

IN THE SUPREME COURT OF THE UNITED STATES

No. A-_____

ADAM SAMIA, APPLICANT

v.

UNITED STATES OF AMERICA

APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

To the Honorable Sonia Sotomayor, Circuit Justice for the United States Court of Appeals for the Second Circuit:

Pursuant to Rules 13.5 and 30.2 of this Court, counsel for Adam Samia respectfully requests a 45-day extension of time, to and including September 2, 2022, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case. The Second Circuit entered its judgment on April 20, 2022. App., infra, 1a-14a. Unless extended, the time for filing a petition for a writ of certiorari will expire on July 19, 2022. The jurisdiction of this Court would be invoked under 28 U.S.C. 1254(1).

1. This case presents the question whether the redaction of the confession of a nontestifying co-defendant that implicates the defendant violates the Sixth Amendment when the defendant's identity is immediately obvious when considered with the surrounding context. Applicant was convicted of several counts involving the

murder of a real-estate agent that took place in the Philippines under the orders of Paul LeRoux, the head of a global criminal organization. Applicant was tried along with two co-defendants, both of whom admitted to participating in the murder and premised their defense only on jurisdictional issues. Applicant alone maintained his innocence. In an interview with police, one of the co-defendants admitted to being in the car with the victim when she was killed. He claimed that he was the driver and that applicant shot the victim. The government sought to introduce that out-of-court confession at trial, with redactions replacing applicant's name with references to "another person" or similar neutral substitutions. After requiring a few additional redactions, the district court agreed and issued an oral ruling that introducing the confession comported with applicant's rights under the Sixth Amendment.

During the course of the two-week trial, the government attempted to establish that applicant was one of the two killers, relying heavily on inferences from e-mails interpreted by cooperating witnesses who ran the criminal organization (including Paul LeRoux). The government presented no physical evidence that applicant participated in the killing, nor did it present statements (aside from the co-defendant's confession) from any individuals with first-hand knowledge of the day's events.

In its opening statement, the government asserted that the co-defendant drove a van in the area outside of Manila while applicant "was in the passenger seat," and that applicant pulled out a gun, "turned around, aimed carefully and shot [the victim]."

C.A. App. 466. The government then listed some of the "most crucial testimony" it would use to support that assertion. Id. at 468. Referring to the confession that could be considered only against the co-defendant, the government stated that the co-defendant "admitted to driving the car while the man he was with turned around and shot [the victim]." Ibid.

When introducing the confession itself, the government presented oral testimony about the statements through an agent from the Drug Enforcement Administration. Despite its complete control over the portions of the confession that were presented to the jury, the government elicited extensive testimony specific to applicant. The government asked the witness whether the co-defendant had stated that he traveled to the Philippines with someone else; where the other person had lived; whether the other person had a firearm; what type of firearm that person had; and when that person had the gun in their possession. The district court instructed the jury that the testimony was admissible only as to the co-defendant and not against applicant. At the close of the trial, and after the government used its closing argument again to connect the confession to applicant, the jury convicted all three co-defendants on all counts.

2. On appeal, applicant argued in relevant part that the introduction of the co-defendant's confession violated his rights under the Confrontation Clause of the Sixth Amendment, citing this Court's decisions in Bruton v. United States, 391 U.S. 123 (1968); Richardson v. Marsh, 481 U.S. 200 (1987); and Gray v. Maryland, 523 U.S. 185 (1998). Those cases establish that the Constitution

forbids the use in a joint trial of a co-defendant's confession that incriminates another defendant, even where the jury is instructed that it cannot consider the confession as to the petitioner. See, e.g., Bruton, 391 U.S. at 137. In such circumstances, the "risk that the jury will not, or cannot, follow instructions is so great, and the consequences of failure so vital to the defendant, that the practical and human limitations of the jury system cannot be ignored," and the instruction cannot serve as an "adequate substitute for [the] constitutional right of cross-examination." Id. at 135, 137. In Richardson and Gray, the Court addressed Bruton's application to redacted confessions. Where the confession "omit[s] all reference" to the defendant, including "any reference to his or her existence," the Court held that Bruton is not violated. Richardson, 481 U.S. at 211. But where the fact of redaction is obvious to the jury, such that the jury will "realize that the confession refers specifically to the defendant" even if the prosecution does not "blatantly link the defendant to the deleted name," a Bruton violation occurs. Gray, 523 U.S. at 193.

In this case, applicant argued that the redaction of his name was insufficient to cure the Bruton problem because it was immediately obvious that the confession implicated him, based both on the questioning eliciting the confession and on the prosecutor's opening statement effectively linking the confession to applicant. The court of appeals disagreed. Applying binding circuit precedent, the court of appeals considered the redacted statements "separate and apart from any other evidence admitted at trial,"

and it concluded that the use of “neutral terms” that did not “explicit[ly] identif[y]” applicant was sufficient. App., infra, 8a (citation omitted; alterations in original).

3. In mandating consideration of the co-defendant’s statement in isolation, the court of appeals’ decision implicates a circuit conflict. Five circuits have held that a court must consider broader context surrounding the trial and the introduction of the confession. See, e.g., United States v. Vega Molina, 407 F.3d 511, 520 (1st Cir.), cert. denied, 546 U.S. 919 (2005); United States v. Hardwick, 544 F.3d 565, 569 (3d Cir. 2008), cert. denied, 555 U.S. 1200 (2009); United States v. Hoover, 246 F.3d 1054, 1059 (7th Cir.), cert. denied, 534 U.S. 1033 (2001); United States v. Schwartz, 541 F.3d 1331, 1351 (11th Cir. 2008), cert. denied 556 U.S. 1130 (2009); United States v. Straker, 800 F.3d 570, 598 (D.C. Cir. 2015), cert. denied, 577 U.S. 1147 (2016). By contrast, three other circuits have joined the Second Circuit in holding that a court’s review is limited to the four corners of the redacted confession. See United States v. Lighty, 616 F.3d 321, 377 (4th Cir.), cert. denied, 562 U.S. 1118 (2010); United States v. Logan, 210 F.3d 820, 822 (8th Cir.) (en banc), cert. denied, 531 U.S. 1053 (2000); United States v. Verduzco-Martinez, 186 F.3d 1208, 1214 (10th Cir. 1999).

3. Counsel for applicant respectfully requests a 45-day extension of time, to and including September 2, 2022, within which to file a petition for a writ of certiorari. This case presents complex issues concerning the Sixth Amendment on which the courts of appeals are divided. In addition, counsel for applicant is

responsible for preparing the brief of appellant in City of Warwick Municipal Employees Pension Fund v. Restaurant Brands International Inc., No. 2022-2336 (N.Y. Sup. Ct. App. Div. 1st Dep't) (due July 11, 2022); the brief of appellee in Siasia v. Fédération Internationale de Football Association, No. 22-72 (2d Cir.) (due July 14, 2022); the supplemental brief of appellant in Reagan National Advertising of Austin, Inc. v. City of Austin, No. 19-50354 (5th Cir.) (due July 21, 2022); and the reply brief of appellant in Arkansas Teachers Retirement System v. Goldman Sachs Group, Inc., No. 22-484 (2d Cir.) (due Aug. 3, 2022). Additional time is therefore needed to prepare and print the petition in this case.

Respectfully submitted.

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July 7, 2022