No. 18-7489

IN THE SUPREME COURT OF THE UNITED STATES

JURIJUS KADAMOVAS, PETITIONER

v.

UNITED STATES OF AMERICA

(CAPITAL CASE)

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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CAPITAL CASE

QUESTIONS PRESENTED

1. Whether a conviction for hostage-taking by a foreign national in the United States, in violation of 18 U.S.C. 1203, requires proof of a nexus to international terrorism.

2. Whether Congress had the authority under the U.S. Constitution to enact Section 1203.

3. Whether the court of appeals erred in determining that petitioner's motion seeking the recusal of the district judge only during the trial's penalty phase, based on a no-longer active circumstance that the judge had disclosed without objection several weeks earlier during the trial's guilt phase, was untimely and did not require the judge to step aside.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 14-69) is reported at 889 F.3d 1003.

JURISDICTION

The judgment of the court of appeals was entered on May 9, 2018. A petition for rehearing was denied on September 7, 2018 (Pet. App. 13). On November 25, 2018, Justice Kagan extended the time within which to file a petition for a writ of certiorari to and including February 4, 2019. The petition was filed on January

14, 2019. 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 Central District of California, petitioner was convicted on one count of conspiracy to take hostages resulting in death, in violation of 18 U.S.C. 1203; three counts of hostage taking resulting in death, in violation of 18 U.S.C. 1203; one count of conspiracy to commit money laundering, in violation of 18 U.S.C. 1956(h); and one count of conspiracy to escape from custody, in violation of 18 U.S.C. 371. Judgment 1; Pet. App. 33; Joint C.A. E.R. 174-213. After the jury recommended that petitioner be sentenced to death, the district court imposed a capital sentence on each of the Section 1203 counts and a sentence of 240 months of imprisonment on the remaining counts. Judgment 1-2; Pet. App. 33. The court of appeals affirmed. Pet. App. 14-69.

1. In late 2001 and early 2002, petitioner (a Lithuanian national) and co-defendant Iouri Mikhel (a Russian national) abducted five people in Southern California, held them captive, murdered them, and dumped their bodies in a reservoir outside Yosemite National Park. Pet. App. 29-30.

a. In October 2001, petitioner, Mikhel, and Ainar Altmanis hatched a plan to kidnap real-estate developer Meyer Muscatel. Pet. App. 30. Mikhel, posing as a businessman, asked Muscatel to view a property with him, and when Muscatel agreed, they drove

together to the property, which was actually Mikhel's house. Ibid. When Muscatel entered, petitioner and Altmanis grabbed him, and petitioner handcuffed his arms behind his back while Altmanis bound his legs with plastic ties. Ibid.

Mikhel then duct-taped Muscatel's eyes and pistol-whipped his head, drawing blood. Pet. App. 30. Petitioner and Mikhel took Muscatel's wallet and credit cards, quizzed him about his finances, and unsuccessfully tried to withdraw money from his bank account. Ibid. When petitioner and Mikhel realized that they would not get money from Muscatel, they injected him with Dimedrol (an antihistamine with sedative properties) and held him to the ground. Ibid. Mikhel then placed a plastic bag over Muscatel's head and pinched his nose shut until Muscatel suffocated and died. Ibid. Petitioner and Mikhel loaded Muscatel's body into petitioner's van and drove to the New Melones Reservoir outside Yosemite National Park, where they tossed Muscatel's body off the Parrots Ferry Bridge and into the reservoir. Id. at 29-30. One of petitioner's friends later reported that petitioner found the incident "very funny." Id. at 30.

b. Petitioner and Mikhel next came up with a scheme to kidnap wealthy Russian businessman George Safiev. Pet. App. 30. The first step was to abduct Safiev's financial advisor, Rita Pekler, and use her as bait. Ibid. In December 2001, petitioner pretended to be interested in Pekler's advice on a real-estate transaction and convinced her to drive him to a property that he

claimed to be interested in buying, but which was actually his own home. Ibid. When Pekler arrived at the house, Mikhel restrained her and told her that, if she brought Safiev to them, they would inject her with Dimedrol or get her drunk with vodka and then leave her unharmed in a motel. Ibid.

Pekler initially resisted, explaining that she was pregnant and feared that the drugs or alcohol would harm the baby, but ultimately relented and called Safiev. Pet. App. 30. After Safiev told Pekler that he was too busy to meet, petitioner and Mikhel "decided Pekler had outlived her usefulness," and they injected her with Dimedrol, strangled her, and threw her body off the Parrotts Ferry Bridge. Ibid. Mikhel later told Altmanis that Pekler had been difficult to kill, "like a snake," because "she was holding [on] for her life." Gov't C.A. E.R. 1462.

c. Later that month, at the suggestion of another co-conspirator, petitioner and Mikhel targeted automobile-shop owner Alexander Umansky. Pet. App. 30. Posing as a customer, Mikhel lured Umansky to petitioner's house, where petitioner seated Umansky in a chair, handcuffed him, and bound his legs with plastic ties. Id. at 30-31. Petitioner and Mikhel took Umansky's wallet, questioned him about his finances, and used his debit card to withdraw money from an ATM. Id. at 31. They kept Umansky trapped in petitioner's home for three days, forcing him to call his brother and beg for money to secure his release. Ibid. Petitioner and Mikhel also sent Umansky's family a ransom note demanding

nearly $235,000; Umansky's family wired part of the ransom to a bank account in the United Arab Emirates that Mikhel had designated and later paid the rest after receiving a call threatening harm to other family members. Ibid.; Gov't C.A. E.R. 1544. The ransom money was laundered abroad and then deposited in accounts held by petitioner and Mikhel. Pet. App. 31.

When petitioner and Mikhel "decided they no longer needed Umansky alive," Mikhel shoved plastic bags in Umansky's mouth, duct-taped his mouth, and placed a bag over his head while petitioner held him down and pinched his nose shut. Pet. App. 31. When those efforts failed to kill Umansky, Mikhel and Altmanis strangled Umansky from behind with a rope. Ibid. Petitioner, Mikhel, and Altmanis then loaded Umansky's body into petitioner's van and, after a stop for dinner with Mikhel's girlfriend, drove to the New Melones Reservoir and threw Umansky's body off the Parrotts Ferry Bridge. Ibid.

d. In January 2002, petitioner and Mikhel devised a new plan for trapping Russian businessman Safiev, this time through his business partner, Nick Kharabadze. Pet. App. 31. After petitioner's girlfriend persuaded Kharabadze to come to a store that petitioner and Mikhel owned, Mikhel handcuffed Kharabadze to a chair, and petitioner and Mikhel forced Kharabadze to call Safiev and lure him there. Ibid.; Gov't C.A. E.R. 1614-1616. When Safiev entered the store, Mikhel handcuffed him, and petitioner and Mikhel then transported both Safiev and Kharabadze to petitioner's house,

where they remained imprisoned for four days. Pet. App. 31. During that time, petitioner and Mikhel forced Safiev to contact a business partner abroad and beg him to transfer $940,000 to a foreign account. Ibid. In addition, petitioner recorded Safiev's voice to enable the conspirators to extort more money after Safiev was dead. Ibid.

After Mikhel confirmed receipt of the $940,000, petitioner, Mikhel, and other co-conspirators plied Kharabadze and Safiev with alcohol and drove them in separate cars to the New Melones Reservoir. Pet. App. 31. The conspirators killed Safiev first, and Mikhel later stated that Safiev, like Pekler, had been difficult to kill because he was "strong as a snake." Id. at 31-32. After the conspirators threw Safiev's body off the Stevenot Bridge and into the reservoir, Mikhel killed Kharabadze by placing a plastic bag over his head and tightening a plastic tie around his throat. Id. at 31. As they had done with Safiev, the conspirators threw Kharabadze's body off the Stevenot Bridge and into the reservoir. Ibid.

e. Over the course of their activities, petitioner and Mikhel obtained more than $1 million in ransom money. Pet. App. 32. At one point, petitioner told a co-conspirator that he planned to continue abducting people and throwing their bodies into the reservoir until he had $50 million, even if it meant piling bodies up to the surface of the water. Id. at 31.

2. After federal investigators uncovered evidence of petitioner's and Mikhel's involvement in the crimes described above, petitioner, Mikhel, and a third co-conspirator were arrested and jailed in the same detention facility in Los Angeles. Pet. App. 32. They promptly began trying to escape. Ibid.

Mikhel devised an escape plan that called for the three to bore holes through their cell walls to reach an adjacent stairwell, where they would use a hydraulic pump to push open a window's bars, climb through the window, and rappel to the ground. Pet. App. 32. "In accordance with the plan, Mikhel successfully smuggled a veritable hardware store into his cell, including hacksaw blades, wrenches, screwdrivers, fishing line, paint, work gloves, bolt cutters, and a camcorder." Ibid. Meanwhile, petitioner "managed to change cells to be next to the stairwell intended for the escape." Ibid. Mikhel attempted to recruit another inmate to join the escape conspiracy, warning him that they would have to kill any guards they encountered during the escape. Ibid. That inmate informed jail officials about the plan. Ibid.

3. a. In 2004, a grand jury in the Central District of California returned a second superseding indictment charging petitioner and Mikhel with one count of conspiracy to take hostages resulting in death, in violation of 18 U.S.C. 1203; three counts of hostage taking resulting in death, in violation of 18 U.S.C. 1203, based on the kidnapping and murder of Umansky, Kharabadze, and Safiev; one count of conspiracy to launder money, in violation

of 18 U.S.C. 1956(h); and one count of conspiracy to escape from custody, in violation of 18 U.S.C. 371. Pet. App. 33; Joint C.A. E.R. 174-213.

Section 1203(a) by its terms provides that

> whoever, whether inside or outside the United States, seizes or detains and threatens to kill, to injure, or to continue to detain another person in order to compel a third person or a governmental organization to do or abstain from doing any act as an explicit or implicit condition for the release of the person detained, or attempts or conspires to do so, shall be punished by imprisonment for any term of years or for life and, if the death of any person results, shall be punished by death or life imprisonment.

18 U.S.C. 1203(a). Section 1203(b)(2) then provides that

> [i]t is not an offense under this section if the conduct required for the offense occurred inside the United States, each alleged offender and each person seized or detained are nationals of the United States, and each alleged offender is found in the United States, unless the governmental organization sought to be compelled is the Government of the United States.

18 U.S.C. 1203(b)(2). Congress first enacted Section 1203 in 1984 to satisfy the United States' obligations under the International Convention Against the Taking of Hostages (Hostage-Taking Convention), done Dec. 17, 1979, T.I.A.S. No. 11,081, 1983 WL 144724 (entered into force June 3, 1983), to which the United States is a party. See Act for the Prevention and Punishment of the Crime of Hostage-Taking, Pub. L. No. 98-473, Tit. II, Ch. XX, Pt. A, §§ 2001-2003, 98 Stat. 2186 (enacting 18 U.S.C. 1203 (Supp. II 1984)).

b. The government filed a notice of intent to seek the death penalty against both petitioner and Mikhel, and petitioner and

Mikhel proceeded to trial together, with the United States Attorney's Office for the Central District of California prosecuting the case. Pet. App. 33; Joint C.A. E.R. 3044. During the trial's five-month guilt phase, the government presented "overwhelming" evidence of petitioner's and Mikhel's guilt, including "the detailed testimony of three cooperating coconspirators," testimony from other witnesses who linked petitioner and Mikhel to the victims' disappearances, DNA and fingerprint evidence, and other physical evidence. Pet. App. 51-52; see id. at 30-33.

At a hearing on December 28, 2006, near the end of the guilt phase, the district judge informed the parties that he had recently submitted materials in response to an inquiry from a search committee for the position of United States Attorney for the Central District of California. Pet. App. 36. After noting that he had previously announced his plans to retire from the bench when this case was over, the district judge stated:

> A couple of weeks ago I received a telephone call from a search committee that's looking to replace the United States Attorney and they asked me to submit my name for that position. The search committee is not associated with the Justice Department nor is it associated with the administration. They make recommendations and they asked me to submit my name. Whether anything comes of it I don't know, but I thought I should disclose this to you. I'm not doing it for any financial gain, because I made it very clear that if I do take the position that I would do it for a dollar a year, because of the fact that I'm on a * * * judicial pension, and I don't believe in double dipping. So I do make this disclosure to you. Again, I don't know if anything is going to come of it. I haven't been contacted by the

> administration. I haven't been contacted by anybody in Washington.

Id. at 37.

No one raised any objection. Pet. App. 37. The guilt phase of trial continued, and a few weeks later, on January 17, 2007, the jury found petitioner and Mikhel guilty as charged. Id. at 33, 37. The trial's penalty phase began the following week, and the government rested its case in chief in the penalty phase on January 25, 2007. Id. at 33; Gov't C.A. E.R. 5850.

On January 29, 2007, Mikhel filed a motion (joined by petitioner) to recuse the district judge under 28 U.S.C. 455(a), which requires a judge to recuse himself "in any proceeding in which his impartiality might reasonably be questioned." Pet. App. 38 (citation omitted); see Joint C.A. E.R. 2066-2071; Gov't C.A. E.R. 5871. Mikhel asked that the district judge "declare a mistrial as to the penalty phase of this case, and then * * * recuse [him]self from presiding any further over this litigation." Joint C.A. E.R. 2068. The judge denied the motion. Pet. App. 37; Joint C.A. E.R. 2133-2137. The judge explained that he had "submitted a form application" for the United States Attorney position and had been interviewed only by a "screening committee," and not by "anyone [at] the Department of Justice o[r] White House counsel's office." Pet. App. 37 (second set of brackets in original); Joint C.A. E.R. 2134. The judge further stated that he had since "withdrawn [his] name from consideration" and had been

informed that neither the Department of Justice nor the White House had considered his application "on the merits." Pet. App. 37; Joint C.A. E.R. 2136-2137.

Petitioner and Mikhel filed a petition in the court of appeals for a writ of mandamus compelling the recusal of the district judge and granting a mistrial limited to the trial's penalty phase. Pet. App. 37; Gov't C.A. E.R. 7260-7269. The court of appeals denied the petition, stating in part that petitioner and Mikhel had "arguably filed their motion to recuse the district judge too late." Pet. App. 37; Gov't C.A. E.R. 7287.

In February 2007, the jury returned penalty-phase verdicts in petitioner's and Mikhel's cases. Pet. App 33. The jury unanimously found all nine aggravating factors proposed by the government against both petitioner and Mikhel, and no juror found any mitigating factor as to either petitioner or Mikhel. Ibid. The jury unanimously recommended that both petitioner and Mikhel be sentenced to death, and the district court imposed that sentence as to both petitioner and Mikhel on each of the four Section 1203 counts. Ibid. The court sentenced petitioner and Mikhel to 240 months of imprisonment on the remaining counts and ordered over $1 million in forfeiture. Ibid.

4. After receiving more than 1700 pages of briefing and hearing more than three hours of oral argument, the court of appeals affirmed. Pet. App. 33; see id. at 14-69.

a. The court of appeals rejected petitioner's contention, raised for the first time on appeal, see Gov't C.A. Br. 77-79, that a conviction under Section 1203 requires "proof of a nexus to international terrorism." Pet. App. 34; see id. at 33-35. The court explained that Section 1203 "makes no mention of international terrorism" and determined that petitioner's construction of Section 1203 was "infirm as a matter of statutory interpretation" and foreclosed by circuit precedent. Id. at 34.

The court of appeals next rejected petitioner's contention, again raised for the first time on appeal, see Gov't C.A. Br. 77-79, that Congress exceeded its constitutional authority in enacting Section 1203. Pet. App. 35-36. The court determined that Section 1203 "was a valid exercise of Congress's power under the Necessary and Proper Clause together with the Treaty Power," reasoning that the Hostage-Taking Convention was "well within the President's Treaty Power" and that Section 1203 fulfills the United States' obligations under the Convention, "tracks the [Convention's] language in all material respects," and "clearly bears a rational relationship to" the Convention. Ibid. In light of that determination, the court found that it "need not consider whether there might be other sufficient constitutional bases for [Section 1203] as well, such as the Define and Punish Clause * * * or the Commerce Clause." Id. at 36, 67 n.3.

The court of appeals further determined that Congress had acted within its authority in amending Section 1203 to authorize

the death penalty. Pet. App. 36. "If Congress has the power to criminalize conduct," the court explained, "it also has the power to prescribe a constitutionally permissible punishment for that conduct." Ibid. The court observed that the Hostage-Taking Convention, which "is not self-executing," "explicitly leaves it to each signatory to" decide on an appropriate punishment for hostage taking that "'take[s] into account the grave nature of those offences.'" Ibid. (quoting Hostage-Taking Convention art. 2, T.I.A.S. No. 11,081, at 5, 1983 WL 144724, at *2).

b. The court of appeals also rejected petitioner's claim that the district judge abused his discretion under 28 U.S.C. 455(a) and violated petitioner's due-process rights in declining to recuse himself. Pet. App. 36-38, 67 n.6. As a threshold matter, the court of appeals found that petitioner and Mikhel "filed their recusal motion too late." Id. at 38. The court explained that "a recusal motion must be made in a timely fashion" and "should be filed with reasonable promptness after the ground for such a motion is ascertained." Id. at 37 (quoting E. & J. Gallo Winery v. Gallo Cattle Co., 967 F.2d 1280, 1295 (9th Cir. 1992)). The court observed that, despite receiving "clear[] notifi[cation]" that the district judge had responded to a request for a submission to a United States Attorney search committee, petitioner and Mikhel "withheld their motion while trial was ongoing and waited to file until after the jury's verdicts against them, and after the government rested its penalty-phase case."

Id. at 38. In addition, the court of appeals noted that petitioner and Mikhel "did not seek a mistrial as to the guilt phase" and "likely recognized that the evidence of guilt was overwhelming." Ibid. Based on those circumstances, the court saw "a heightened risk" that petitioner and Mikhel were using the recusal motion "for strategic purposes." Ibid. (quoting Preston v. United States, 923 F.2d 731, 733 (9th Cir. 1991)).

The court of appeals also determined that the recusal motion "fails on its merits" because "'a reasonable person with knowledge of all the facts'" would not have questioned the district judge's impartiality. Pet. App. 38 (citation omitted). The court based that determination on several factors, including the judge's "prompt[] and clear[] disclos[ure of] the alleged grounds for recusal," the fact that the judge's application was never considered on the merits, and the judge's "immediate[]" withdrawal of his application upon the filing of the recusal motion. Ibid. And because the court found no abuse of discretion under Section 455(a), which it described as "more stringent than due process," it also found that the district judge's failure to recuse did not violate petitioner's rights under the Due Process Clause. Id. at 67 n.6.

ARGUMENT

Petitioner renews his argument (Pet. 6-27), raised for the first time on appeal, that 18 U.S.C. 1203 requires proof of a nexus to international terrorism and that Congress lacked authority to

enact Section 1203. Petitioner further argues (Pet. 27-40) that 28 U.S.C. 455(a) and the Due Process Clause required the district judge's recusal.[1] The court of appeals correctly rejected each of petitioner's claims, and its decision does not conflict with any decision of this Court or another court appeals. This case would also be an unsuitable vehicle for reviewing petitioner's various claims, the first two of which he did not even raise in the district court and would thus be subject to plain-error review, see Fed. R. Crim. P. 52(b). Further review is unwarranted.

1. The court of appeals correctly rejected petitioner's contention (Pet. 7-15), raised for the first time in that court, that conviction under Section 1203 requires proof that the hostage taking had a connection to "international terrorism." The court of appeals' determination accords with the decisions of every other court of appeals to address the issue and does not warrant this Court's review.

a. As relevant here, Section 1203 applies broadly to a foreign national who "seizes or detains and threatens to kill, to injure, or to continue to detain" a person in the United States "in order to compel [either] a third person or a governmental organization to do or abstain from doing any act as an explicit or

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[1] All three questions are presented in the petition for a writ of certiorari filed by petitioner's co-defendant. See Mikhel v. United States, No. 18-7835 (filed February 4, 2019). The first two questions are also presented by the petition for a writ of certiorari in Noel v. United States, No. 18-7485 (filed Jan. 16, 2019).

implicit condition for the release of the person detained." 18 U.S.C. 1203(a); see 18 U.S.C. 1203(b)(2). That plain statutory language "encompasses not only kidnapping and ransom demands seeking to compel action of 'a governmental organization,'" a category of conduct that terrorist organizations might employ in pressuring governments, "but also kidnapping and ransom demands 'to compel a third person.'" United States v. Noel, 893 F.3d 1294, 1300 (11th Cir. 2018), petition for cert. pending, No. 18-7485 (filed Jan. 16, 2019). At the same time, as the court of appeals recognized, the statutory text "makes no mention of international terrorism." Pet. App. 34. Section 1203 thus reaches "acts of hostage taking for ransom between private parties" that bear no connection to "governmental organizations" at all, let alone to "terrorism," however that nonstatutory term might be defined. Noel, 893 F.3d at 1300 (citing 18 U.S.C. 1203(a)); see Pet. App. 34-35. The court of appeals therefore correctly determined that Section 1203's plain language "squarely" encompasses the acts for which petitioner was convicted and "does not require proof of a nexus to international terrorism." Pet. App. 35.

The other courts of appeals to consider the question have likewise found no ambiguity in the statutory language and have declined to "limit[]" Section 1203 "to conduct related to international terrorism." United States v. Rodriguez, 587 F.3d 573, 579-580 (2d Cir. 2009) (citing cases); see Noel, 893 F.3d at 1299-1300; United States v. Lin, 101 F.3d 760, 765-766 (D.C. Cir.

1997); United States v. Carrion-Caliz, 944 F.2d 220, 223 (5th Cir. 1991), cert. denied, 503 U.S. 965 (1992). Although petitioner contends (Pet. 6-8) that the Second Circuit "suggested" otherwise in Rodriguez, that court discussed "whether [Section 1203] may be validly applied to any conduct that is not related to international terrorism" and determined that "the case law has now established that a [Section 1203] violation does not require a link to international terrorism." 587 F.3d at 579-580; see id. at 579 (citing cases).

b. In urging a contrary result, petitioner attempts (Pet. 7-9, 13) to find support in the preamble and "context" of the Hostage-Taking Convention, statements by individual legislators at two congressional subcommittee hearings, President Reagan's statement transmitting to Congress proposed legislation in accordance with the Hostage-Taking Convention, and the fact that the chapter of the public law that included Section 1203 was titled "'[t]errorism.'" But this Court has repeatedly emphasized that where, as here, "the statute is clear and unambiguous[,] that is the end of the matter." Sullivan v. Stroop, 496 U.S. 478, 482 (1990) (citation and internal quotation marks omitted); see also, e.g., Connecticut Nat'l Bank v. Germain, 503 U.S. 249, 253-254 (1992). Because the plain text of Section 1203 clearly and unambiguously covers acts of "abducting and holding * * * victims for ransom," Pet. App. 35, without any requirement of a nexus to "terrorism" (or definition of that term), petitioner cannot impose

such an atextual limitation by invoking considerations outside the statutory text. Even accepting "that a primary focus of the statute is on acts of terrorism," Noel, 893 F.3d at 1300, "[t]he Congress that wrote" Section 1203 "enacted a provision which goes well beyond that," Whitfield v. United States, 135 S. Ct. 785, 789 (2015) (addressing 18 U.S.C. 2113(e)).

Contrary to petitioner's contention (Pet. 10-15), the Court's decision in Bond v. United States, 572 U.S. 844 (2014), does not support engrafting a terrorism limitation onto Section 1203 that is found nowhere in the statute's operative text. Bond was, as this Court repeatedly stressed, a "curious" and "unusual" case. Id. at 860, 863, 865. The Court in Bond considered whether 18 U.S.C. 229(a), a federal statute that prohibits possessing or using a "chemical weapon," reaches conduct that the Court described as "a purely local crime" -- namely, the defendant's use of chemicals to poison her romantic rival in a lovers' quarrel. 572 U.S. at 848, 856-857.

Congress had enacted Section 229(a) "[t]o fulfill the United States' obligations" under an international convention on chemical weapons, Bond, 572 U.S. at 848, and the Court determined that the statute was ambiguous based on the confluence of several factors: the "dissonance" between the limited "ordinary meaning" of "'chemical weapon'" and the statute's potential breadth if its more technical definition applied to purely local conduct; "the context from which the statute arose," which the Court found

"demonstrate[d] a much more limited prohibition was intended"; and the fact that "the most sweeping reading of the statute would fundamentally upset the Constitution's balance between national and local power." Id. at 861, 866; see id. at 860. That "exceptional convergence of factors," the Court reasoned, "call[ed] for [it] to interpret the statute more narrowly," id. at 866, in accordance with the "natural meaning of 'chemical weapon,'" which "takes account of both the particular chemicals that the defendant used and the circumstances in which she used them," id. at 861. The Court thus found Bond's conduct, which involved chemicals that were "not of the sort that an ordinary person would associate with instruments of chemical warfare," to be outside the statute's scope. Ibid.

No such "exceptional convergence of factors" is present in Section 1203. As an initial matter, to the extent the section's title is taken into account, no "dissonance" exists "between th[e] ordinary meaning" of the term "hostage taking" and the elements of the offense set forth in Section 1203's operative text. Bond, 572 U.S. at 861. To the contrary, Section 1203 comports with the ordinary meaning of "hostage-taking" as "[t]he unlawful holding of an unwilling person as security that the holder's terms will be met by an adversary." Black's Law Dictionary 855 (10th ed. 2014); see also Webster's Third New International Dictionary 1094 (2002) (defining "hostage" as "the state of a person given or kept as a pledge pending the fulfillment of an agreement, demand, or

treaty"). And as the court of appeals observed, the specific conduct at issue in this case -- abducting multiple victims, binding them with handcuffs and ties, demanding ransom from their families and associates, and holding them prisoner while ransom demands are met -- "comports with any ordinary understanding of a 'hostage taking'" Pet. App. 35.

Nor does Section 1203 alter the federal-state balance in any way that supports a federalism-based limitation on the statute's reach. Cf. Bond, 572 U.S. at 856-860. As the court of appeals explained, the "international component" of requiring that either the perpetrator or victim be foreign (or found abroad) ensures the statute will not cover conduct of "purely local" concern. Pet. App. 35. And as petitioner's own case demonstrates, acts of hostage taking committed by or against foreign nationals (or by those who flee to foreign countries) are likely to implicate foreign-affairs and immigration concerns that the Constitution commits exclusively to the federal government.[2] See ibid.

[2] Although petitioner suggests in passing that Section 1203 "raises serious questions of equal protection of the laws" because it draws distinctions on the basis of alienage, Pet. 14 (citation and internal quotation marks omitted), he does not develop an equal-protection argument. In any event, every court of appeals that has considered an equal-protection challenge to Section 1203 has rejected it. See United States v. Ferreira, 275 F.3d 1020, 1025-1027 (11th Cir. 2001), cert. denied, 535 U.S. 977, 535 U.S. 1028, and 537 U.S. 926 (2002); United States v. Montenegro, 231 F.3d 389, 394-395 (7th Cir. 2000); United States v. Santos-Riviera, 183 F.3d 367, 373 (5th Cir. 1999), cert. denied, 528 U.S. 1054 (1999); United States v. Lue, 134 F.3d 79, 87 (2d Cir. 1998); United States v. Lopez-Flores, 63 F.3d 1468, 1475 (9th Cir. 1995), cert. denied 516 U.S. 1082 (1996).

(observing that petitioner and Mikhel "sent a ransom demand abroad and laundered ransom money through foreign countries"). It is therefore not the case here, as it was in Bond, that state laws will necessarily be "sufficient to prosecute" the criminal conduct at issue, 572 U.S. at 864, and no further review of petitioner's atextual limiting construction is warranted.

2. Petitioner next contends (Pet. 15-27) that Congress exceeded its enumerated powers in enacting Section 1203 and in amending it in 1994 to authorize imposition of the death penalty for hostage-taking offenses that result in death. The court of appeals correctly rejected those contentions, in accord with the decisions of every other court of appeals to consider them. Its decision does not warrant this Court's review, and this case would be an unsuitable vehicle for revisiting this Court's precedents on the scope of congressional authority.

Congress enacted Section 1203 to satisfy the United States' obligations under the Hostage-Taking Convention. See United States v. Ali, 718 F.3d 929, 943 (D.C. Cir. 2013) (observing that Section 1203 "fulfills U.S. treaty obligations" under the Convention). The Convention requires its State parties, including the United States, to punish "hostage-taking" offenses with "appropriate penalties which take into account the grave nature of those offences," Hostage-Taking Convention arts. 1(2) and 2, T.I.A.S. No. 11,081, at 5, 1983 WL 144724, at *2, and to "take such measures as may be necessary to establish its jurisdiction

over," inter alia, acts of hostage taking committed "in its territory"; "by any of its nationals"; or against "a hostage who is a national of that State, if that State considers it appropriate," id. art. 5(1)(a), (b), and (d), T.I.A.S. No. 11,081, at 6, 1983 WL 144724, at *3. The Convention's definition of "'hostage-taking'" substantially corresponds to Section 1203(a), providing that a person "commits the offence of taking hostages" if he "seizes or detains and threatens to kill, to injure or to continue to detain another person (* * * the 'hostage') in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage." Id. art. 1(1), T.I.A.S. No. 11,081, at 4-5, 1983 WL 144724, at *2; see 18 U.S.C. 1203(a). The Convention's definition, similar to Section 1203, does not apply when the act of hostage taking is committed "within a single State, the hostage and the alleged offender are nationals of that State and the alleged offender is found in the territory of that State." Hostage-Taking Convention art. 13, T.I.A.S. No. 11,081, at 11, 1983 WL 144724, at *5; see 18 U.S.C. 1203(b)(2).

Petitioner argues (Pet. 19-22) that Section 1203 is unconstitutional on the theory that the Hostage-Taking Convention falls outside the federal government's Treaty Power. See U.S. Const. Art. II, § 2, Cl. 2 (authorizing the President, "by and

with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur"). That argument lacks merit. This Court has long recognized that an "agreement with respect to the rights and privileges of citizens of the United States in foreign countries, and of the nationals of such countries within the United States, * * * is within the scope of th[e treaty] power." Santovincenzo v. Egan, 284 U.S. 30, 40 (1931). In Bond, Justice Thomas expressed the view "that the Treaty Power can be used to arrange intercourse with other nations, but not to regulate purely domestic affairs." 572 U.S. at 884 (Thomas, J., concurring in the judgment); see id. at 897 (Alito, J., concurring in the judgment) (agreeing "that the treaty power is limited to agreements that address matters of legitimate international concern"). Justice Thomas made clear, however, that such "intercourse with other nations * * * []includ[es] their people and property," id. at 893, as reflected in, for example, treaties providing protection for citizens of one country resident in another or for extradition of foreign nationals. See id. at 893-894 (citing, inter alia, Asakura v. City of Seattle, 265 U.S. 332, 341 (1924), and Holmes v. Jennison, 39 U.S. (14 Pet.) 540, 569 (1840)).

The Hostage-Taking Convention falls squarely within that authority because it concerns the treatment of and the protections afforded the "people" of "other nations" in the United States, as well as the United States' ability to protect its own nationals

resident in other countries. See Bond, 572 U.S. at 893 (Thomas, J., concurring in the judgment). Accordingly, every court of appeals to consider the issue has concluded that the "Convention is well within the boundaries of the Constitution's Treaty Power." United States v. Lue, 134 F.3d 79, 84 (2d Cir. 1998); see Noel, 893 F.3d at 1301-1302; Pet. App. 35-36. And like every other court of appeals to consider the question, the court below found that Congress had the authority to enact Section 1203. See Noel, 893 F.3d at 1301-1302; United States v. Shibin, 722 F.3d 233, 247 (4th Cir. 2013), cert. denied, 572 U.S. 1089 (2014); Lue, 134 F.3d at 82-84; Pet. App. 35-36.

Petitioner also invokes (Pet. 15-18, 23) Justice Scalia's concurring opinion in Bond, 572 U.S. at 873-881 (Scalia, J., concurring in the judgment), to suggest that the Court revisit its decision in Missouri v. Holland, 252 U.S. 416 (1920), in which this Court held that, "[i]f [a] treaty" entered into by the President with the advice and consent of the Senate "is valid[,] there can be no dispute about the validity of [a] statute" implementing that treaty "under Article I, § 8, as a necessary and proper means to execute the powers of the Government." Id. at 432; see U.S. Const. Art. II, § 2 (empowering the President, "by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur"). But this case does not implicate the core concerns that Justice Scalia voiced, as Section 1203 is limited to conduct with a foreign nexus,

does not displace state authority, and does not afford the federal government authority amounting to "a general police power." Bond, 572 U.S. at 879 (Scalia, J., concurring in the judgment). Instead, as noted above, Section 1203 is limited to conduct involving foreign nationals in the United States and U.S. nationals in foreign countries. Moreover, in light of its statutory focus, Section 1203 may well be a valid exercise of other congressional powers -- such as its authority over immigration, foreign commerce, or the protection of U.S. nationals abroad -- in which case reviewing the court of appeals' specific reasoning would have no effect on petitioner's case. Cf. Pet. App. 36, 67 n.3 (declining to "consider whether there might be other sufficient constitutional bases for [Section 1203] as well").

For similar reasons, petitioner's contention (Pet. 22-27) that Congress exceeded its authority when it amended Section 1203(a) in 1994 to authorize the death penalty for a hostage-taking offense that results in death likewise does not warrant this Court's review. As the court of appeals explained, if "Congress has the power to criminalize [the] conduct" described in Section 1203, "it also has the power to prescribe a constitutionally permissible punishment for that conduct." Pet. App. 36; see Mistretta v. United States, 488 U.S. 361, 364 (1989) ("Congress * * * has the power to fix the sentence for a federal crime."). Contrary to petitioner's contention (Pet. 22-24), the amendment is consistent with the Hostage-Taking Convention, which

expressly requires the United States to punish hostage-taking offenses with "appropriate penalties which take into account the grave nature of those offences." Art. 2, T.I.A.S. No. 11,081, at 5, 1983 WL 144724, at *2. The 1994 amendment reflects Congress's determination that the death penalty is an appropriate punishment for a Section 1203 violation that results in death, and so long as the criminal prohibition itself is within Congress's authority, the identification of an appropriate penalty is as well.[3]

3. Petitioner additionally contends (Pet. 27-40) that 28 U.S.C. 455(a) and the Due Process Clause required the district judge to recuse himself. The court of appeals correctly rejected that factbound claim, its decision does not conflict with any decision of this Court or another court of appeals, and this case would be an unsuitable vehicle for further review.

a. Under 28 U.S.C. 455(a), "[a]ny justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." On the particular facts of this case, the court of appeals correctly determined that the district court did not abuse

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[3] Petitioner contends (Pet. 24-27) that Congress's authority to enact the 1994 amendment turns on five considerations discussed in the context of United States v. Comstock, 560 U.S. 126 (2010), which upheld a civil-commitment statute. As petitioner tacitly acknowledges (Pet. 24), however, this Court has never suggested that those considerations drive the analysis in "the treaty context," and he identifies no sound reason why they would limit Congress's ability to choose the appropriate penalty for a federal crime.

its discretion in denying petitioner and Mikhel's motion seeking disqualification based on the district judge's response to a request to submit materials to a search committee for a new U.S. Attorney for the Central District of California. Pet. App. 38. As the court of appeals observed, the district judge "promptly and clearly disclosed the alleged grounds for recusal to the parties" and "immediately withdrew his application" upon the filing of the recusal motion, before the application received any "consider[ation] on its merits." Ibid. The court of appeals thus correctly found that no "reasonable person with knowledge of all the facts would have questioned the [district judge's] impartiality." Ibid.; cf. Mistretta, 488 U.S. at 410 ("We simply cannot imagine that federal judges will comport their actions to the wishes of the President for the purpose of receiving an appointment to the Sentencing Commission."). The court of appeals' fact-bound rejection of petitioner's recusal argument does not warrant this Court's review.

Contrary to petitioner's contention (Pet. 37-38), the court of appeals' decision does not conflict with the Committee on Codes of Conduct's Advisory Opinion No. 84. 2B U.S. Courts, Guide to Judiciary Policy, Ch. 2, No. 84, https://www.uscourts.gov/sites/default/files/guide-vol02b-ch02-2019_final.pdf (last visited June 7, 2019). That opinion states that "[a]fter the initiation of any discussions" with a potential employer, a judge should recuse himself "on any matter in which the [employer]

appears." Id. at 125. Because the district judge here withdrew his application for United States Attorney before "the initiation of any discussions" with the Department of Justice or the White House about his possible employment, ibid., Advisory Opinion No. 84 did not require him to recuse himself from petitioner's case. In addition, even if some tension existed between Advisory Opinion No. 84 and the decision below, petitioner cites no authority to support his contention that "lower federal courts are generally bound by the opinions" of the Committee on the Codes of Conduct and thus should be "direct[ed] * * * to follow the Committee's opinions." Pet. 28, 37. Although the courts of appeals have generally recognized that the views of the Committee on Codes of Conduct should be given at least some weight, the Committee's opinions are "not a definitive interpretation of the statutory recusal obligations of [Section] 455(a)." Ragozzine v. Youngstown State Univ., 783 F.3d 1077, 1080 (6th Cir. 2015); see also, e.g., Draper v. Reynolds, 369 F.3d 1270, 1280 (11th Cir.), cert. denied, 543 U.S. 988 (2004).

Petitioner's citations of decisions by other courts addressing recusal in other contexts (Pet. 38-39) are inapposite. Those decisions address a judge's obligation to recuse himself from a prosecution by a United States Attorney's Office when he was "actively negotiating for employment" with the Executive Office for United States Attorneys, see Scott v. United States, 559 A.2d 745, 750 (D.C. 1989); from a case involving a law firm

that had informed the judge's "headhunter" that it was not interested in hiring the judge, Pepsico, Inc. v. McMillen, 764 F.2d 458, 459-461 (7th Cir. 1985); and from a prosecution by a county attorney's office, where the judge had agreed to act as an expert witness for that office in another case, State v. Pratt, 813 N.W.2d 868, 876-878 (Minn. 2012). None of those opinions states that a judge must recuse himself in the circumstances presented here, i.e., where the judge responds to a request for materials from a search committee for an executive-branch position that requires nomination by the President and confirmation by the Senate, promptly discloses that fact to the parties, and then withdraws the application before it receives any "consider[ation] on its merits."[4] Pet. App. 38.

b. The court of appeals also correctly rejected petitioner's contention (Pet. 39-40) that the Due Process Clause required the district judge's recusal. Petitioner bases his due-process claim on Williams v. Pennsylvania, 136 S. Ct. 1899 (2016), and In re Murchison, 349 U.S. 133 (1955), but neither decision supports it. Those decisions establish that "[d]ue process guarantees 'an absence of actual bias' on the part of a judge" and

[4] The D.C. Circuit's recent decision in In re Al-Nashiri, 921 F.3d 224 (2019), also does not address those circumstances. See id. at 233-237 (discussing military judge's obligation to recuse himself from a case in which "the Attorney General was a participant * * * from start to finish," where the judge applied for and later obtained a position as an immigration judge and "the Attorney General himself [wa]s directly involved in selecting" such judges).

that "an unconstitutional potential for bias exists when the same person serves as both accuser and adjudicator in a case." Williams, 136 S. Ct. at 1905 (quoting Murchison, 349 U.S. at 136)). In Williams, the Court found "an impermissible risk of actual bias" under the Due Process Clause "when a judge earlier had significant, personal involvement as a prosecutor in a critical decision regarding the defendant's case" -- there, personally approving the decision to seek the death penalty against the defendant. Ibid. And in Murchison, the Court held it unconstitutional for a judge who had served as a "one-man grand jury" to preside over a contempt hearing arising from the grand jury proceedings. 349 U.S. at 136. No similar circumstances are present here.

Although the district judge responded to a request for materials from a search committee for the position of United States Attorney partway through trial, he later withdrew his submission and never served as an accuser or prosecutor in petitioner's case. The judge thus had no "'personal knowledge and impression' of the case, acquired through his * * * role in the prosecution," that might "carry far more weight with the judge than the parties' arguments to the court." Williams, 136 S. Ct. at 1906 (quoting Murchison, 349 U.S. at 138). Likewise, no "serious question arises as to whether the judge * * * could set aside any personal interest in the outcome," and no "risk" exists that "the judge 'would be so psychologically wedded' to his * * * previous position as a prosecutor that the judge 'would consciously or

unconsciously avoid the appearance of having erred or changed position.'" Ibid. (citation omitted). And because petitioner's due-process claim would fail under any standard of review, petitioner would not be entitled to relief even if he could establish that the court of appeals "applied the wrong standard of review" to his due-process claim, Pet. 39.

c. Petitioner also argues (Pet. 27-35) that the Court should grant review to resolve an asserted circuit conflict regarding whether Section 455 imposes a timeliness requirement on motions for recusal under Section 455(a). But answering that question would have no effect on the outcome of petitioner's case because the court of appeals determined that, "[i]n addition to its untimeliness, [petitioner's] recusal motion fails on its merits." Pet. App. 38; see pp. 26-31, supra. Petitioner's case is thus an unsuitable vehicle for addressing any question regarding the timeliness of recusal motions.

In any event, the decision below does not implicate any circuit conflict that warrants this Court's review. As petitioner appears to recognize (Pet. 30-33), the courts of appeals, including the court below, generally agree that Section 455(a) recusal motions must be timely made and that a party's failure to file a timely recusal motion affects the scope or availability of appellate review. See, e.g., In re United States, 441 F.3d 44, 65 (1st Cir.), cert. denied, 549 U.S. 888 (2006); United States v. Bayless, 201 F.3d 116, 127 (2d Cir.), cert. denied, 529 U.S. 1061

(2000); United States v. Vampire Nation, 451 F.3d 189, 208 & n.18 (3d Cir.), cert. denied, 549 U.S. 970 (2006); United States v. Owens, 902 F.2d 1154, 1155-1156 (4th Cir. 1990); United States v. York, 888 F.2d 1050, 1053-1055 (5th Cir. 1989); United States v. Rubashkin, 655 F.3d 849, 858 (8th Cir. 2011), cert. denied, 568 U.S. 927 (2012); United States v. Nickl, 427 F.3d 1286, 1297 (10th Cir. 2005); United States v. Slay, 714 F.2d 1093, 1094 (11th Cir. 1983) (per curiam), cert. denied, 464 U.S. 1050 (1984); United States v. Brice, 748 F.3d 1288, 1289 (D.C. Cir. 2014) (opinion of Kavanaugh, J.); Pet. App. 37-38. Enforcing that timeliness requirement "prevent[s] litigants from using § 455(a) for strategic purposes," Pet. App. 38, and "serves to induce the timely raising of claims and objections, which gives the district court the opportunity to consider and resolve them" and often enables the district court to "avoid [a] mistake." Puckett v. United States, 556 U.S. 129, 134 (2009) (discussing the value of applying plain-error review to untimely objections).

Petitioner contends (Pet. 29-30) that "[t]he Sixth and Seventh Circuits have held that § 455 does not have a timeliness requirement," but neither circuit appears currently to have a rule that conflicts with the general principle that Section 455(a) motions must be timely filed. Although the Sixth Circuit once stated that Section 455(a)'s text and legislative history contain no "suggestion" that a timeliness requirement applies to "disqualification under [Section] 455," Roberts v. Bailar, 625

F.2d 125, 128 n.8 (1980), that court has since determined that Section 455 implicitly "require[s] that disqualification motions be timely" and that "[t]imeliness is a factor that obviously merits consideration" in reviewing recusal claims. In re City of Detroit, 828 F.2d 1160, 1167 (1987) (per curiam), abrogated on other grounds by In re Aetna Cas. & Sur. Co., 919 F.2d 1136, 1139-1143 (6th Cir. 1990); see also, e.g., Bosley v. 21 WFMJ Television, Inc., 245 Fed. Appx. 445, 455 (6th Cir. 2007); McKibben v. Hamilton Cnty., 215 F.3d 1327, No. 99-3360, 2000 WL 761879, at *6 (6th Cir. 2000) (Tbl.); Callihan v. Eastern Ky. Prod. Credit Ass'n, 895 F.2d 1412, No. 89-5578, 1990 WL 12186, at *2 (6th Cir. 1990) (Tbl.).

For its part, the Seventh Circuit stated 40 years ago in SCA Servs., Inc. v. Morgan, 557 F.2d 110 (1977) (per curiam), that Section 455 does not "contain any time limits within which disqualification must be sought." Id. at 117. But that court soon "question[ed]" that decision, Union Carbide Corp. v. U.S. Cutting Serv., Inc., 782 F.2d 710, 716 (7th Cir. 1986), and acknowledged that it "st[ood] alone," United States v. Murphy, 768 F.2d 1518, 1539 (7th Cir. 1985), cert. denied, 475 U.S. 1012 (1986). And in United States v. Balistrieri, 779 F.2d 1191 (1985), cert. denied, 475 U.S. 1094, and 475 U.S. 1095 (1986), overruled by Fowler v. Butts, 829 F.3d 788 (7th Cir. 2016), the Seventh Circuit concluded that "a timely petition for a writ of mandamus" was the exclusive means of obtaining appellate review of "the administration of [Section] 455(a) in the district courts," thus

effectively requiring that Section 455(a) challenges be timely made. Id. at 1205. The Seventh Circuit recently overruled the mandamus-only rule it adopted in Balistrieri, see Fowler, 829 F.3d at 791-795, and since that development, the court has not addressed whether Section 455(a) recusal claims must be timely raised. Accordingly, further review of any tension between the Seventh Circuit's decision in SCA Services and the decisions of other courts of appeals is unwarranted at this time.

d. Petitioner also appears to argue (Pet. 29-33) that, even if his Section 455(a) motion was subject to a timeliness requirement, the Court should grant review to resolve asserted circuit conflicts regarding whether (1) "a recusal motion must be made at 'the earliest possible moment' or instead within a 'reasonable' time"; (2) the filing of an untimely motion "result[s] in waiver or forfeiture allowing for plain error review"; and (3) a timeliness requirement also applies to recusal motions under a different subsection of the recusal statute, 28 U.S.C. 455(b). Pet. 29 (citation omitted). This case does not provide a suitable vehicle for resolving those questions.

First, to the extent that petitioner believes that it would be error to require a party to file a recusal motion at the "earliest possible moment" (Pet. 34), his concern is theoretical because the court of appeals here did not apply such a requirement. Instead, the court below stated that Section 455(a) motions "should be filed with reasonable promptness after the ground for such a

motion is ascertained," Pet. App. 37, which reflects the more permissive reasonableness standard that petitioner advocates. Second, although the court found that petitioner's Section 455(a) motion was untimely, it proceeded to consider the merits of the motion and reviewed the district court's recusal decision for abuse of discretion. Id. at 38, 67 n.6. This case thus does not provide a vehicle for deciding whether a court of appeals might err if it treated an untimely recusal challenge as either waived or forfeited. Finally, because petitioner did not move for recusal under Section 455(b), a decision that addresses the requirements for such motions would have no effect on petitioner.

e. Petitioner also briefly argues (Pet. 33-36) that this case implicates a separate asserted conflict between the Seventh Circuit and all other courts of appeals over the standard for reviewing "timely recusal claim[s]" under Section 455(a). As petitioner acknowledges, "[t]he overwhelming majority of courts of appeals apply the deferential abuse-of-discretion standard" in reviewing the denial of recusal motions. See 13D Charles Alan Wright et al., Federal Practice and Procedure § 3553, at 146-161 & n.30 (3d ed. 2008 & Supp. 2019) (collecting cases).

Based on a decision addressing a Section 455(b) recusal claim, see United States v. Diekemper, 604 F.3d 345, 351 (7th Cir. 2010), petitioner asserts (Pet. 33) that "[t]he Seventh Circuit applies de novo review." But as explained above, see pp. 33-34, supra, the Seventh Circuit had only limited occasion to review recusal

challenges under Section 455(a) on direct appeal because of its longstanding rule, in place until 2016, that such challenges had to be raised in a mandamus petition. In addition, the Seventh Circuit previously stated that it "review[s] a district court judge's decision not to recuse himself for abuse of discretion," United States v. Franklin, 197 F.3d 266, 269 (1999), and it recently applied that standard in affirming a district court's decision not to recuse himself under Section 455(a), see Whitlow v. Bradley Univ., 722 Fed. Appx. 592, 593 (2018). Any intracircuit inconsistency within the Seventh Circuit would not warrant this Court's review. See Wisniewski v. United States, 353 U.S. 901, 902 (1957) (per curiam).

For several reasons, this case would also be an unsuitable vehicle for addressing the proper standard of review for timely Section 455(a) recusal claims. First, although the court of appeals applied the abuse-of-discretion standard, it also determined that petitioner's recusal claim was untimely, making this case an odd vehicle for resolving any disagreement among the courts of appeals regarding the appropriate standard of review for timely recusal claims. Second, during the district court proceedings, petitioner and Mikhel's recusal motion sought a mistrial only as to the trial's penalty phase, see Pet. App. 38, which indicates that they were not objecting to the district judge's failure to recuse himself during the guilt phase of trial. Accordingly, to the extent that petitioner now argues that the

district judge should have recused himself sua sponte during the guilt phase, that claim would not be timely under any standard and should be reviewed only for plain error. See Gov't C.A. Br. 151-153.

Finally, the court of appeals' opinion does not indicate that a different standard of review would affect that court's resolution of petitioner's Section 455(a) recusal claim. To the contrary, the court of appeals conducted a thorough review of the facts surrounding the district judge's recusal decision, identified the judge's prompt withdrawal of his submission as a "particularly significant" fact, and observed that the case would present "a closer question" without that fact. Pet. App. 38. Nothing in that analysis suggests that the court viewed the case, which does include that fact, as sufficiently "close[]," ibid., that the de novo standard petitioner seeks would have made a difference.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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