No. _____

IN THE SUPREME COURT OF THE UNITED STATES

MANNY JACKSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Do the Fifth and Sixth Amendments guarantee a defendant the right to call a percipient witness to nearly the entirety of the Government's evidence presented in the prosecution's case-in-chief, or may a district court preclude such percipient witness testimony as irrelevant?

STATEMENT OF RELATED CASES

United States v. Jackson, Case No. 13 Cr. 484-CAS-62, Central District of California (Snyder, J.). Judgment entered March 2, 2020. Docket Entry 1342.

United States v. Jackson, Case No. 20-50057, United States Court of Appeals for the Ninth Circuit. Memorandum disposition filed March 12, 2024. Docket Entry 80; *see also* Pet. Appx. Motion for Rehearing denied June 10, 2024. Docket Entry 84.

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JURISDICTION

The court of appeals filed its memorandum on March 12, 2024. It denied rehearing on June 10, 2024. This Court possesses jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const. Amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. Amend. VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

STATEMENT OF THE CASE

In July 2013, a grand injury indicted 11 defendants, including Petitioner, on one count of conspiracy to possess with intent to distribute and to distribute controlled substances in violation of 21 U.S.C. § 846 (Count One). 3-ER-496.[1] The indictment further charged Petitioner with two separate drug offenses, including the January 31, 2012, alleged receipt of methamphetamine for distribution (Count Five), *viz.*, the sole count of conviction.

All parties filed extensive pre-trial motions, including Petitioner's objections to the Government's motion *in limine* to preclude the defense from calling confidential informant Ralph Rocha ("CS-1") as a trial witness.

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[1] As used herein, "ER" refers to Appellant's Excerpts of Record, with the volume number preceding and the page number following (filed at Ninth Circuit docket 33; "CR" refers to the Clerk's Record of district court proceedings, followed by the ECF-generated page numbers; and "Ex." to trial exhibits. "AOB" and "GAB" refer to Appellant's Opening Brief and the Government's Answering Brief, followed by page number; these briefs are filed at entries 32 and 51, respectively, on the Ninth Circuit's docket. "Pet. App'x" refers to Petitioner's Appendix, containing the panel's slip opinion, followed by pin cite.

Throughout this brief, unless otherwise indicated, emphases were added to quotations while internal quotation marks, citations, footnotes, ellipses, parallel citations, and the like were omitted from them.

Trial commenced March 26, 2019. The Government's primary evidence comprised of edited clips of surreptitiously recorded conversations centered around confidential informant Rocha, gleaned from "thousands" of recordings over the course of the investigation. 2-ER-291; 3-ER-583–627 (list of recordings admitted). Defendants made repeated challenges to the admission of the recordings. 9-ER-2057–58. *See also* pre-trial motions at CR 868, CR 867, CR 871.

Instead of having Rocha testify at trial, and then corroborate his testimony with the recordings, the Government kept Rocha off the stand, played the select and edited recordings for the jury, and had their case agents interpret them, over continuing defense objections for, *inter alia*, lack of foundation, violation of the confrontation clause, hearsay, and speculation. 12-ER-2665; 16-ER-3801; 13-ER-3076–77; 14-ER-3197–201. *See also* pre-trial motions CR 867, 2-ER-240–41. The district court allowed lay opinion testimony with a limiting instruction that the jury was free to reject the interpretation of the law enforcement officer. 8-ER-1553–54; 14-ER-3200–01. The district court also instructed the jury that recordings of Rocha's statements were offered as "context" and not for the truth of the matter asserted. 17-ER-3914–15; 12-ER-2667.

Relying on recordings and lay opinions of their case agents, the Government attempted to establish a conspiracy between two separate Hispanic organizations: La Familia and the Mexican Mafia (Count One). The recordings also provided evidence of separate drug offenses (Counts Five and Six). According to the recordings, in early 2012, Rocha (a made Mexican Mafia member *and* active Government informant) negotiated with La Familia leader F. Montes and placed two orders of methamphetamine for himself, and one order on behalf of Petitioner. At trial, Petitioner raised a continuing objection to the admission of all "co-conspirator" statements under Fed. R. Ev. 801(d)(2)(E). 9-ER-1989–90. *See also* pre-trial motion at CR 868. The Government presented no direct evidence about the substance delivered to Petitioner's courier, and instead argued that circumstantial evidence proved he possessed two pounds of methamphetamine with the intent to distribute (Count Five). The Government further argued that Petitioner aided and abetted in the delivery of methamphetamine to Rocha (Count Six).

At the close of the Government's case, Petitioner made a Rule 29 motion, and the district court reserved judgment. 18-ER-4074–75. Defendants then proffered a myriad of permissible reasons for calling Rocha to testify in the defendants' case. CR 1159; CR 1156. But the district court found that defendants'

primary purpose was impeachment before ruling that Rocha did not possess relevant evidence regarding the charged counts. 1-ER-64–65, 77; 1-ER-118–19; *see also* GAB 54.

After deliberating for five days, the jury acquitted Petitioner of drug conspiracy (Count One) and the February 3, 2012, drug charge (Count Six). 2-ER-224, 230. It found Petitioner guilty of possession of methamphetamine with intent to distribute on January 31, 2012 (Count Five). 2-ER-228–29. But the jury rejected the quantity findings and determined that the evidence did *not* prove beyond a reasonable doubt that Petitioner possessed more than 500 grams of a mixture containing a detectable amount of methamphetamine. Similarly, the jury rejected the requested finding that Petitioner possessed more than 50 grams. *Id.*

At sentencing, notwithstanding the jury's rejection of Petitioner's responsibility for possessing more than 50 grams of methamphetamine, the district court found by a preponderance of evidence that Petitioner possessed two pounds (about 907 grams) of methamphetamine. 2-ER-205. The district court imposed the maximum sentence of 20 years. 2-ER-217.

Petitioner timely appealed. 1-ER-2; 5-ER- 987. He raised six claims for relief plus a claim of cumulative error. Dkt. 32. The Ninth Circuit denied each of them. *See* Pet. App'x. Of note here, the panel found that "[t]he district court did

not abuse its discretion in admitting the lay opinion of law enforcement officer[s]" because their testimony "interpret[ed] ambiguous conversations." Pet. App'x 5. Similarly, the panel ruled that the prosecution could keep Rocha off the stand, and introduce his recorded statements, without violating Petitioner's rights under the Confrontation Clause. Pet. App'x. 6-7. Petitioner does not seek review of those rulings.

In contrast, he challenges the panel's ruling that the "district court did not violate Petitioner's right to present a defense by barring him from calling Rocha to testify." Pet. App'x 7. In so ruling, the panel confirmed the district court's erroneous ruling that Rocha's testimony about the *same* conversations that the police officer lay opinion covered for the prosecution constituted irrelevant testimony.

This clearly erroneous ruling, on *de novo* review, should be corrected now to avoid a miscarriage of justice. More importantly, this Court's strong voice is very much needed to clarify the scope of a defendant's right to present a defense, which necessarily permits him to call in his case the Government's lead witness against when the Government offers its witness's testimony through audio recordings.

STATEMENT OF FACTS[2]

The "Project" that stood at the center of the alleged conspiracy beginning January 2011, when Hugo and Freddie Montes ("the Montes brothers") approached then-incarcerated Mexican Mafia member Rodriguez-Landa about an idea to form a drug alliance between the Montes's organization (La Familia) and the Mexican Mafia. 3-ER-505.

But consummation of the Project encountered multiple setbacks, and the Government's undercover agent, Rocha (a.k.a. "Perico"), attempted to spur the Project forward. Rocha was a Mexican Mafia member acting as a confidential informant ("CS-1") for a joint task force led by ATF and the L.A. Sheriff's Department.[3] Rocha was trying to avoid life imprisonment for violent offenses including extortion, 14-ER-3241–42, and murder, 14-ER-3281, by assisting the Government in building a drug case against members of the Mexican Mafia and La Familia.

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[2] *See also* AOB 7-13, 24-29.

[3] Agent Ciccone and Detective Kays were Rocha's lead handlers. 18-ER-4120.

To capture conversations, Rocha carried a portable digital recording device, and the task force installed a recording device in his vehicle, both of which Rocha could turn on and off. 9-ER-2085, 2087; 10-ER-2131. The Government equipped the warehouse where Rocha conducted meetings with hidden video cameras. 9-ER-2076. Rocha also carried two phones, one of which recorded his conversations by consensual wiretap. 18-ER-4196. From February 2011 to May 2012, the Government intercepted "thousands" of calls. 2-ER-291. Only about five percent of recordings of all calls were preserved. 8-ER-1543. Snippets of a fraction of this small subsection of recordings were played for the jury. And instead of calling Rocha to testify, case agents involved in the investigation, Detectives Kays and Urita, interpreted the recordings for the jury.

Petitioner, another Mexican Mafia member, was ensnared late in the investigation when the Government identified him as a potential target and arranged a meeting to get him involved. 17-ER-3923; CR 342 at 5:8-15. In October 2011, Petitioner was released from federal prison and had gotten a job in construction. 17-ER-3924. The Government targeted him for contact, and on October 27, 2011, Rocha invited Petitioner to a warehouse meeting; Rocha's goal was to ensnare Petitioner with joining the Project. 4-ER-743. At this time, Rocha

complained about the Montes brothers and the problems they were having. 4-ER-747–50.

On November 9, 2011, Rocha and Petitioner met with the Montes brothers and argued about pricing and the cancellation of debt. Ex. 383-10; Ex. 383-13; Ex. 383-14. The parties did not reach an agreement. After the meeting, the Montes brothers ceased communicating with Rocha. 17-ER-3946–47.

The Government spurred further communications between with the Montes brothers and Rocha, and Petitioner tried and failed to purchase from the Montes brothers on his own. 4-ER-852, 4-ER-862. Petitioner did not possess sufficient funds, and the Montes brothers refused fronting him. *See* 4-ER-907.

The task force, including Rocha, then hatched a new plan to generate this crime, and again intervened to make it happen. 17-ER-3951. On January 26 and 27, Rocha called F. Montes. Acting as middleman, Rocha negotiated and communicated a deal on behalf of Petitioner. 4-ER-887–89; 4-ER-891–97. According to the recordings, Rocha would purchase five pounds of methamphetamine in cash for himself, which (because F. Montes didn't possess five pounds) ended up being divided into one delivery of three pounds, followed by a later delivery of two pounds. 4-ER-894. Rocha further asked F. Montes to front Petitioner methamphetamine, and Rocha (*viz.*, the Government) generously

guaranteed repayment and presented F. Montes with designer Gucci and Louis Vuitton gifts. 4-ER-920–21. F. Montes finally relented and said he would front the drugs for Petitioner. *Id.*

The quantity for Petitioner was unsettled; Rocha went back and forth about how much he could guarantee. *See* 4-ER-888 (three pounds); 4-ER-896–97 (two to three pounds); 4-ER-921 (two pounds). Rocha hedged: "I'm not a hundred percent guaranteed that I can come through for this." "Let's just deal with what I know I could handle," and F. Montes said he would "shoot him at least one." 4-ER-928.

Rocha told Petitioner that the drugs would be fronted for 20 days, but never discussed with him any other material terms: price, quantity, or the guarantee arrangement. *See* 4-ER-917–18.

Petitioner and Rocha expected delivery on January 28 and waited all day. 4-ER-936. But no one showed, nor did the Montes brothers answer their phones. *Id.*

On January 31, Rocha called Petitioner. According to a selected recording, Petitioner told Rocha: F. Montes had called Petitioner to let him know that F. Montes said he had given him "two" and had "the rest" for Rocha. 4-ER-946. When Rocha asked Petitioner if it was "good" or "blue," Petitioner did not know. Petitioner had not seen it, touched it, or otherwise verified it. 4-ER-947, 949. The

next morning, Rocha again asked Petitioner about the color, and Petitioner still hadn't seen it, but told him: "the dude said they were white." 4-ER-959. Rocha had received something different: "Yeah, my shit was blue, homes." *Id.* Rocha inquired about time frame, and Petitioner told Rocha: F. Montes "didn't say shit" about price or time frame. 4-ER-956–57. Rocha responded that they were "free." *Id.*

In a subsequent and critical call, Rocha again asked Petitioner about the quality of the product delivered to him. Petitioner complained about receiving "crumbs" and "*nada*" (nothing). Ex. 402 at 2:04. Rocha asked no further questions about the product. Well past the 20-day deadline, by mid-April, Petitioner had not paid F. Montes. 4-ER-982–83; 17-ER-3964. Nor had Rocha.

The Government neither seized nor tested nor saw nor captured any pictures of the "two" F. Montes said he gave Petitioner. 17-ER-3960–61. The Government did test and verify the three pounds of blue and white methamphetamine delivered to Rocha on January 27 (3-ER-628–33), and the two pounds of white methamphetamine delivered to Rocha on February 3 (3-ER-641–44). 17-ER-3964, 3977-85.

REASONS TO GRANT THE PETITION

A. The Fifth Amendment guarantees a defendant the right to call percipient witnesses to the events presented by the prosecution in its case.

More than half a century ago, this Court recognized:

> The availability of the right to confront and to cross-examine those who give damaging testimony against the accused has never been held to depend on whether the witness was initially put on the stand by the accused or by the State. We reject the notion that a right of such substance in the criminal process may be governed by that technicality or by any narrow and unrealistic definition of the word 'against.' The 'voucher' rule, as applied in this case, plainly interfered with Chambers' right to defend against the State's charges.

Chambers v. Mississippi, 410 U.S. 284, 297–98 (1973).

Whether grounded in the Sixth Amendment's guarantee of compulsory process or in the more general Fifth Amendment guarantee of due process, "the Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.'" *Holmes v. South Carolina,* 547 U.S. 319, 324 (2006) (quoting *Crane v. Kentucky,* 476 U.S. 683, 690 (1986)). This right includes, "at a minimum, ... the right to put before a jury evidence that might influence the determination of guilt." *Pennsylvania v. Ritchie,* 480 U.S. 39, 56 (1987); *accord Washington v. Texas,* 388 U.S. 14, 19 (1967) ("The right to offer the testimony of witnesses ... is in plain terms the right to present a defense, the right to present the

defendant's version of the facts....[The accused] has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law."); *Michigan v. Lucas,* 500 U.S. 145 (1991) (the right to present relevant evidence).

Petitioner concedes that "the right to present relevant testimony is not without limitation. The right 'may, in appropriate cases, bow to accommodate other legitimate interests in the criminal trial process.'" *Rock v. Arkansas,* 483 U.S. 44, 55 (1987), quoting *Chambers,* 410 U.S. at 295. As this Court has explained, "trial judges retain wide latitude" to limit reasonably a criminal defendant's right to cross-examine a witness "based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant." *Delaware v. Van Arsdall,* 475 U.S. 673, 679 (1986).

No factors supported the district court's order precluding Petitioner from calling Rocha as a trial witness. Nor could there be: Rocha was a percipient witness to nearly all of the conduct introduced by the Government to try to prove Petitioner's guilt. Surely, the rule must be that Petitioner categorically had the right to call that percipient witness to defend against the charges. The Court should grant the writ so it can issue this much needed bright-line rule.

Put another way, after being denied the opportunity to cross examine Rocha, trial counsel argued that the defense should permitted to elicit testimony from Rocha about the *same* conversations the Government relied upon to convict Petitioner. The district court permitted the Government to play these recorded conversations for the jury and allowed Detective Urita or Kays to give their lay opinion about them, ER 2647–2690 and 2699–2735, while precluding Petitioner from examining Rocha, the person with first-hand knowledge about these conversations. *See, e.g.,* 17-ER-3908–3969.

This Court permits "other legitimate interests in the criminal trial process" to support the denial of a defendant's examination of a critical witness. *Chambers*, 410 U.S. at 295. "But its denial or significant diminution calls into question the ultimate 'integrity of the fact-finding process' and requires that the competing interest be closely examined." *Id*.

Without belaboring the point, this trustworthy, admissible evidence—Rocha's understanding of the meaning of Petitioner's reference to "crumbs" and "nada", and his challenges to the quality of the methamphetamine his courier received—was relevant to the determination on Count 5, and the district court erred when it found the opposite: that Rocha's testimony was irrelevant. Most pointedly, the lower courts never identified any legitimate basis to deny Petitioner

his constitutional right to call percipient witness Rocha to provide trial testimony that would have undermined the Government's trial presentation.

More granularly, the Government needed to prove that Petitioner intended to sell these "crumbs" and "nada" to establish liability for Count Five. CR 1180 at 34. Rocha was the perfect witness to explain that Petitioner would not distribute the bunk he had been given, which explained why he refused to pay anything for it: it was garbage that differed in every material aspect from the shipment Rocha obtained (and for which the United States paid).

But the panel overlooked *Chambers*, *Holmes*, *Ritchie*, *Rock*, and other of this Court's teachings, and it refused to address the district court's errant basis for excluding Rocha, *viz.*, the finding that Rocha lacked any relevant evidence about the substance of the recordings, as well as the manner by which they were created and maintained.

Because the district court excluded Rocha from the defense case without proper basis, this case was easy: vacate the sole conviction and remand for a new trial.

1. Petitioner's offer of proof was sufficient.

Rather than follow this Court's precedent, the lower court instead applied circuit authority—the so-called *Miller*[4] factors—without addressing the glaring evidentiary error that undergird Petitioner's claim. Pet. App'x at 7. The *Miller* factors are consulted when the district court *correctly* excludes evidence pursuant to an evidentiary rule, and the defendant nevertheless contends that the exclusion of evidence violates the Constitution, and thus a balancing is appropriate. *Miller*, 757 F.2d at 994.[5] But that balancing doesn't apply here where the district court erred in the first instance by excluding plainly relevant evidence as "irrelevant".

The lower court then overlooked the record when it ruled that Petitioner did not provide a sufficient basis to call this percipient witness to the critical conversations upon which the Government relied in this case. Pet. App'x 8. The record disproves that cramped view of the proceedings; Petitioner identified *all* recordings that the Government used to prosecute Petitioner.

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[4] *Miller v. Stagner*, 757 F.2d 988, 994 (9th Cir. 1985).

[5] *Miller* addressed the district court's exclusion of evidence supporting an entrapment defense based on the state court analog of Fed. R. Evid. 403, "which grants a court discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time, create substantial danger of undue prejudice, confuse the issues, or mislead the jury." *Id*.

> CS-1 was percipient to, and actually participated in, almost all of the conversations, recordings of which the government relied upon in its case-in-chief. While other government witnesses, notably members of law enforcement, have been permitted to testify as to their "lay opinions" of the content of the recorded conversations, CS-1 can offer first-hand information about the meaning of the conversations.

1-SER-196. *See also* 14-ER-3198; 17-ER-3887; 18-ER-4275. The district court had sufficient notice of these "specific recordings," as did the Government, because they were all contained in the record and comprised the Government's primary evidence against Petitioner. *See also United States v. Boulware*, 558 F.3d 971, 975–76 (9th Cir. 2009) (an "offer of proof" is "not confined to the four corners of the formal offer," but instead reaches "the record as a whole."). The Ninth Circuit was incorrect to find the opposite.

Equally concerning is the court's assertion that Petitioner failed to establish that Rocha "qualified as a lay witness to interpret" the very conversations in which he participated, and which were played to the jury. The court offered no authority for this untenable position. As a participant in the recordings, Rocha certainly possessed the ability to explain to the jury how he interpreted Petitioner's statements, just as the police officers did. Rule 701 permits *any* witness to testify "in the form of an opinion that is rationally based on the witness's perception." Fed. R. Evid. 701. Petitioner's proffer met this low standard. Indeed, the panel

applied that same low bar to justify the prosecution witnesses' lay opinion testimony. Pet. App'x 5.

The record contained the specific recordings of conversations regarding which trial counsel wished to elicit testimony from the Government's principal witness who had more personal knowledge about these conversations than the prosecution's testifying officers. The record also contained testimony that not all conversations were recorded or preserved. For these reasons, the district court had notice of the substance of the proposed testimony, as well as the grounds upon which it should have been admitted. 1-SER-194–99.

2. The principal witness's testimony was "relevant."

Petitioner remains unaware of any authority that permits the exclusion of the Government's *principal* witness to the events from testifying about those events as "irrelevant" testimony. And here, there can be no genuine claim that Rocha didn't possess relevant evidence for the jury to consider Rocha was uniquely positioned to provide first-hand details surrounding the conversations, based on his personal knowledge.

Regarding lost, missing, or altered recordings: while it can be challenging to prove that something doesn't exist, Rocha was the best witness to answer questions about the completeness and integrity of the Government's manufactured

presentations, because he participated in nearly all of the conversations related to Count Five, whether recorded, not recorded, or deleted. Furthermore, the Government does not deny problems with the transcripts/recordings, replete with omitted words and unintelligible phrases ("[U/I]"), and that Rocha was uniquely positioned to testify about the actual communications. AOB 46.

But the lower court declined to address this aspect of Petitioner's attempt to call Rocha as a witness. Worse, it held that Rocha's testimony was not central to his defense or a major part of it. Pet. App'x at 8-9. But it only reaches this conclusion by overlooking that his challenge to the interpretations of the recordings was his *only* defense, and that Rocha was the key witness through which to present his defense.

3. The exclusion of evidence was harmful.

The prejudice Petitioner suffered as a result of the exclusion further proves the magnitude of the error here. The Government argued that Petitioner had alternatives to eliciting testimony from a principal witness, and for this reason, was not deprived of his constitutional right to present a defense. GAB 55-56.

The alternatives were poor substitutes. Having to question Detective Urita instead of Rocha and getting his third-party "lay opinion testimony" about conversations he did not participate in, impaired Petitioner's defense.

Exhibit 402 provides a dispositive example. There, Detective Urita offered his interpretation of the meaning of "crumbs," based on flawed transcripts he reviewed and approved by signing his initials, and not the actual conversation. 4-ER-961; 16-ER-3793.

> Q During this same conversation, did Mr. Petitioner complain to Mr. Rocha that the materials that were delivered to his runner were crumbs?
>
> A Yes, based on the amounts that you can get from a cartel.

17-ER-3963. The district court relied in part on Detective Urita's errant interpretation that Petitioner was merely frustrated about the small *quantity* and denied Petitioner's Rule 29 motion. 1-ER-30. But Petitioner was complaining about *quality*, and the uselessness of the bunk he was supplied. Only Rocha could provide this testimony.

Detective Urita could also dodge questions Rocha would have been expected to address.

> Q As you sit up there today, do you have any information that Mr. Petitioner made money orders and provided them to Rocha?
>
> A I do not know.
>
> Q So you don't have any information?
>
> A I don't know that he did.

17-ER-3963. *See also* 14-ER-3198-99 ("people who were not participants in the conversation" giving "extremely biased answers" or saying they don't remember or know).

Brass tacks: Rocha was an important defense witness, and the district court gutted Petitioner's right to present a defense when it blocked Rocha from testifying.

CONCLUSION

Rocha was no ordinary witness. He was the Government's *principal* witness, at the center of its case-in-chief, participating in or leading every recorded conversation about engaging in some drug deal that he (or the task force) contrived and orchestrated. There was no substitute for him. Shielding him from all manner of questioning abused the truth-determining process of trial and violated Petitioner's Fifth Amendment and Sixth Amendment rights to call the Government's principal witness to be examined at trial.

The Ninth Circuit's refusal the recognize the seriousness of the violation here threatens the right to present a defense for all accused persons in nine states and two territories, and makes illusory the guarantees this Court long ago announced. This Court should grant this petition and take the opportunity to

clarify the breadth of a criminal defendant's right to call witnesses in his defense to the charges.

Respectfully submitted,

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