NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

ROSSEN IOSSIFOV,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari from the
United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

John Kevin West (KY #81802)
STEPTOE & JOHNSON PLLC
41 South High Street, Suite 2200
Columbus, Ohio 43215
(614) 458-9889 phone
(614) 221-0952 fax
kevin.west@steptoe-johnson.com
Counsel for Petitioner Rossen Iossifov

QUESTIONS PRESENTED

The Petitioner, Rossen Iossifov ("Iossifov"), was indicted on July 5, 2018, and charged with one count of conspiring to engage in racketeering activity in violation of 18 U.S.C. §1962(d) (Count 1) and one count of knowingly conducting and attempting to conduct financial transactions affecting interstate and foreign commerce, which transactions involved the proceeds of fraud in violation of 18 U.S.C. §1956(a)(1) and (a)(2) (Count 3).

The United States alleged (and Iossifov does not deny) that most of Iossifov's Romanian co-defendants were engaged in a scheme in which they would post advertisements on online sales platforms like eBay or Craigslist for non-existent goods like motor vehicles and would convince unsuspecting victims to purchase debit cards and send them as payment for the non-existent items. An American middleman would then convert the debit cards to money orders which were ultimately converted to Bitcoin for a percentage of the profit from the fake sale. There was no evidence presented at trial that Iossifov had any contact with any of the American fraud victims. Furthermore, Iossifov had never set foot in the

United States prior to his extradition to stand trial for the offenses alleged in the indictment.

Iossifov is a Bulgarian citizen who after working in a factory and operating an accounting business, opened a Bitcoin exchange business in 2014 which was called RG Coin. Iossifov registered the business with the Bulgarian government, advertised on the internet, and opened an office with a sign on the door advertising the name of the business. When dealing with customers, he used his own legal name or the name of his business (which was derived from the initials of his name-Rossen Georgiov) and, unlike the Romanian customers who it was later determined were engaged in fraudulent activity, never attempted to conceal his identity.

Iossifov was not aware that the Romanian customers later charged with fraud were engaged in fraudulent activities until an arrest and extradition warrant was served on him at his home in the early morning hours of December 11, 2018. The United States introduced evidence at trial that most of RG Coin's customers were not engaged in fraudulent activities. At trial, the only direct evidence offered by the United States that Iossifov was aware of the fraudulent activities of the Romanian

customers was the testimony of a co-defendant, Andrei Stocia, about a hearsay statement allegedly made by Razvan Sandu, a co-defendant who had not been apprehended and who did not testify at trial.

This Court should grant certiorari and review Iossifov's conviction on jurisdictional grounds for three reasons. *First*, there was no venue in the Eastern District of Kentucky and conducting a trial there violated the United States Constitution. *Second*, none of the laws that Iossifov was charged with violating applied outside of the United States. *Third*, the prosecution violated Iossifov's due process rights because the United States had no legitimate interest in prosecuting the charged conduct as to Iossifov. Assertion of jurisdiction in this case conflicts with prior decisions of this Court and this Court should grant certiorari to correct the violation of Iossifov's rights and ensure the rights of future defendants are not violated by the improper assertion of extraterritorial jurisdiction.

LIST OF PROCEEDINGS

United States Court of Appeals for the Sixth Circuit No. 21-5063/5404

United States of America, Plaintiff-Appellee v. Rossen Iossifov, Defendant-Appellant

Date of Final Opinion: August 12, 2022

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The Sixth Circuit's conviction affirming Iossifov is attached as Appendix 1. The district court's Final Judgment and Order denying his motion to dismiss are attached as Appendices 2 and 3.

This case involves application of 18 U.S.C. §1956 and 18 U.S.C. §1962. The texts of these provisions are contained in Appendix 4.

TABLE OF AUTHORITIES

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PETITION FOR WRIT OF CERTIORARI

Rossen Iossifov petitions the Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The Sixth Circuit's conviction affirming Iossifov is attached as Appendix 1. The district court's Final Judgment and the Order denying his motion to dismiss are attached as Appendices 2 and 3.

JURISDICTION

The Sixth Circuit entered judgment on August 12, 2022. *See* Appendix 1. This petition is timely filed pursuant to Supreme Court Rule 13.1. This Court has jurisdiction under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

This case involves application of 18 U.S.C. §1956 and 18 U.S.C. §1962. The texts of these provisions are contained in Appendix 4.

STATEMENT OF THE CASE

An Indictment was returned on July 5, 2018 charging Iossifov with one count of conspiring to engage in racketeering activity in violation of 18 U.S.C. §1962(d) (Count 1) and one count of knowingly conducting and attempting to conduct financial transactions affecting interstate and foreign commerce, which transactions involved the proceeds of fraud in violation of 18 U.S.C. §1956(a)(1) and (a)(2) (Count 3). When the allegations against Iossifov are boiled down to their essence, the United States claims that Iossifov, who had never stepped foot on the United States soil or communicated with anyone in the United States before his indictment, knowingly used his legitimate Bulgarian Bitcoin exchange business to exchange Bitcoin into foreign currency for Romanian co-defendants who were engaged in defrauding American citizens in an internet fraud scheme.

The United States alleged (and Iossifov does not deny) that most of Iossifov's Romanian co-defendants were engaged in a scheme in which they would post advertisements on online sales platforms like eBay or Craigslist for non-existent goods like motor vehicles and would convince unsuspecting victims to purchase debit cards and send them as payment for the non-existent items. An American middleman would then convert the debit cards to money orders which were ultimately converted to Bitcoin for a percentage of the profit from the fake sale. There was no evidence presented at trial that Iossifov had any contact with any of the American fraud victims.

Iossifov is a Bulgarian citizen who after working in a factory and operating an accounting business, opened a Bitcoin exchange business in 2014 which was called RG Coin. Iossifov registered the business with the Bulgarian government, advertised on the internet, and opened an office with a sign on the door advertising the name of the business. When dealing with customers, he used his own legal name or the name of his business (which was derived from the initials of his name-Rossen Georgiov) and, unlike the Romanian customers who it was later

determined were engaged in fraudulent activity, never attempted to conceal his identity.

Iossifov was not aware that the Romanian customers later charged with fraud were engaged in fraudulent activities until an arrest and extradition warrant was served on him at his home in the early morning hours of December 11, 2018. The United States introduced evidence at trial that most of RG Coin's customers were not engaged in fraudulent activities. At trial, the only direct evidence offered by the United States that Iossifov was aware of the fraudulent activities of the Romanian customers was the testimony of a co-defendant, Andrei Stocia, about a hearsay statement allegedly made by Razvan Sandu, a co-defendant who had not been apprehended and who did not testify at trial.

Iossifov moved for a Judgment of Acquittal pursuant to Fed. R. Cr. P. 29 at the close of proof by the United States and at the conclusion of all proof based upon the lack of jurisdiction over him and the insufficiency of the evidence as to his knowledge of the fraudulent activities of his customers. The trial court denied both motions. A jury verdict was ultimately returned convicting Iossifov of Counts 1 and 3. Iossifov was

sentenced to a term of imprisonment of one hundred twenty-one (121) months and was ordered to pay restitution of $2,642,297.43.

REASONS FOR GRANTING THE WRIT

This Court should grant certiorari and review Iossifov's conviction because the trial court improperly exercised jurisdiction.

The Indictment alleged that Iossifov exchanged Bitcoin for currency with knowledge that some of the Bitcoin had been acquired with the proceeds from an online fraud scheme carried out in the United States. There were no allegations that Iossifov engaged in any activities in the United States, let alone in the Eastern District of Kentucky.

This Court has recognized that questions involving the United States' prosecution of a foreign citizen raise important and delicate issues. In *F. Hoffmann-La-Roche Ltd. v. Empagran*, 542 U.S. 155, 164-165 (2004), this Court stated:

> [T]his Court ordinarily construes ambiguous statutes to avoid unreasonable interference with the sovereign authority of other nations (citations omitted). This rule of construction reflects principles of customary international law – law that [we must assume] Congress ordinarily seeks to follow. (citations omitted) This rule

> of statutory construction cautions courts to assume that legislators take account of the legitimate sovereign interests of other nations when they write American laws. It thereby helps the potential conflicting laws of different nations work together in harmony – a harmony particularly needed in today's highly interdependent commercial world.

Similarly, in *Microsoft Corp. v. AT&T Corp.*, 550 U.S. 437 (2007), this Court stated that the presumption against extraterritorial application of United States law reflected the "presumption that United States law governs domestically but does not rule the world." *Id.* at 454. Likewise, in *EEOC v. Arabian American Oil Co.*, 499 U.S. 244 (1991), this Court held that the presumption against extraterritoriality "serves to protect against unintended clashes between our laws and those of other nations which could result in international discord." *See also Kiobel v. Royal Dutch Petroleum Co.*, 133 S.Ct. 1659, 1664 (2013) (citing *Benz v. Compania Naviera Hidalgo, S.A.*, 353 U.S. 138, 147 (1957) ("The presumption against extraterritorial application helps ensure that the Judiciary does not erroneously adopt an interpretation of U.S. law that carries foreign policy consequences not clearly intended by the political branches.")); *Matter of Warrant to Search Certain E-Mail Account Controlled and Maintained by Microsoft Corp.*, 829 F.3d 197 (2d Cir.

2016) (applying presumption against extraterritorial application of U.S. law to hold that the Stored Communication Act ("SCA") does not authorize a U.S. Court to enforce a SCA warrant against a U.S. service provider for customer communications located outside the U.S.). The trial court should have granted Iossifov's motion to dismiss because the allegations in the Indictment lacked the required nexus, either geographically or from the perspective of a cognizable United States interest to the charged conduct. The Indictment did not allege that Iossifov was engaged in any activities in the United States and there was no evidence introduced that Iossifov had any contact with any of the American fraud victims.

In criminal cases, questions of venue take on a constitutional dimension. *United States v. Johnson*, 323 U.S. 273 (1944). Because venue was improper here, the trial court misapplied the law in not dismissing for improper venue. In *United States v. Cabrales*, 524 U.S. 1 (1998), this Court held: "[t]he Constitution twice safeguards the defendant's venue right." *Id.* at 6. This Court cited to Article III, Section 2, cl. 3 of the United States Constitution, which provides that "[t]rial of all crimes...shall be held in the State where the said crimes shall have been committed." *Id.*

In addition, the Court cited the Sixth Amendment, which provides criminal defendants with the right "to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed." *Id.*

Rule 18 of the Federal Rules of Criminal Procedure implements the above-noted rights, providing that "the government must prosecute an offense in a district where the offense was committed." Rule 18 further provides that "[t]he court must set the place of trial within the district with due regard for the convenience of the defendant, any victim, and the witnesses, and the prompt administration of justice." This Court has stated that venue provisions are intended as safeguards to protect defendants from bias, disadvantage, and inconvenience in the adjudication of charges against them. *Travis v. United States*, 364 U.S. 631, 634 (1961). This Court has placed particular significance on proper venue in criminal cases:

> [Issues of venue] are matters that touch closely the fair administration of criminal justice and public confidence in it, on which it ultimately rests. These are important factors in any consideration of the effective enforcement of the criminal law. They have been adverted to, from time to time, by eminent judges; and Congress has not been unmindful of them. Questions of venue in criminal cases, therefore, are not merely matters of formal legal

> procedure. They raise deep issues of public policy in the light of which legislation must be construed. If an enactment of Congress equally permits the underlying spirit of the constitutional concern for trial in the vicinage to be respected rather than to be disrespected, construction should go in the direction of constitutional policy even though not commanded by it.

United States v. Johnson, 323 U.S. 273, 276.

Likewise, Iossifov's conviction must be reversed because the trial court lacked extraterritorial jurisdiction to hold him responsible for the offenses of conviction. As noted above, while "United States law governs domestically, [it] does not rule the world." *Microsoft Corp. v. AT&T Corp.*, 550 U.S. 437, 454 (2007). This premise leads to the presumption against extraterritoriality, a "longstanding principle of American law that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States." *Morrison v. Nat'l Australia Bank, Ltd.*, 561 U.S. 247 (2010) (citing *EEOC v. Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991)); *Foley Bros., Inc. v. Filardo*, 336 U.S. 281, 284-285 (1949). This presumption exists to avoid international discord that can result when United States law is applied to conduct in foreign countries. *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108, 133 S. Ct. 1659 (2013); *EEOC v. Arabian Am. Oil Co.*, 499 U.S. 244

(1991); *Benz v. Compania Naviera Hidalgo, S.A.*, 353 U.S. 138 (1957). The presumption "applies regardless of whether there is a risk of conflict between the American statute and a foreign law," *Morrison*, 561 at 255 (citing *Sale v. Haitian Ctr. Council Inc.*, 509 U.S. 155, 173-174 (1993)), and reflects the notion that "Congress generally legislates with domestic concerns in mind." *Smith v. United States*, 507 U.S. 197 (1993). Since there was no basis for prosecuting Iossifov in the United States, his conviction must be reversed.

Count 1 of the Indictment charged Iossifov with being a participant in a racketeering conspiracy in violation of 18 U.S.C. §1962(d). In *RJR Nabisco, Inc. v. European Community*, 136 S. Ct. 2090 (2016), this Court set forth the governing interpretation of extraterritorial application of the RICO statute. The Court held that the extraterritorial application of RICO's criminal provisions, including its conspiracy provision, 18 U.S.C. §1962(d), only apply extraterritorially "to the extent that the predicates alleged in [the] case[s] themselves apply extraterritorially." *Id.* at 2102. The Court held that: (1) for RICO to apply extraterritorially, the predicate statute must "manifest an unmistakable congressional intent to apply extraterritorially," (2) not all RICO predicates have

extraterritorial effect, and (3) "inclusion of some extraterritorial predicates does not mean that all RICO predicates extend to foreign conduct." *Id.* If a predicate statute does not apply extraterritorially, conduct committed abroad is not indictable under the statute and cannot qualify as a predicate RICO act. *Id.*

The trial court erred in not dismissing Count 1 for the separate and independent reason that RICO does not have extraterritorial application here because the predicate act statute alleged does not have extraterritorial application. With respect to Iossifov, the Money Laundering and Control Act ("MLCA") statute, 18 U.S.C. §1956, is the predicate statute charged as part of the alleged RICO conspiracy. The MLCA explicitly addresses the question of extraterritoriality, stating that a money laundering prosecution is appropriate if, in relevant part, "the [prohibited] conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States." 18 U.S.C. §1956(f)(1). It is undisputed that Iossifov is not a United States citizen. Thus, for the MLCA to apply extraterritorially against him, he must have engaged in conduct occurring, in part, in the United States.

Since he did not, the predicate money laundering count does not apply extraterritorially.

As a predicate act to the RICO charge (Count 1), the Indictment alleged in Count 3 that Iossifov and other alleged co-conspirators conspired to commit offenses against the United States in violation of 18 U.S.C. §1956(a)(1) and (a)(2). One element of Section 1956(a)(1) is the conduct or attempted conduct of a financial transaction involving the proceeds of specified unlawful activity. Additionally, one element of Section 1956(a)(2) requires the transport, transmittal, or transfer (or an attempt of the same) of a monetary instrument or funds.

Section 1956(c)(4) defines the term "financial transaction" to mean a transaction that involves either (i) the movement of funds, (ii) one or more monetary instruments, or (iii) the transfer of title to any real property, vehicle, vessel, or aircraft. Section 1956(c)(5) provides that a "monetary instrument" means (i) coin or currency (U.S. or foreign), travelers' checks, personal checks, bank checks, and money orders, or (ii) investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery. The Treasury Department and the IRS have addressed the government's

classification and treatment of "virtual currency" like Bitcoin in IRS Notice 2014-21. Under IRS Notice 2014-14, Bitcoin is not currency and should be treated as personal property. As a result, the Bitcoin involved in the alleged transactions does not qualify as funds or a monetary instrument as required under Sections 1956(a)(1) and 1956(a)(2). Moreover, because the subject Bitcoin is not currency, a monetary instrument, or represent title in any real property, vehicle, vessel, or aircraft, the Bitcoin transactions that Iossifov allegedly participated in do not qualify as a "financial transaction" as required under Section 1956(a)(1).

Finally, Iossifov's conviction must be reversed for jurisdictional reasons because his right to due process was violated by the trial court's improperly finding that it had jurisdiction over his case. The Due Process Clause protects a defendant's right not to be coerced except by lawful judicial power. *Giaccio v. Pennsylvania*, 382 U.S. 399 (1966). A court may subject a defendant to jurisdiction only when the defendant has sufficient contacts with the sovereign "such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *J.*

McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873 (2011) (citing *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).

Prosecution of Iossifov violated his due process rights and his conviction must be reversed. Federal courts routinely recognize that foreign nationals facing criminal prosecutions have due process rights under the Fifth Amendment of the United States Constitution. *See, e.g., United States v. Hayes*, No. 12 MJ 3229, 2015 WL 1740830, at *3-4 (S.D.N.Y. Mar. 20. 2015) (finding that a criminal complaint creates a cognizable relationship between a foreign defendant and the court in which the complaint has been filed such that the defendant may properly challenge due process violations in that forum); *In re Hijazi*, 589 F.3d 401 (7th Cir. 2009) (Lebanese citizen living in Kuwait properly raised due process objections to his Indictment); *United States v. Noriega*, 683 F. Supp. 1373, 1374-75 (S.D. Fl. 1988) (indicted *de facto* head of a foreign government permitted to file motion attacking indictment based on due process concerns); *United States v. Verdugo-Urquidez*, 494 U.S. 259, 278 (1990) (Justice Kennedy stating in his concurring opinion that "[a]ll would agree, for instance, that the dictates of the Due Process Clause of the Fifth Amendment protect the [foreign national] defendant.").

The Indictment alleges that Iossifov participated in Bitcoin exchange transactions that were completed entirely outside of the United States through Iossifov's Bitcoin exchange company consistent with Romanian law. Iossifov's company – RG Coins – is a Bulgarian entity registered to conduct business in Bulgaria. Iossifov did not conduct business in the United States nor did any of the alleged Bitcoin transactions involve U.S. businesses or U.S. citizens. Iossifov is a Bulgarian citizen, who had never set foot in the United States before his extradition. Iossifov did not reside in the United States during the period of the charged conduct and did not transact business for his company from within the United States.

The charged conduct involving Iossifov does not have substantial effect on the United States. The allegations in the Indictment against Iossifov focus solely on conduct that was part of Iossifov's everyday business activity in operating his legitimate Bitcoin exchange company in Bulgaria. Such conduct is not enough to create a substantial effect on the United States. If such minor incidental "connections" to the United States stemming from a defendant's operation of his legitimate business consistent with the laws of his country could serve as a basis of jurisdiction,

almost any business transaction could, rendering basic principles of international law and the presumption against United States jurisdiction voiced by the Supreme Court in *Microsoft*, meaningless.

Iossifov operated a legitimate Bitcoin exchange company in Bulgaria, subject to the legal requirements and regulations governing such a business under Bulgarian law. There are no allegations that Iossifov had any involvement in the fraudulent activity alleged in the Indictment. Iossifov simply participated in Bitcoin exchange transactions through his business in which "some" of the Bitcoin was allegedly purchased by unrelated third parties using the proceeds of fraudulent activity. The only established link between Iossifov and these third parties is that they were all Romanian citizens. Given that Iossifov is a Bulgarian citizen that owns and operates a Bulgarian Bitcoin exchange company, transactions involving citizens from Romania, a neighboring country, were common and expected.

Because the conduct charged in the Indictment has neither a substantial effect on the United States nor implicates a United States security or other interest, the assertion of jurisdiction violates Iossifov's due process rights. For that reason, this Court should grant certiorari to

remedy the improper exercise of jurisdiction over Iossifov's prosecution and ensure that future prosecutions are not undertaken in violation of the United States Constitution.

CONCLUSION AND PRAYER FOR RELIEF

Iossifov's conviction and sentence violated Iossifov's rights under the Fifth and/or Sixth Amendments to the United States Constitution. This Court should grant certiorari and determine that the trial court improperly exercised jurisdiction. Unconstitutional assertion of jurisdiction in extraterritorial prosecutions will continue to occur unless certiorari is granted, and this Court addresses the issues raised in this Petition. Consequently, the Court should grant certiorari and vacate Iossifov's conviction.

Respectfully submitted,

/s/ John Kevin West

John Kevin West (KY #81802)
STEPTOE & JOHNSON PLLC
41 South High Street, Suite 2200
Columbus, Ohio 43215
(614) 458-9889 phone; (614) 221-0952 fax
kevin.west@steptoe-johnson.com
Counsel for Petitioner Rossen Iossifov

CERTIFICATE OF WORD COUNT

Pursuant to Supreme Court Rule 33.1(h), I certify that the foregoing Petition for Writ of Certiorari contains 3783 words, excluding the Cover Page, the Table of Contents, the Table of Authorities and the Certificate of Service.

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on November 10, 2022, the foregoing was served via e-mail upon the following:

Haley Trogdlen McCauley
Assistant United States Attorney
260 West Vine Street, Suite 300
Lexington, KY 40507-1612
Haley.mccauley@usdoj.gov

/s/ John Kevin West
John Kevin West
Counsel for Petitioner Rossen Iossifov