No. 22-196

In the Supreme Court of the United States

ADAM SAMIA, AKA SAL, AKA ADAM SAMIC, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the Sixth Amendment's Confrontation Clause precluded the admission at a joint trial of a modified version of a non-testifying co-defendant's statement, which did not facially inculpate petitioner and was accompanied by a limiting instruction that it be considered only against the co-defendant, on the theory that other trial evidence would lead the jury to link it to petitioner.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-17a) is not published in the Federal Reporter but is available at 2022 WL 1166623. The relevant ruling of the district court was delivered orally (Pet. C.A. App. 261-267).

JURISDICTION

The judgment of the court of appeals was entered on April 20, 2022. On July 14, 2022, Justice Sotomayor extended the time within which to file a petition for a writ of certiorari to and including September 2, 2022. The petition for a writ of certiorari was filed on August 30, 2022. 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 Southern District of New York, petitioner

was convicted of conspiring to commit murder for hire, in violation of 18 U.S.C. 1958(a); murder for hire, in violation of 18 U.S.C. 1958(a); conspiring to kidnap and murder in a foreign country, in violation of 18 U.S.C. 956(a)(1); using or carrying a firearm during and in relation to murder, in violation of 18 U.S.C. 924(c)(1)(A) and (j); and conspiring to launder money, in violation of 18 U.S.C. 1956(h). Pet. App. 2a. He was sentenced to life in prison. *Id.* at 3a. The court of appeals affirmed in part, vacated in part, and remanded. *Id.* at 1a-17a.

1. Petitioner worked as a hitman for Paul LeRoux, the head of "a transnational criminal organization" through which "he committed 'an array of crimes worthy of a James Bond villain.'" 32 F.4th 22, 26 (citation omitted); see *id.* at 26-27. The organization's crimes included "money laundering, drug and weapons trafficking, and various acts of violence, including murder," *id.* at 26, and LeRoux accordingly employed a team of "mercenaries" to administer "beatings, shootings, intimidation[,] and if necessary, killings." Pet. C.A. App. 540; see *id.* at 755. Petitioner was recruited as a mercenary in 2008, and he expressed interest in "[w]et work"—*i.e.*, "assassinations, but up close and personal." *Id.* at 760.

In 2011, LeRoux directed Joseph Hunter to assemble "a new kill team." Pet. C.A. App. 571. In January 2012, LeRoux ordered the murder of Catherine Lee, a real estate broker in the Philippines who LeRoux believed had stolen money from him. *Id.* at 569, 579. LeRoux told Hunter that petitioner and "his partner," Carl David Stillwell, could "pretend to be real estate buyers" and murder Lee. *Id.* at 579; see *id.* at 866.

On February 13, 2012, Lee was found dead "[i]n a vacant lot beside a pile of garbage." Pet. C.A. App. 475.

She had been shot twice in the face at close range. *Id.* at 479. Hunter subsequently described in detail to another LeRoux organization member how petitioner and Stillwell had murdered Lee, *id.* at 772, and did so again during a meeting in Thailand that was secretly recorded by U.S. law enforcement, see C.A. Supp. App. 6-7, 213-214; Gov't C.A. Br. 19.

LeRoux was arrested by the Drug Enforcement Administration (DEA) in 2012 and became a cooperating witness. Pet. C.A. App. 597; Gov't C.A. Br. 19. Hunter was arrested in 2013, and petitioner and Stillwell were arrested in 2015. Gov't C.A. Br. 19-20. Stillwell waived his *Miranda* rights and confessed to Lee's murder. Pet. C.A. App. 515-516.

In 2017, a federal grand jury returned a superseding indictment charging petitioner and Stillwell with conspiring to commit murder for hire, in violation of 18 U.S.C. 1958(a); murder for hire, in violation of 18 U.S.C. 1958(a); conspiring to kidnap and murder in a foreign country, in violation of 18 U.S.C. 956(a)(1); using or carrying a firearm during and in relation to murder, in violation of 18 U.S.C. 924(c)(1)(A) and (j); and conspiring to launder money, in violation of 18 U.S.C. 1956(h). Pet. C.A. App. 282-304. The indictment also charged Hunter with all but the money-laundering count. *Ibid.* LeRoux separately pleaded guilty to seven felonies. *Id.* at 598.

2. Hunter, Stillwell, and petitioner were tried jointly. 32 F.4th at 26. Before trial, the government filed a motion in limine regarding the admissibility of Stillwell's post-arrest statement admitting to Catherine Lee's murder. D. Ct. Doc. 414 (July 31, 2017). The government recognized that the statement in its original form named petitioner as an accomplice, and that using it in that form could run afoul of *Bruton* v. *United States*,

391 U.S. 123 (1968), which held that the admission of a non-testifying co-defendant's confession expressly implicating the defendant violates the Confrontation Clause even if the jury is instructed not to consider the confession as to the defendant. See *id.* at 126; D. Ct. Doc. 414, at 37. The government therefore sought to introduce a modified version of Stillwell's statement that neither named petitioner nor contained explicit redactions. See D. Ct. Doc. 414-1, at 46, Ex. B.

At a hearing on the motion in limine, the district court generally approved the government's approach to introducing Stillwell's statement. Pet. C.A. App. 261-267. The court required some additional changes to avoid any remaining "explicit references" to petitioner or "stilted or ungrammatical sentences." *Id.* at 266-267. The government complied with that directive. *Id.* at 385. At trial, a DEA agent testified regarding the contents of Stillwell's statement in a manner consistent with its approved form, avoiding any reference to petitioner's identity. *Id.* at 514-516. The agent recounted Stillwell's statements, for example, that "he had met somebody else" in the Philippines; that "the person that he was with" had carried a firearm; and that "the other person he was with pulled the trigger on that woman," Catherine Lee, "in a van that he and Mr. Stillwell w[ere] driving." *Id.* at 516; see Pet. 8-10.

The district court instructed the jury both during the DEA agent's testimony and at the end of trial that the testimony about Stillwell's statement could be considered only as to Stillwell, not as to petitioner or Hunter. Pet. C.A. App. 520, 972-973. The jury returned guilty verdicts on all counts against all three defendants. *Id.* at 990-991. The court sentenced petitioner to a life term of imprisonment. *Id.* at 1010.

3. The court of appeals affirmed in part, vacated in part, and remanded. Pet. App. 1a-17a.

In a summary order, the court of appeals first agreed with the parties that three of each defendant's convictions needed to be vacated because they were predicated, directly or indirectly, on a statutory provision, 18 U.S.C. 924(c)(3)(B), that this Court held to be unconstitutionally vague in *United States* v. *Davis*, 139 S. Ct. 2319 (2019). Pet. App. 4a. It then rejected the defendants' other claims and upheld the remaining convictions, for conspiring to kidnap and murder in a foreign country and conspiring to launder money. *Id.* at 4a-5a.

The court of appeals determined that the admission of a modified version of Stillwell's statement through the DEA agent's testimony did not violate petitioner's Confrontation Clause right under *Bruton*. Pet. App. 10a-12a. Relying on circuit precedent, the court explained that the "'non-obvious redaction'" of a co-defendant's confession to replace references to the defendant with "'neutral noun[s] or pronoun[s]'" has been upheld against *Bruton* challenges, because such a modified confession—assessed "'separate and apart from any other evidence admitted at trial'"—"'sufficiently conceals the fact of explicit identification.'" *Id.* at 10a-11a (quoting *United States* v. *Jass*, 569 F.3d 47, 61 (2d Cir. 2009), cert. denied, 558 U.S. 1159, and 559 U.S. 1087 (2010), and *United States* v. *Lyle*, 919 F.3d 716, 733 (2d Cir. 2019), cert. denied, 140 S. Ct. 846 (2020)). And it found that Stillwell's statement here, "[v]iewed 'separate and apart from any other evidence,' * * * d[id] not 'explicitly identify'" petitioner. *Id.* at 11a (brackets and citation omitted).

ARGUMENT

Petitioner contends (Pet. 21-26) that the court of appeals erred in assessing the sufficiency of the modifications to Stillwell's statement without also considering the potential interaction between the statement and the other evidence at trial. Petitioner did not, however, challenge that understanding of the Confrontation Clause in the court of appeals, and even described it as "true." Pet. C.A. Reply Br. 27; see Pet. C.A. Br. 45-54 (arguing that the modifications were facially insufficient). Even if he had not thereby relinquished such a challenge, it lacks merit, and he significantly overstates any disagreement in the courts of appeals on the question presented. This case would be an unsuitable vehicle for addressing the question, because even if his argument were properly raised, any error was harmless. This Court has denied multiple petitions for writs of certiorari raising the same issue. See *Glisson* v. *United States*, 568 U.S. 829 (2012) (No. 11-9836); *Persfull* v. *United States*, 566 U.S. 1034 (2012) (No. 11-1060). It should follow the same course here.

1. The Sixth Amendment's Confrontation Clause provides that "[i]n all criminal prosecutions, the accused shall enjoy the right * * * to be confronted with the witnesses against him." U.S. Const. Amend. VI. "Ordinarily, a witness whose testimony is introduced at a joint trial is not considered to be a witness 'against' a defendant if the jury is instructed to consider that testimony only against a codefendant." *Richardson* v. *Marsh*, 481 U.S. 200, 206 (1987).

That understanding of the Clause not only follows from its text but also reflects "the almost invariable assumption * * * that jurors follow their instructions." *Richardson*, 481 U.S. at 206. In *Bruton* v. *United States*,

391 U.S. 123 (1968), the Court "recognized a narrow exception to this principle," *Richardson*, 481 U.S. at 207, under which a co-defendant's confession that "expressly implicat[es]" the defendant is impermissible irrespective of a jury instruction. *Bruton*, 391 U.S. at 124 n.1; see *id.* at 126. The Court reasoned that such an out-of-court statement is so "powerfully incriminating" that a jury cannot be expected to follow an instruction barring it from using the confession against the defendant. *Id.* at 135-136.

At the same time, however, the Court recognized the potential for "alternative ways" of allowing "the prosecution * * * the benefit of the confession to prove the confessor's guilt" without creating the same degree of risk that the jury would disregard its instructions and use the confession against a non-confessing defendant as well. *Bruton*, 391 U.S. at 133. The Court had occasion to address those alternative possibilities in *Richardson* v. *Marsh*, holding that the prosecution had avoided a *Bruton* problem by modifying a co-defendant's confession to omit references to the defendant. 481 U.S. at 211. In doing so, the Court rejected the defendant's argument that the redactions were insufficient because her co-defendant's confession could still incriminate her if the jury "linked [it] with evidence introduced later at trial." *Id.* at 208.

The Court in *Richardson* explained that if a co-defendant's confession incriminates the defendant not "on its face," but "only when linked" by inference to other evidence, *Bruton*'s "foundation[al]" hypothesis—that the jury will be unable to resist using the confession against the defendant—no longer applies. 481 U.S. at 208. It also observed that applying *Bruton* to such inferentially incriminating confessions would have

troubling "practical effects." *Ibid.* For example, because the *Bruton* issue would turn on the other evidence presented at trial, it might not "even [be] possible to predict the admissibility of a confession in advance of trial." *Id.* at 209. The result would be to rule out many joint trials, which play a "vital role" in promoting "the efficiency and the fairness of the criminal justice system," or to force prosecutors "'to forgo use of codefendant confessions," which are "essential to society's compelling interest in finding, convicting, and punishing those who violate the law.'" *Id.* at 209-210 (citation omitted).

Because *Richardson* involved a confession that had been "redacted to eliminate not only the defendant's name, but any reference to * * * her existence," the Court reserved judgment on "the admissibility of a confession in which the defendant's name has been replaced with a symbol or neutral pronoun." 481 U.S. at 211 & n.5. The Court confronted the first of those issues—the use of redaction symbols—in *Gray* v. *Maryland*, 523 U.S. 185 (1998), where it found that the prosecution failed to satisfy *Bruton* when it "redacted the codefendant's confession by substituting for the defendant's name in the confession a blank space or the word 'deleted.'" *Id.* at 188. The Court concluded that such "obvious indications of alteration" inevitably point the jury to the defendant, and thus "so closely resemble *Bruton*'s unredacted statements" as to "require the same result." *Id.* at 192.

The Court in *Gray* "concede[d] that *Richardson* placed outside the scope of *Bruton*'s rule those statements that incriminate inferentially." 523 U.S. at 195. And it explained the distinction between the results of the two cases to turn on "the *kind* of * * * inference"

involved. *Id.* at 196. The inferences at issue in *Gray* were "inferences that a jury ordinarily could make immediately, even were the confession the very first item introduced at trial," and the confession "'*facially* incriminat[ed]'" Gray. *Ibid.* (quoting *Richardson*, 481 U.S. at 209). In contrast, "*Richardson*'s inferences," which did not present a *Bruton* problem, "involved statements that did not refer directly to the defendant himself and which became incriminating 'only when linked with evidence introduced later at trial.'" *Ibid.* (quoting *Richardson*, 481 U.S. at 208).

The Court in *Gray* accordingly addressed the practical concerns identified in *Richardson* by emphasizing the availability of alternatives to "us[ing] a blank space, the word 'delete,' or a symbol." 523 U.S. at 196. Using part of the confession at issue as an example, the Court explained that the co-defendant's answer to the question, "Who was in the group that beat Stacey?"—which the prosecution had redacted to read, "Me, deleted, deleted, and a few other guys"—could have been adequately redacted to read, "Me and a few other guys." *Ibid.* (citation omitted). Along the same lines, the Court approvingly cited a case rejecting a *Bruton* challenge to a confession that had been "redacted by replacing [the defendant's] name with the neutral pronoun 'someone.'" *United States* v. *Garcia*, 836 F.2d 385, 390 (8th Cir. 1987) (cited in *Gray*, 523 U.S. at 197).

2. The court of appeals correctly applied the foregoing precedents in rejecting petitioner's *Bruton* claim. Pet. App. 10a-12a.

a. In order to ensure compliance with the Confrontation Clause, the government modified the statement of petitioner's co-defendant, Stillwell, to replace references to petitioner with "neutral language" (*e.g.*, "somebody

else," "the other person"), rather than blank spaces or deletions that would have been "so awkward or obvious as to tip off the jury that a redaction has occurred." Pet. App. 11a; see *Gray*, 523 U.S. at 196. The district court supervised the modifications, requiring the government to scrub the statement of not only explicit references to petitioner, but also any awkward locutions that could have made redactions apparent. See Pet. C.A. App. 265-267. The result was a statement that, like the hypothetical modified confession in *Gray* ("Me and a few other guys"), acknowledged others' involvement in the criminal activity but did not obviously point toward petitioner. *Id.* at 515-516; see *Gray*, 523 U.S. at 196; *Garcia*, 836 F.2d at 390.

Because the modified statement was not "facially" inculpatory, and would not lead the jury to petitioner "even were [it] the very first item introduced at trial," *Gray*, 523 U.S. at 196 (emphasis omitted), it avoided a *Bruton* problem, and its introduction with appropriate limiting instructions did not violate the Confrontation Clause. The mere possibility that the jury could have linked the redacted confession with "other evidence introduced in the case" in an inferential manner that might lead it to suspect that it referred to petitioner is not sufficient to establish a *Bruton* claim. *Id.* at 197; see *id.* at 196; *Richardson*, 481 U.S. at 208. After all, if there were no possibility that the jury could find the confession inferentially incriminating against the defendant, there would be no need for a limiting instruction warning the jury against using the confession against a non-confessing defendant. See *Richardson*, 481 U.S. at 208 n.3 ("[T]he very premise of our discussion is that respondent would have been harmed by

Williams' confession *if* the jury had disobeyed its instructions.").

Bruton does not dispense with "the almost invariable assumption of the law that jurors follow their instructions," which this Court "ha[s] applied in many varying contexts." *Richardson*, 481 U.S. at 206. Instead it is simply a "narrow exception to th[at] principle," applicable only to a "facially incriminating confession of a nontestifying codefendant * * * at [a] joint trial." *Id.* at 207. And in this case, as the court of appeals determined (see Pet. App. 11a), and the question presented presumes (Pet. i), the modified version of Stillwell's statement did not facially incriminate petitioner.

b. Petitioner errs in arguing (Pet. 21-27) that a Confrontation Clause violation nonetheless occurred. His contentions (Pet. 24-26) that the prosecution inappropriately linked him to Stillwell's statement during opening and closing arguments are entirely factbound, and thus not a basis for this Court's review. See Sup. Ct. R. 10. They are also conceptually misplaced. The prosecution could assert during its opening and closing statements that petitioner turned around and shot Lee in the van because other trial evidence conclusively proved that, in fact, petitioner turned around and shot Lee in the van. See, *e.g.*, Pet. C.A. App. 772 (testimony from another member of the LeRoux organization that Hunter told him that "Adam"—*i.e.*, petitioner—"continued into the van—in the passenger seat while his friend was driving and at some point he just turned around while they were driving and shot Catherine Lee who was sitting in the backseat with a .22 automatic pistol with a silencer."); see also pp. 16-17, *infra*. Petitioner's claim (Pet. 25) that describing what that other evidence would prove "primed the jury to identify

petitioner as the man identified in Stillwell's confession" is thus just another way of arguing that the jury might infer from the other trial evidence that Stillwell's statement referred to petitioner. But as this Court recognized in *Richardson* and *Gray*, a jury can be trusted not to rely on that sort of inferential logic when it is instructed not to do so. See *Gray*, 523 U.S. at 195-197; *Richardson*, 481 U.S. at 208.

To the extent that petitioner contends that Stillwell's statement included too much detail about Stillwell's anonymous accomplice, and that it could not be used unless it was further modified to "omit[] all references to petitioner's existence," Pet. 25, that contention falls outside the scope of the question presented, which concerns the confession's "context," not its content. Pet. 6. In any event, the contention rests on the faulty premise that it was obvious the modified confession referred to someone else in the courtroom, and to petitioner in particular. Especially in light of the vastness of LeRoux's criminal enterprise, that inference would not have been so obvious to the jury that the jury would have been unable to "thrust [it] out of mind" in compliance with the district court's instructions. *Gray*, 523 U.S. at 196 (citation omitted). Instead, as the court of appeals determined, Stillwell's confession was sufficiently redacted such that "a juror listening to these statements could have concluded that several other people [besides petitioner] may have been Stillwell's co-conspirator." Pet. App. 11a. Redaction that accomplishes that objective is sufficient to comply with *Bruton*. See *Gray*, 523 U.S. at 196-197.

3. Petitioner errs in asserting (Pet. 19) that this Court's intervention is warranted to resolve an alleged circuit conflict about whether the *Bruton* inquiry looks

to "inferences that might be drawn when considering other evidence introduced at trial." In particular, he overstates the scope of any disagreement.

a. The decisions of the First and D.C. Circuits on which petitioner relies (Pet. 13, 18) did not involve a finding of *Bruton* error and thus do not suggest that those courts would necessarily have found such error here.

Although the First Circuit in *United States* v. *Vega Molina*, 407 F.3d 511, cert. denied, 546 U.S. 919 (2005), urged "careful attention to both text and context," it recognized that a co-defendant's "statement is powerfully incriminating," and thus forbidden by *Bruton*, "only when it is inculpatory on its face," not "when linked to other evidence in the case." *Id.* at 520. And the court rejected the defendants' *Bruton* claim on that basis. See *id.* at 521.

Similarly, in *United States* v. *Straker*, 800 F.3d 570 (2015) (per curiam), cert. denied, 577 U.S. 1147 (2016), the D.C. Circuit found the redactions of the co-defendants' confessions insufficiently "obvious" to trigger a *Bruton* problem. *Id.* at 598. The court acknowledged that "[w]hen a confession is redacted with neutral pronouns, a jury, after hearing all of the evidence presented in the case, may still very well be able to draw inferences that the 'other guy' mentioned in the confession was actually one of the defendants." *Id.* at 599. "*Bruton* is not violated, however, whenever a jury may be able to draw such an inference." *Ibid.*

b. Petitioner also points (Pet. 13-17) to decisions from the Third, Seventh, and Ninth Circuits, in which those courts identified *Bruton* errors after referring to other trial evidence. The *Bruton* analysis was unnecessary to the result in nearly all of those cases, however,

because the courts of appeals found that any error was harmless or otherwise non-reversible. See *United States* v. *Richards*, 241 F.3d 335, 342 (3d Cir.), cert. denied, 533 U.S. 960 (2001); *United States* v. *Hardwick*, 544 F.3d 565, 573-574 (3d Cir. 2008), cert. denied, 555 U.S. 1195, and 555 U.S. 1200, and 556 U.S. 1144 (2009); *United States* v. *Hoover*, 246 F.3d 1054, 1059-1060 (7th Cir.), cert. denied, 534 U.S. 1033 (2001). In any event, in each of the cases petitioner identifies from the Third, Seventh, and Ninth Circuits, the *Bruton* violation involved redactions that were found to be ineffective on their face, so as to be immediately inculpatory in the manner described in *Gray*. Any tension between those decisions and the decision below does not amount to a conflict that would warrant this Court's review.

In *United States* v. *Hardwick*, for example, the Third Circuit explained—consistent with the Second Circuit's decision here—that admission of a co-defendant's confession is permissible if "the statement must be linked to other evidence before it can incriminate the [non-confessing] co-defendant." 544 F.3d at 573. But the court of appeals concluded that, on the facts there, that standard was not met because the redacted confession still created an "unavoidable inference" about the guilt of non-confessing defendants. *Ibid.* Similarly, in *United States* v. *Richards*, the Third Circuit concluded that the district court had erred in admitting a confession that referred to "a friend, whom I do not wish to name," because the redaction was "just as blatant and incriminating of [the defendant] as the word 'deleted'" in *Gray*. 241 F.3d at 338, 341.

The Seventh Circuit found an analogous obvious error in *United States* v. *Hoover*, where the version of a confession admitted at trial had replaced the names of

two co-defendants with "aliases based on their occupations" that "[o]nly a person unfit to be a juror could have failed to" see through. 246 F.3d at 1059. Finally, while the Ninth Circuit incorporated other trial evidence into its *Bruton* analysis in *United States* v. *Mayfield*, 189 F.3d 895 (1999), it also found that "the confession itself" was "fairly obvious" on its own, and observed that the district court failed even to provide the jury with a limiting instruction to safeguard the defendant's Confrontation Clause rights. *Id.* at 902-903.

c. The Eleventh Circuit's decision in *United States* v. *Schwartz*, 541 F.3d 1331 (2008), cert. denied, 556 U.S. 1130, and 556 U.S. 1174 (2009), involved a confession that was redacted to omit the defendant's name but mentioned corporations that, as other trial evidence showed, the defendant "owned or controlled." *Id.* at 1340. The apparent close identity between the defendant and his corporate entities may well have made the redactions inadequate on their face. Cf. *Gray*, 523 U.S. at 195 (noting the Court's assumption that admitting a confession that includes the defendant's "nickname" violates *Bruton*). But the Eleventh Circuit concluded otherwise, see *Schwartz*, 541 F.3d at 1351; took the view that "a defendant's confrontation right is violated when the court admits a codefendant statement that, in light of the Government's whole case, compels a reasonable person to infer the defendant's guilt," *ibid.*; and applied that approach to find a violation in that case, see *id.* at 1351-1353.

That approach was incorrect and inconsistent with *Richardson* and *Gray*. See pp. 6-11, *supra*. It does not, however, show a circuit conflict warranting this Court's intervention, particularly because—as *Schwartz* itself suggests—the Eleventh Circuit's case law may be

internally inconsistent on this issue. 541 F.3d at 1352 n.63 (discussing *United States* v. *Williamson*, 339 F.3d 1295 (11th Cir. 2003) (per curiam), cert. denied, 540 U.S. 1184 (2004)); see *Williamson*, 339 F.3d at 1303 (rejecting a *Bruton* claim because "independent evidence [wa]s needed" to link the co-defendant's statement to the other defendants); *United States* v. *Brazel*, 102 F.3d 1120, 1140 (11th Cir.) ("No *Bruton* problem exists * * * where the statement 'was not incriminating on its face, and became so only when linked with evidence introduced later at trial.'") (quoting *Richardson*, 481 U.S. at 208), cert. denied, 522 U.S. 822 (1997), and 522 U.S. 1060 (1998). That intra-circuit conflict can be resolved by the Eleventh Circuit without this Court's intervention. See *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957) (per curiam).

4. At all events, this case would also be a poor vehicle for considering the question presented.

First, petitioner did not raise his current contention in the court of appeals, and in fact described the principle that "the confession must be reviewed 'separate and apart from any other evidence admitted at trial'" as "true." Pet. C.A. Reply Br. 27 (citations omitted). The Second Circuit therefore had no occasion to address petitioner's new contrary argument. See Pet. App. 11a. Although petitioner may have been taking circuit precedent on the issue as a given, this Court has explained that it does not exercise its discretion to review a circuit rule in a case in which the petitioner "concede[d]" the "correctness" of circuit precedent in the proceedings below. *United States* v. *Williams*, 504 U.S. 36, 45 (1992) (finding a claim reviewable in this Court where the petitioner "did not concede in the [court of appeals] the

correctness" of the relevant circuit precedent); see *United States* v. *Vonn*, 535 U.S. 55, 58 n.1 (2002) (same).

Second, even if petitioner had preserved the issue that he now raises, any *Bruton* error would have been harmless beyond a reasonable doubt in light of the overwhelming independent evidence of his guilt. See Gov't C.A. Br. 85-90. LeRoux and another member of his organization testified at trial, for example, that Hunter told them that petitioner and Stillwell murdered Lee. Pet. C.A. App. 584, 772. That testimony was corroborated by descriptions of the crime scene, *id.* at 475, and Hunter's statements during the recorded meeting in Thailand, C.A. Supp. App. 6-7.

The key to the van in which Lee was killed was found in petitioner's residence. Pet. C.A. App. 587-588, 824. Two days after the murder, petitioner e-mailed Hunter an "expense report" seeking reimbursement for "tools," which meant guns. C.A. Supp. App. 114-115 (capitalization altered); see also Pet. C.A. App. 590. In an e-mail from the month before the killing, Hunter told LeRoux that petitioner and Stillwell would be owed $35,000 apiece "upon Mission Success." C.A. Supp. App. 206; see also Gov't C.A. Br. 89. Petitioner transferred about $32,000 to the United States in the weeks after the murder. C.A. Supp. App. 212.

In light of that and other independent evidence of petitioner's guilt, any *Bruton* error did not prejudice him. A resolution of the question presented in his favor would therefore not change the outcome of his case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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