No. 23-485

In the Supreme Court of the United States

JESUS ARLEY MUNERA-GOMEZ, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the government violated petitioner's constitutional rights by declining to immunize a potential defense witness.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-24a) is reported at 70 F.4th 22. The order of the district court is unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 7, 2023. On August 24, 2023, Justice Jackson extended the time within which to file a petition for a writ of certiorari to and including November 3, 2023. The petition for a writ of certiorari was filed on November 1, 2023. 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 District of Massachusetts, petitioner was convicted of attempting to possess five kilograms or

more of cocaine with intent to distribute, in violation of 21 U.S.C. 841(b)(1)(A) and 846. Judgment 1. The district court sentenced petitioner to 120 months of imprisonment, to be followed by five years of supervised release. Judgment 2, 3. The court of appeals affirmed. Pet. App. 1a-24a.

1. In August 2019, a confidential source for the U.S. Drug Enforcement Administration approached petitioner in a billiards bar after hearing someone refer to petitioner as "Pikachu." Pet. App. 2a. Based on his recollection of that nickname as belonging to someone who had supplied cocaine to his former business partner, Fabio Quijano, the confidential source introduced himself to petitioner, and the two subsequently interacted on several occasions at the billiards bar. *Id.* at 2a-3a. During one of those interactions, the confidential source broached the subject of doing a drug transaction with petitioner. *Ibid.*

On October 23, 2019, the confidential source and petitioner met at a restaurant and had a recorded discussion about the drug transaction. Pet. App. 3a. During the meeting, petitioner stated that he was then getting between twenty and thirty kilograms of cocaine from a Mexican supplier. *Ibid.* When the confidential source told petitioner that, if they closed a drug deal, petitioner would have to cover the transportation costs for the cocaine up front, petitioner agreed, stating, "That's the way it is. Yes." *Ibid.*

Approximately two weeks later, petitioner had another recorded conversation with the confidential source, this time at a cafe. Pet. App. 3a. The confidential source told petitioner that he could get a few hundred kilograms of cocaine. *Ibid.* Petitioner told the confidential source that his interest in a deal depended on

the price. *Id.* at 3a-4a. Petitioner explained that he was then getting cocaine at "twenty-nine and a half" (that is, $29,500), and they then discussed the possibility of petitioner buying drugs at $28,000 per kilogram. *Id.* at 4a. Petitioner stated that he needed about eight days to get $150,000-$200,000 to purchase the cocaine. *Ibid.* Petitioner indicated that he understood that the confidential source's suppliers would want to make large sales because "[i]t's better for them. They can't be all over the place with twenty, ten . . . ," and petitioner also observed that in selling cocaine, "many times you're making six thousand, four thousand but with a lot of back and forth." *Ibid.*

Petitioner and the confidential source met for another recorded meeting on January 21, 2020. Pet. App. 4a. During that meeting, the confidential source told petitioner that the cocaine was set to arrive. *Ibid.* When the confidential source asked petitioner how much he wanted, petitioner reiterated that it depended on the price, now claiming that he was obtaining cocaine for $28,000 per kilogram from a different supplier, and that he purchased around 20 kilograms of cocaine per month. *Ibid.* After some back and forth, the confidential source agreed to a price of $27,000 per kilogram. *Ibid.*

The day before the anticipated drug transaction, the confidential source and petitioner met to discuss logistics, including how much money petitioner was going to pay up front and where the transaction would occur. Pet. App. 5a. Petitioner mentioned that he had been "shorted on cocaine in the past." *Ibid.* The following day, the confidential source and petitioner met at petitioner's apartment building to complete the transaction. *Ibid.* Petitioner showed the confidential source the

money that he was providing, packaged in bundles of $10,000 and $50,000, and told the confidential source to take a photo of the cash as proof for the drug suppliers. *Ibid.* The confidential source then left, returning with undercover agents, who handed petitioner a bag containing fake cocaine, and then placed him under arrest. *Id.* at 5a-6a. The officers recovered $200,000 from petitioner's apartment. *Id.* at 6a.

2. A grand jury in the District of Massachusetts returned an indictment charging petitioner with attempting to possess with intent to distribute five kilograms or more of cocaine, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(A), 846. Indictment 1; Pet. App. 6a. Before trial, and at petitioner's request, the government interviewed the confidential source to learn more about why he initially decided to approach petitioner at the billiards bar. Pet. App. 6a. The confidential source stated that he had worked with a man named Fabio Quijano in 2016 and 2017; that Quijano had purchased kilogram-quantities of cocaine from a Colombian man called "Pikachu"; and that the confidential source had approached petitioner in the bar after hearing someone call him "Pikachu." *Ibid.* The government then interviewed Quijano, who was under indictment for 2018 and 2020 drug-trafficking and money-laundering offenses. *Ibid.* During his proffer, Quijano acknowledged that he knew petitioner but said he had never engaged in drug activity with him. *Ibid.*

Anticipating that Quijano would assert a Fifth Amendment privilege if called to testify, petitioner asked the government to "exercise its authority under 18 U.S.C. § 6001 - 6003 to immunize Mr. Quijano." C.A. Sealed Supp. App. at 6; Pet. App. 6a. After the government declined to do so, petitioner asked the district

court to grant Quijano use immunity, under which the government would be precluded from using any testimony from Quijano, or any evidence traceable to that testimony, in a prosecution of Quijano. C.A. Sealed Supp. App. 1-14. The district court denied petitioner's request at the final pretrial conference, finding "no evidence that the prosecution has withheld immunity in an attempt to distort the factfinding process." Pet. App. 30a.

At trial, petitioner admitted to the underlying offense conduct but advanced an entrapment defense. Pet. App. 7a. Petitioner admitted that he went by the nickname "Pikachu" but testified that he had never previously engaged in drug trafficking and had never worked with Quijano to import cocaine into the country. D. Ct. Doc. 102, at 80-81 (Feb. 14, 2022). After a four-day trial, the jury found petitioner guilty. Pet. App. 7a. The district court sentenced him to 120 months of imprisonment, to be followed by five years of supervised release. *Ibid.*; Judgment 2, 3.

3. The court of appeals affirmed. Pet. App. 1a-24a.

On appeal, petitioner argued that the district court's denial of petitioner's request to order the government to grant Quijano use immunity resulted in a denial of due process and an unfair trial. Pet App. 7a. Petitioner asserted that, had Quijano testified, his testimony would have directly contradicted the confidential source's testimony regarding petitioner's prior drug-trafficking work with Quijano, thereby "discredit[ing]" the confidential source and undermining the government's evidence establishing petitioner's "predisposition to engage in drug trafficking." *Id.* at 12a; see *id.* at 7a-8a.

The court of appeals disagreed with petitioner's contention that the Constitution compelled the district court to order the government to grant Quijano use immunity. Pet. App. 7a-13a. The court of appeals explained that "'the power and discretion to immunize witnesses lies primarily with the prosecution,'" and "[a] district court may circumvent the government's discretionary call only in the rare circumstance that a prosecutor abuses his or her discretion by intentionally attempting to distort the fact-finding process, thus violating a defendant's due process rights." *Id.* at 8a (citation and internal quotation marks omitted).

The court of appeals observed that under circuit precedent, "where the government offers a plausible reason for denying use immunity to a defense witness, such an assertion 'adequately deflects any insinuation that the government's handling of the witness was motivated by the sole purpose of keeping exculpatory evidence from the jury.'" Pet. App. 8a-9a (brackets and citation omitted). And the court credited the government's stated reason for refusing to immunize Quijano's testimony—"avoiding potential obstacles to Quijano's prosecution on pending federal charges"—as "exactly the type of rationale" the court had "continuously recognized as fending off a claim of prosecutorial misconduct." Pet. App. 9a.

The court of appeals stated that such a good-faith justification, coupled with petitioner's "concession" that the government had not acted in bad faith, "would normally end" the court's inquiry. Pet. App. 9a. But it then noted that petitioner had asked the court to find a constitutional violation based "primarily on Ninth Circuit jurisprudence" and its own decision in *United States* v. *Mackey*, 117 F.3d 24 (1st Cir.), cert. denied, 522 U.S.

975 (1997), which described an "'effective defense theory," under which "a strong need for exculpatory testimony can override even legitimate, good faith objections by the prosecutor to a grant of immunity," *id.* at 28. The court explained that, while it had "repeatedly rejected" an "effective defense theory," its prior decision in *Mackey* "may have left open the possibility of an exceedingly narrow 'exception' to that rejection in circumstances involving 'very extreme facts.'" Pet. App. 10a-11a (citation omitted).

The court of appeals then explained that the facts of this case did not fall within the narrow exception *Mackey* contemplated. Pet. App. 11a. The court observed that the "government's interest in withholding use immunity from Quijano was far from 'trivial'" because the government "had a legitimate interest in avoiding potential obstacles" to Quijano's own prosecution that might have arisen if he were immunized. *Ibid.* (citation omitted). And the court further found that petitioner had not shown an "overwhelming need for specific exculpatory evidence that can be secured in no way other than through the grant of immunity" because petitioner himself had provided testimony disclaiming any past work with Quijano, and because the government had presented ample evidence of petitioner's predisposition to drug trafficking that was unrelated to his alleged past work with Quijano. *Id.* at 12a. In particular, the government had "introduced transcripts of recordings where [petitioner] is caught discussing, among other things, his Mexican drug supplier, how much a kilogram of cocaine costs him, his profits from drug sales, and other intricacies of the drug trade." *Id.* at 13a. "Given this evidence," the court determined that petitioner could not "show an 'overwhelming need' for

Quijano's immunized testimony to avoid 'a complete miscarriage of justice.'" *Ibid.*

ARGUMENT

Petitioner renews his contention (Pet. 10-35) that the government violated his constitutional rights by declining to immunize Quijano. The court of appeals correctly rejected that contention, and petitioner overstates the practical significance of the purported division in the circuits regarding when, if ever, the government may be required to grant use immunity as a condition of proceeding with a prosecution. This Court has recently and repeatedly denied petitions for writs of certiorari raising the issue.[1] It should follow that same course here.

1. The Fifth Amendment's Self-Incrimination Clause guarantees that "[n]o person * * * shall be compelled in any criminal case to be a witness against himself." U.S. Const. Amend. V. The government may overcome a witness's privilege against self-incrimination by immunizing him from the use of the compelled testimony and any evidence derived from that testimony. See *Kastigar* v. *United States*, 406 U.S. 441, 453 (1972). A court, however, has no authority to compel the

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[1] See, *e.g.*, *Jones* v. *United States*, 143 S. Ct. 2560 (2023) (No. 22-785); *Aviles* v. *United States*, 139 S. Ct. 1619 (2019) (No. 18-772); *Davis* v. *United States*, 538 U.S. 816 (2017) (No. 16-1190); *Viloski* v. *United States*, 575 U.S. 935 (2015) (No. 14-472); *Wilkes* v. *United States*, 574 U.S. 1049 (2014) (No. 14-5591); *Quinn* v. *United States*, 572 U.S. 1063 (2014) (No. 13-7399); *Brooks* v. *United States*, 568 U.S. 1085 (2013) (No. 12-218); *Walton* v. *United States*, 568 U.S. 1085 (2013) (No. 12-5847); *Phillips* v. *United States*, 568 U.S. 1085 (2013) (No. 12-5812); *Singh* v. *New York*, 555 U.S. 1011 (2008) (No. 08-165); *Ebbers* v. *United States*, 549 U.S. 1274 (2007) (No. 06-590); *DiMartini* v. *United States*, 524 U.S. 916 (1998) (No. 97-1809); *Wilson* v. *United States*, 510 U.S. 1109 (1994) (No. 93-607); *Whittington* v. *United States*, 479 U.S. 882 (1986) (No. 85-1974).

government to grant such immunity. See *United States* v. *Doe*, 465 U.S. 605, 616 (1984); *Pillsbury Co.* v. *Conboy*, 459 U.S. 248, 261 (1983).

The decision to grant use immunity "necessarily involves a balancing of the Government's interest in obtaining information against the risk that immunity will frustrate the Government's attempts to prosecute the subject of the investigation." *Doe*, 465 U.S. at 616. Once a witness receives immunity, a prosecution of the witness must satisfy "the heavy burden of proving that all of the evidence it proposes to use was derived from legitimate independent sources" rather than from the immunized statements. *Kastigar*, 406 U.S. at 461-462. Article II's Vesting Clause and Take Care Clause accordingly place the authority to weigh the government's competing prosecutorial interests—like the authority to make other prosecutorial decisions—in the Executive Branch. See U.S. Const. Art. II, §§ 1, 3. And the federal use-immunity statute grants the Department of Justice "exclusive authority" to confer immunity. *Conboy*, 459 U.S. at 254; see 18 U.S.C. 6003.

Contrary to petitioner's argument (Pet. 10-36), the Due Process and Compulsory Process Clauses of the Fifth and Sixth Amendments do not override that allocation of authority. The Sixth Amendment's Compulsory Process Clause provides that "[i]n all criminal prosecutions, the accused shall enjoy the right * * * to have compulsory process for obtaining witnesses in his favor." U.S. Const. Amend. VI. Together with the Due Process Clause, the Compulsory Process Clause guarantee a defendant a right "to present a complete defense," *Holmes* v. *South Carolina*, 547 U.S. 319, 324 (2006) (citation omitted), but that right is not absolute. "The accused does not have an unfettered right to offer

testimony that is incompetent, privileged, or otherwise inadmissible under standard rules of evidence." *Taylor* v. *Illinois*, 484 U.S. 400, 410 (1988). And the Self-Incrimination Clause and the use-immunity statute are both "standard rules," *ibid.*, relating to the admission of evidence at trial.

A regime in which criminal defendants could force the government to immunize defense witnesses would create not only separation-of-powers problems, but practical ones as well. For example, it would encourage "cooperative perjury" among defendants and their witnesses. *United States* v. *Turkish*, 623 F.2d 769, 775 (2d Cir. 1980), cert. denied, 449 U.S. 1077 (1981). "Co-defendants could secure use immunity for each other, and each immunized witness could exonerate his co-defendant at a separate trial by falsely accepting sole responsibility for the crime, secure in the knowledge that his admission could not be used at his own trial for the substantive offense." *Ibid.* "A person suspected of [a] crime should not be empowered to give his confederates an immunity bath." *In re Kilgo*, 484 F.2d 1215, 1222 (4th Cir. 1973).

2. The courts of appeals uniformly agree that, as a general matter, a court has no authority to grant (or to compel the government to grant) use immunity to a witness whom the defendant would like to call to the stand. See *United States* v. *Castro*, 129 F.3d 226, 232 (1st Cir. 1997), cert. denied, 523 U.S. 1100 (1998); *Turkish*, 623 F.2d at 772-773 (2d Cir.); *United States* v. *Quinn*, 728 F.3d 243, 260-261 (3d Cir. 2013) (en banc), cert. denied, 572 U.S. 1063 (2014); *United States* v. *Moussaoui*, 382 F.3d 453, 466-467 (4th Cir. 2004), cert. denied, 544 U.S. 931 (2005); *United States* v. *Brooks*, 681 F.3d 678, 711 (5th Cir. 2012), cert. denied, 568 U.S. 1085 (2013);

United States v. *Pennell*, 737 F.2d 521, 527-528 (6th Cir. 1984), cert. denied, 469 U.S. 1158 (1985); *United States* v. *Herrera-Medina*, 853 F.2d 564, 568 (7th Cir. 1988); *United States* v. *Capozzi*, 883 F.2d 608, 613-614 (8th Cir. 1989), cert. denied, 495 U.S. 918 (1990); *United States* v. *Alessio*, 528 F.2d 1079, 1081-1082 (9th Cir.), cert. denied, 426 U.S. 948 (1976); *United States* v. *Serrano*, 406 F.3d 1208, 1217 (10th Cir.), cert. denied, 546 U.S. 913 (2005); *United States* v. *Cuthel*, 903 F.2d 1381, 1384 (11th Cir. 1990); *United States* v. *Perkins*, 138 F.3d 421, 424 (D.C. Cir.), cert. denied, 523 U.S. 1143 (1998).

The courts of appeals also agree that a court may order the government to choose between granting immunity and taking some other act (such as dismissing the charges), if ever, only in narrow circumstances. Specifically, most courts to consider the issue have concluded that a district court may issue such an order only to provide a remedy for certain forms of prosecutorial misconduct. See, *e.g.*, *United States* v. *Anguilo*, 897 F.2d 1169, 1191-1192 (1st Cir.), cert. denied, 498 U.S. 845 (1990); *United States* v. *Ebbers*, 458 F.3d 110, 118-120 (2d Cir. 2006), cert. denied, 549 U.S. 1274 (2007); *Quinn*, 728 F.3d at 247-248, 261 (3d Cir.); *United States* v. *Washington*, 398 F.3d 306, 310 (4th Cir.), cert. denied, 545 U.S. 1109 (2005); *Brooks*, 681 F.3d at 711 (5th Cir.); *United States* v. *Emuegbunam*, 268 F.3d 377, 401 & n.5 (6th Cir. 2001), cert. denied, 535 U.S. 977 (2002); *United States* v. *Taylor*, 728 F.2d 930, 935 (7th Cir. 1984); *United States* v. *Blanche*, 149 F.3d 763, 768-769 (8th Cir. 1998); *Serrano*, 406 F.3d at 1218 n.2 (10th Cir.); *United States* v. *Sawyer*, 799 F.2d 1494, 1506-1507 (11th Cir. 1986) (per curiam), cert. denied, 479 U.S. 1069 (1987).

3. Petitioner nonetheless contends (Pet. 11-20) that this Court should grant a writ of certiorari because of alleged differences in the way that the circuits approach the use-immunity question (*ibid.*). But he fails to identify any disagreement that would implicate the facts of this case.

Petitioner's claim of a circuit conflict focuses principally on the Sixth and Ninth Circuits. He contends, for example, that in the Sixth and Ninth Circuits, "immunity for a defense witness's testimony may be warranted if 'the government selectively grant[s] immunity to its own witnesses but denie[d] immunity to the defendant's witnesses." Pet. 12 (quoting *United States* v. *Meda*, 812 F.3d 502, 518 (6th Cir. 2015), cert. denied, 578 U.S. 913 (2016)).

But in *United States* v. *Meda*, the Sixth Circuit decision that petitioner quotes for that proposition, the Sixth Circuit refused to find a constitutional violation in the face of the government's allegedly selectively use of immunity, explaining that "a defendant does not have an automatic right to have his or her witnesses immunized simply because the prosecution relies on immunized witnesses to make its case." 812 F.3d at 518.
And the Ninth Circuit decision on which petitioner relies, *United States* v. *Straub*, 538 F.3d 1147 (2008), concluded that the defendant's due-process rights had been violated based on a combination of factors that are not present in this case.

Among other things, in *Straub*, the government had denied immunity to "[t]he only defense witness listed," while immunizing (or granting other benefits to) 12 of the 13 prosecution witnesses," 538 F.3d at 1164; the defense witness's testimony, if believed, would have "ma[de] the government's key witness both a perjurer

and possibly the actual perpetrator of the crime," *id.* at 1162, and the government had expressly disclaimed any "interest in prosecuting [the defense] witness" to whom it had denied immunity, *id.* at 1164. The circumstances here are not analogous.

The Ninth Circuit's decision in *Straub* moreover emphasized that, even in that circuit's view, judicial intervention would be appropriate only in "rare" and "exceptional" cases. 538 F.3d at 1162, 1166. In particular, it cautioned that a court should compel the government to choose between granting use immunity and dismissing the charges only "in exceptional cases" when "the fact-finding process [is] distorted through the prosecution's decisions to grant immunity to its own witness while denying im-munity to a witness with directly contradictory testimony." *Id.* at 1166. And in the almost 15 years since *Straub*, the Ninth Circuit has repeatedly rejected claims of a constitutional violation based on the government's refusal to grant use-immunity, suggesting that *Straub* has exceedingly narrow application. See *United States* v. *Loza*, No. 20-50062, 2022 WL 3210700, at *2 (Aug. 9, 2022); *United States* v. *Kuzmenko*, 671 Fed. Appx. 555, 556 (2016); *United States* v. *Lopez-Banuelos*, 667 Fed. Appx. 959, 960 (2016); *United States* v. *Miller*, 546 Fed. Appx. 709, 710 (2013).

Nor does petitioner identify any decision of another circuit requiring dismissal of charges in circumstances like his—or even standards that would indicate such a possibility. Petitioner suggests (Pet. 16), for example, that the Third Circuit applies a "relaxed" standard that is easy for a defendant to satisfy. But in *Quinn*, the *en banc* court explained that a defendant cannot claim a constitutional violation based on a denial of use immunity unless he can make at least five distinct showings:

"[1] Immunity must be properly sought in the district court; [2] the defense witness must be available to testify; [3] the proffered testimony must be clearly exculpatory; [4] the testimony must be essential; and [5] there must be no strong governmental interests which countervail against a grant of immunity." 728 F.3d at 262 (brackets and citation omitted). And he appears to recognize that his claim would not be strong enough to prevail in the additional circuits whose decisions he cites.

Indeed, in almost every case cited by petitioner, including *Quinn*, the deciding court rejected the assertion that use immunity was constitutionally required.[2] The lone exception, aside from *Straub*, is *United States* v. *Morrison*, 535 F.2d 223 (3d Cir. 1976), a nearly 50-year-old pre-*Quinn* case in which the prosecutor intimidated a witness, and then called her to the stand to testify affirmatively for the prosecution, while she invoked her Fifth Amendment rights on issues that would have been helpful to the defense. See *id.* at 225-229. It is far from clear that the Third Circuit, post-*Quinn*, would

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[2] See *United States* v. *Dalton*, 918 F.3d 1117, 1131 (10th Cir. 2019); *United States* v. *Hager*, 879 F.3d 550, 556 (5th Cir.), cert. denied, 138 S. Ct. 2661 (2018); *United States* v. *Stewart*, 907 F.3d 677, 685 (2d Cir. 2018); *Meda*, 812 F.3d at 518; *United States* v. *Foster*, 701 F.3d 1142, 1155 (7th Cir. 2012); *Ebbers*, 458 F.3d at 119; *Blanche*, 149 F.3d at 768; *Mackey*, 117 F.3d at 28; *United States* v. *Abbas*, 74 F.3d 506, 512 (4th Cir.), cert. denied, 517 U.S. 1229 (1996); *Pennell*, 737 F.2d at 529; *Taylor*, 728 F.2d at 935; *Turkish*, 623 F.2d at 777-778; *Earl* v. *United States*, 361 F.2d 531, 534 (D.C. Cir. 1966), cert. denied, 388 U.S. 921 (1967); see also *United States* v. *Allebban*, 578 Fed. Appx. 492, 505 (6th Cir. 2014) (finding immunity claim was forfeited). In *United States* v. *Wilkes*, the Ninth Circuit initially remanded for further fact-finding, 662 F.3d 524, 534 (2011), but ultimately denied relief, 744 F.3d 1101, 1106 (2014), cert. denied, 574 U.S. 1049 (2014).

view it as compelling relief on the different facts of petitioner's case. Nor does petitioner provide any reason to conclude that any other circuit would grant him relief.

3. This is simply not a case in which petitioner can show that his right "to present a complete defense," *Holmes*, 547 U.S. at 324 (citation omitted), was denied. Petitioner "does not contend that the government acted in bad faith." Pet. App. 9a. The government had a "legitimate interest" in withholding immunity because it was "safeguarding its then-ongoing prosecution of Quijano." *Id.* at 11a. And petitioner is unable to show that he needed Quijano's testimony in order for any fair trial on the charge to proceed.

If petitioner were concerned that the jury would take the confidential source's testimony about associating petitioner's nickname with someone who had been involved in a drug deal with Quijano, he could have sought a limiting instruction to that effect. In the courts below, petitioner asserted that he needed Quijano's testimony to support his entrapment defense because Quijano's testimony would undermine the government's evidence of predisposition. Pet. App. 7a-8a, 12a. But as the court of appeals explained, the government did not need to rely on the confidential source's testimony to establish predisposition. *Ibid.* The government had transcripts of recorded conversations in which petitioner showed a deep familiarity with the drug trade, and in which petitioner told the confidential source that he was already buying large quantities of cocaine from another supplier and that his desire to switch to dealing with petitioner depended on price. *Ibid*; see pp. 2-3, *supra*.

In these circumstances, petitioner cannot show that any court of appeals would have found a constitutional

violation based on the government's refusal to grant Quijano immunity. And even if he could, any error here would not have affected the jury's verdict. See Fed. R. Crim. P. 52. Further review in this Court is accordingly unwarranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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