for cocaine.

Q. Right. And you knew that after they increased the charges to conspiracy with overdoses and deaths, you knew that with a prior drug dealing conviction, the only sentence—

Trial Tr. 1237. At that point, the government objected. *Ibid.* The district court sustained the objection, instructing counsel that although he could "talk about it being an extreme penalty," he should "stay away from the specific penalty" that Anderson had faced. *Ibid.* During an ensuing sidebar, the court explained that the charge against Anderson was "the same" as the charge against petitioner, and that counsel's question was

therefore "telling the jury what the penalty [wa]s going to be" if petitioner was convicted. *Ibid.*

The district court made clear that petitioner's counsel could have questioned Anderson about the mandatory life sentence if he had not first elicited information that would have made it obvious to the jury that petitioner necessarily faced the same mandatory sentence. As petitioner's counsel was aware, the court had granted the government's motion to admit evidence of one of petitioner's own prior drug convictions under Federal Rule of Evidence 404(b). See Pet. App. 3. The court accordingly explained:

> The problem is you told the jury why it's an automatic life sentence. You told them that because of his prior conviction, it's an automatic life sentence, and so now it makes it unbelievably easy for them to connect the dots when they find out that your client also has a prior. If you hadn't * * * gone to that step and just said, "You knew at that point you were facing a life sentence," that would have been appropriate, but you've told them why and now you've made it very easy for them to figure out that your client has the same problem.

Trial Tr. 1240. The court asked for "a suggestion as to what can be said to convey the seriousness without going all the way to the specific penalty," *id.* at 1239, and it approved a proposal by petitioner's counsel that he ask whether Anderson "would be facing a mandatory minimum penalty that could cost him decades of his life," *id.* at 1242.

Counsel then continued his cross-examination, asking Anderson about "a mandatory minimum that cost [him] decades of [his] life." Trial Tr. 1242. Anderson repeatedly acknowledged that he knew that he

could only avoid "that minimum sentence that would be decades of [his] life" by cooperating with the government. *Ibid.*; see, *e.g.*, *id.* 1247 (Anderson knew that "if [he] didn't find somebody to cooperate against, * * * [he was] facing a minimum of decades in prison"); *id.* at 1248 (Anderson did not "tell anyone from the prosecution anything about working for [petitioner] before they increased the penalty up to decades in prison minimum"); *ibid.* ("in exchange for testifying against [petitioner], [Anderson was] hoping that [he was] not going to get that minimum sentence of decades in prison"); *ibid.* (Anderson agreed that "the only way [he] know[s] to save [himself] from these decades in prison is to claim that [he] just work[ed] for [petitioner]").

3. The jury found petitioner guilty on all counts. Pet. App. 1. The district court then denied petitioner's motion for a new trial or a judgment of acquittal. *Id.* at 27-96. As relevant here, the court rejected petitioner's contention that it had violated the Confrontation Clause of the Sixth Amendment by precluding him from revealing to the jury that Anderson had faced a mandatory life sentence. *Id.* at 44-54. The court explained that the issue "intersect[ed] two firmly established points of law": "[t]he jury should not hear evidence about the specific sentence faced by a defendant, but the defendant has a Sixth Amendment right to establish bias by showing the benefits received by a cooperating witness." *Id.* at 51.

The district court explained that the testimony it allowed—that Anderson had faced a decades-long mandatory sentence—"gave the jury a substantially-similar impression" as the testimony that petitioner sought to elicit. Pet. App. 52. The court noted that "[f]or a witness of Anderson's age (44), the jury could surmise that 'decades' in prison is closely analogous to life in prison,"

and that the jury was thus "adequately informed of the severity of the sentence Anderson faced unless he testified against [petitioner], while not being informed of the exact sentence faced by [petitioner] himself." *Ibid.*

The district court also explained that the absence of a Sixth Amendment violation was confirmed by the fact that petitioner's counsel "contributed to the situation by telling the jury, in his question to Anderson, that a 'prior drug dealing conviction' was the cause of the sentence that Anderson faced." Pet. App. 53. The court stated that, under the circumstances, "it was obvious" that counsel "was attempting to signal to the jury that [petitioner] would receive a life sentence if convicted." *Ibid.*

Finally, the district court concluded that "even if a Sixth Amendment violation did occur," the error was "harmless." Pet. App. 54. Among other things, the court noted that "numerous witnesses" had testified that petitioner and Anderson had conspired to sell drugs. *Ibid.*

4. The court of appeals affirmed. Pet. App. 1-26. As relevant here, the court rejected petitioner's Confrontation Clause argument. *Id.* at 10-16. The court explained that it reviews a Confrontation Clause challenge to a limitation on the scope of cross-examination for abuse of discretion. *Id.* at 10. Here, the court found no abuse of discretion because it was "not persuaded that evidence that Anderson faced a life sentence would have given the jury a significantly different impression of Anderson's credibility when compared with the alternative phrase 'decades' that the district court authorized at [petitioner's] counsel's own suggestion." *Id.* at 15. Like the district court, the court of appeals also emphasized that the need to prevent the jury from learning

that Anderson faced a life sentence arose only because petitioner's counsel "guaranteed that the jury would realize that [petitioner] faced the same life sentence as Anderson." *Id.* at 16.

ARGUMENT

Petitioner renews his contention (Pet. 5-13) that the district court violated the Confrontation Clause by declining to allow his counsel to elicit testimony that the mandatory sentence Anderson avoided through his cooperation was a life sentence. The court of appeals correctly rejected that argument, and its decision does not conflict with any decision by this Court. Petitioner asserts that the courts of appeals have reached different results in resolving claims that the Confrontation Clause entitled a defendant to cross-examine cooperating witnesses on sentencing matters. But those fact-specific decisions do not create any conflict warranting this Court's review, and the Court has repeatedly denied petitions for writs of certiorari raising the same issue and asserting similar circuit conflicts. See, *e.g.*, *Lipscombe* v. *United States*, 135 S. Ct. 945 (2015) (No. 14-6204); *Heinrich* v. *United States*, 564 U.S. 1040 (2011) (No. 10-9194); *Wilson* v. *United States*, 564 U.S. 1040 (2011) (No. 10-8969); *Reid* v. *United States*, 556 U.S. 1235 (2009) (No. 08-1011). The same result is warranted here. Indeed, this case would be an especially poor vehicle in which to take up the question presented, because petitioner's counsel created the need to prevent the jury from learning about the specific sentence that Anderson faced, and also because other evidence of petitioner's guilt rendered any potential error harmless.[1]

[1] A similar question is presented in the petition for a writ of certiorari in *Trent* v. *United States*, No. 17-830 (filed Dec. 8, 2017).

1. The court of appeals correctly held that the limitation on petitioner's cross-examination of Anderson did not violate the Confrontation Clause.

a. This Court has recognized that "exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination." *Delaware* v. *Van Arsdall*, 475 U.S. 673, 678-679 (1986) (quoting *Davis* v. *Alaska*, 415 U.S. 308, 316-317 (1974)). The Court has thus cautioned that a trial court may violate the Confrontation Clause if it "prohibit[s] *all* inquiry" into a potential basis for a witness's bias or prejudice. *Id.* at 679; see *Olden* v. *Kentucky*, 488 U.S. 227, 231-232 (1988) (per curiam); *Davis*, 415 U.S. at 316-318.

This Court has simultaneously recognized, however, that "trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant." *Van Arsdall*, 475 U.S. at 679. The Court has thus emphasized that "the Confrontation Clause guarantees an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." *Ibid.* (citation omitted). Accordingly, to establish that a limitation on cross-examination violated the Confrontation Clause, a defendant must demonstrate that "[a] reasonable jury might have received a significantly different impression of [the witness's] credibility had [the defendant's] counsel been permitted to pursue his proposed line of cross-examination." *Id.* at 680.

b. Here, the district court's limitation on cross-examination fell well within its "wide latitude * * * to impose reasonable limits" on cross-examination. *Van Arsdall*, 475 U.S. at 679.

Because petitioner's counsel had already tied Anderson's mandatory sentence to his prior drug conviction, revealing that Anderson faced a mandatory life sentence for his role in the conspiracy would have revealed to the jury that petitioner himself faced the same sentence. Pet. App. 13-14. That information would have been highly prejudicial to the proper conduct of the trial. "[P]roviding jurors sentencing information invites them to ponder matters that are not within their province, distracts them from their factfinding responsibilities, and creates a strong possibility of confusion." *Shannon* v. *United States*, 512 U.S. 573, 579 (1994). Courts of appeals have thus recognized the "certain prejudicial impact" that results when a jury learns the sentencing consequences of its verdict. *United States* v. *Cropp*, 127 F.3d 354, 359 (4th Cir. 1997), cert. denied, 522 U.S. 1098 (1998); see, *e.g.*, *United States* v. *Rushin*, 844 F.3d 933, 939 (11th Cir. 2016) (sentencing information "could invite jury nullification"); *United States* v. *Arocho*, 305 F.3d 627, 636 (7th Cir. 2002) (sentencing information "could improperly sway the jury"), cert. denied, 550 U.S. 926 (2007).

The district court sought to avoid that harm by tailoring the scope of cross-examination to give counsel ample latitude to explore Anderson's potential bias without revealing the specific sentence that petitioner and Anderson faced. Adopting counsel's suggestion, the court permitted him to cross-examine Anderson about the "mandatory minimum sentence * * * that [would have] cost [Anderson] decades of [his] life"; to

elicit testimony that Anderson "couldn't avoid that minimum sentence that would be decades of [Anderson's] life in any way other than cooperating with the government"; and to secure Anderson's admission that "[t]he only way that [Anderson] knew of, could think of, that it was possible * * * to get less time than this mandatory minimum of decades in prison was to find someone to cooperate against." Trial Tr. 1242-1243. In addition, the court instructed the jury that it "must consider with greater caution and care" the testimony of a witness who "participated in the charged offense" or testified pursuant to a "'cooperation' plea agreement" and that it was up to the jury to decide whether the witness's testimony was influenced by "the desire to please the prosecution," "any promises by the prosecution," or "any payment or other benefit provided by the prosecution." D. Ct. Doc. 149, at 23-24 (Mar. 2, 2016).

The district court's prohibition on revealing Anderson's specific sentence appropriately balanced the limited incremental probative value of such information against the substantial risk of prejudice to the jury's impartial evaluation of the evidence. And the court of appeals correctly found no violation of the Confrontation Clause because the specific sentence would not have given the jury "a significantly different impression of [Anderson's] credibility." *Van Arsdall*, 475 U.S. at 680.

c. Petitioner appears to contend (Pet. 6) that, at least where a mandatory life sentence is at issue, the Sixth Amendment categorically entitles the defendant to reveal to the jury the precise sentence that a cooperating witness would have faced absent cooperation. That rigid rule is inconsistent with this Court's admonition that the Confrontation Clause leaves trial judges with "wide latitude," *Van Arsdall*, 475 U.S. at 679, and

"broad discretion," *Davis*, 415 U.S. at 316, to impose reasonable limits on cross-examination based on the circumstances of a particular case. Petitioner identifies no other context in which the Court has interpreted the Confrontation Clause to mandate that defendants be permitted not only to explore a given *topic*, but also to ask a specific *question*. And petitioner provides no sound reason to create such a categorical rule for the first time here.

2. As petitioner appears to recognize (Pet. 6-9), the court of appeals' decision here is consistent with many other decisions that have applied similar reasoning to uphold restrictions on the disclosure of the precise sentences that cooperating witnesses avoided or hoped to avoid. See, *e.g.*, *United States* v. *Trent*, 863 F.3d 699, 704-706 (7th Cir. 2017), petition for cert. pending, No. 17-830 (filed Dec. 8, 2017); *Rushin*, 844 F.3d at 938-940; *United States* v. *Walley*, 567 F.3d 354, 358-360 (8th Cir. 2009); *Arocho*, 305 F.3d at 636; *Cropp*, 127 F.3d at 360; *United States* v. *Luciano-Mosquera*, 63 F.3d 1142, 1153 (1st Cir. 1995), cert. denied, 517 U.S. 1234 (1996); *United States* v. *Nelson*, 39 F.3d 705, 708 (7th Cir. 1994). Petitioner contends (Pet. 9-13), however, that those decisions conflict with decisions of the Third, Fourth, Fifth, and Ninth Circuits. The decisions on which petitioner relies do not support that assertion.

Petitioner first cites (Pet. 9) the Third Circuit's decision in *United States* v. *Chandler*, 326 F.3d 210 (2003). But the Third Circuit declined to adopt a "categorical[]" rule that the Confrontation Clause permits every defendant to inquire into "the specific sentence [a cooperating] witness may have avoided through his cooperation." *Id.* at 221. Instead, the court concluded that whether such an inquiry must be permitted "depends on

'whether the jury had sufficient other information before it * * * to make a discriminating appraisal of the possible biases and motivation of the witnesses.'" *Id.* at 219 (citation omitted). Accordingly, the Third Circuit has upheld a district court's order prohibiting cross-examination "on the length of either the sentence [a cooperating witness] faced or the one he received" where—as here—the court allowed counsel to convey the severity of the sentence using qualitative terms. *United States* v. *Marrero*, 643 Fed. Appx. 233, 237 (2016). The Third Circuit has also stated, in direct opposition to petitioner's contentions here, that it has found "no cases holding" that defendants "have a categorical right to inquire into the penalty a cooperating witness would otherwise have received." *United States* v. *Mussare*, 405 F.3d 161, 170 (2005), cert. denied, 546 U.S. 1225 (2006).

Petitioner also cites (Pet. 10) the Fourth Circuit's decision in *Hoover* v. *Maryland*, 714 F.2d 301 (1983). There, the court found a violation of the Confrontation Clause because counsel had been "prevented totally from developing [the witness's] understanding of what concrete benefits he would receive" from his immunity agreement with the government. *Id.* at 303. But the Fourth Circuit has found no violation where—as here—a district court allowed a defendant to establish that cooperating witnesses faced "severe penalties" absent cooperation but prohibited inquiry into their "exact sentences." *Cropp*, 127 F.3d at 359.[2]

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[2] Petitioner also cites (Pet. 11) the Fourth Circuit's decision in *United States* v. *Smith*, 919 F.2d 734, 1990 WL 194516, at *1 (1990) (Tbl.), cert. denied, 502 U.S. 1017 (1991). That nonprecedential decision could not create a conflict warranting this Court's review.

The Fifth Circuit decision on which petitioner relies (Pet. 10) similarly declined to adopt a categorical rule and recognized that restrictions on cross-examination about specific sentences do not violate the Confrontation Clause "if 'the jury has sufficient information to appraise the bias and motives of the witness.'" *United States* v. *Cooks*, 52 F.3d 101, 104 (1995) (brackets and citation omitted). Moreover, because that case involved cross-examination about a witness's potential sentences on unrelated *state* charges, the court had no occasion to consider the substantial risk of prejudice that arises where, as here, disclosure of the sentence faced by a cooperating witness would allow the jury to infer the sentence to which a conviction would subject the defendant himself. *Id.* at 103-104 & n.13

Finally, petitioner cites (Pet. 9-11) the Ninth Circuit's decision in *United States* v. *Larson*, 495 F.3d 1094 (2007) (en banc), cert. denied, 552 U.S. 1260 (2008). But that decision also did not purport to adopt a categorical rule. The court instead recognized, consistent with this Court's precedents, that the question is whether a "reasonable jury might have received a significantly different impression of the witness'[s] credibility had . . . counsel been permitted to pursue his proposed line of cross-examination." *Id.* at 1106 (brackets and citation omitted). In *Larson* itself, a bare majority of the en banc court found a violation of the Confrontation Clause where a cooperating witness faced a minimum sentence of life in prison and where the defendant was not allowed to elicit *any* testimony about the existence or magnitude

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And in any event, the Fourth Circuit did not find that a Confrontation Clause violation had occurred—instead, the court "assume[d] that constitutional error was committed" and found that any error was harmless. *Id.* at *4; see *id.* at *4-*5.

of that mandatory minimum. *Id.* at 1105-1107; see *id.* at 1108 (Graber, J, concurring in part and specially concurring in part). The court suggested that a mandatory *life* sentence is particularly probative of a cooperating witness's potential bias. *Id.* at 1105-1107. But the court had no occasion to consider a circumstance where, as in this case, defense counsel explored at length a witness's potential mandatory sentence of "decades" in prison. And the Ninth Circuit has not treated *Larson* as establishing a categorical rule permitting inquiry into the specific details of any mandatory minimum sentence faced by a cooperating witness. For example, the court found no error in the preclusion of specific inquiry into a 15-year mandatory minimum where "sufficient [other] evidence" allowed "the jury to assess [the cooperating witness's] credibility." *United States* v. *Gradinariu*, 283 Fed. Appx. 541, 543, cert. denied, 555 U.S. 962 (2008).

In sum, the courts of appeals treat the inquiry into whether and to what extent a defendant should be permitted to question a cooperating witness about the benefits he hopes to receive in exchange for his cooperation as fact-intensive and case-specific. The courts have resolved that question in different ways when considering different sets of facts. That is neither unexpected nor problematic, and it does not indicate the existence of a conflict warranting this Court's intervention.[3]

[3] Petitioner also asserts (Pet. 11-12) that the court of appeals' decision in this case conflicts with its prior decision in *United States* v. *Roan Eagle*, 867 F.2d 436 (8th Cir.), cert. denied, 490 U.S. 1028 (1989). Such an intra-circuit disagreement would not warrant this Court's review even if it existed. *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957) (per curiam). In fact, no conflict exists. The decision below distinguished *Roan Eagle* on several grounds, including the fact that the district court in that case "did not offer the defendant the opportunity to phrase the question differently so as

3. Even if the question presented otherwise warranted this Court's review, this case would be not be a suitable vehicle in which to consider it for two independent reasons.

First, as the courts below emphasized, petitioner's own counsel created the need to prevent the jury from learning that Anderson faced a mandatory life sentence "by telling the jury, in his [earlier] question to Anderson, that a 'prior drug dealing conviction' was the cause of the sentence Anderson faced." Pet. App. 53; see *id.* at 16. The district court stated that, had counsel not provided the jury with that context, it would have allowed him to question Anderson about the mandatory life sentence. Trial Tr. 1240. But because counsel identified the prior conviction as the basis for the life sentence, he made it "very easy for [the jury] to figure out that [petitioner] ha[d] the same problem." *Ibid.* Indeed, the court concluded that "it was obvious" that counsel "was attempting to signal to the jury that [petitioner] would receive a life sentence if convicted." Pet. App. 53.

None of the decisions on which petitioner relies involved that dynamic. And even if petitioner were correct that the Confrontation Clause generally entitles defendants to cross-examine cooperating witnesses about the specific sentences they avoided or hoped to avoid, it would not follow that defendants have a right to do what petitioner's counsel sought to do here: Elicit *both* that specific information *and* additional context that would allow the jury to deduce that the defendant himself faced the same sentence.

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to convey the severity of the potential sentence without specifying the exact length of time, as the district court did here." Pet. App. 14; see *id.* at 13-14.

Second, any Confrontation Clause violation in this case was harmless beyond a reasonable doubt. See *Van Arsdall*, 475 U.S. at 684 ("[T]he constitutionally improper denial of a defendant's opportunity to impeach a witness for bias, like other Confrontation Clause errors, is subject to *Chapman* harmless-error analysis."). As this Court has explained, a "host of factors" can demonstrate the harmlessness of such an error, including "the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecutor's case." *Ibid.*

Here, as the district court found, any Confrontation Clause violation was harmless because "numerous witnesses" established petitioner's guilt by testifying that they had purchased drugs from petitioner and Anderson. Pet. App. 54. For example, Tim Hill testified that he frequently purchased heroin from petitioner; that Anderson would sometimes deliver the drugs on petitioner's behalf, and that he suffered a near-fatal overdose after using heroin provided by petitioner. Gov't C.A. Br. 6-7 & n.4; see Trial Tr. 297-300, 342-347. Numerous other witnesses offered similar testimony. Gov't C.A. Br. 6-11.

Particularly because petitioner's counsel thoroughly cross-examined Anderson about his incentives to lie, this powerful corroborating evidence confirms that any Confrontation Clause error was harmless beyond a reasonable doubt. See *Larson*, 495 F.3d at 1108 (finding the error in that case to be harmless because "the Gov-

ernment offered significant evidence" of guilt and because defense counsel was allowed to explore the cooperating witness's "desire to obtain a lesser sentence"). Accordingly, petitioner would not be entitled to relief even if he prevailed on the question presented.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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