No. 25-512

In the Supreme Court of the United States

JIBRIL ADAMU, 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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QUESTIONS PRESENTED

1. Whether petitioner's conviction for conspiring to distribute and possess with intent to distribute a controlled substance, based on an international narcotics trafficking scheme using U.S.-registered private aircraft to transport shipments of cocaine, was an impermissibly extraterritorial application of 21 U.S.C. 959(c).

2. Whether the admission of software-generated data from an extraction of seized cellphones and an investigative analyst's testimony concerning the extracted data was both a violation of petitioner's Sixth Amendment right to confront the police officer who utilized the software that generated the data extraction and prejudicial in light of the other evidence of his guilt.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-21a) is reported at 144 F.4th 396. The order of the district court is available at 2021 WL 1700410. Prior memorandum opinions of the district court are available at 2021 WL 5402288 and 2022 WL 2334509.

JURISDICTION

The judgment of the court of appeals was entered on July 21, 2025. The petition for a writ of certiorari was filed on October 20, 2025. 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 distribute and possess with the intent to distribute five kilograms or more of

cocaine on board a U.S.-registered aircraft, in violation of 21 U.S.C. 959(c) and (d) and 963. Pet. App. 2a. Petitioner was sentenced to 120 months of imprisonment, to be followed by five years of supervised release. *Ibid.* The court of appeals affirmed. *Ibid.*

1. Beginning in 2016, petitioner and his coconspirators engaged in a multi-year international narcotics trafficking conspiracy in which they planned to use a U.S.-registered private aircraft to transport cocaine from South America to Africa and Europe. Pet. App.3a-4a. Petitioner and his partners undertook extensive preparations to conceal and facilitate the scheme, including retrofitting the U.S.-registered aircraft and scouting remote landing strips in Africa. *Id.* at 3a. And in 2018, one of petitioner's coconspirators—the owner of the aircraft—met with potential customers, including a confidential DEA informant, to discuss the logistics of the trafficking plans. *Id.* at 4a.

The conspirators agreed to complete a test run to demonstrate their capacity to move larger quantities of drugs. Pet. App. 4a. They finalized their plans for the test flight in October 2018. *Ibid.* Petitioner and the owner of the aircraft loaded the U.S.-registered plane with a kilogram of cocaine in Mali and flew it to Croatia, with petitioner serving as the copilot on the journey. *Ibid.* When they arrived, Croatian authorities arrested both individuals and seized their mobile phones as well as the cocaine. *Ibid.* In October 2019, petitioner and the aircraft owner were extradited to the United States. *Ibid.*

2. A grand jury in the Southern District of New York indicted petitioner on, *inter alia*, one count of conspiring to distribute and possess with intent to distribute, five kilograms or more of cocaine on board a U.S.-

registered aircraft, in violation of 21 U.S.C. 959(c) and (d) and 963, and one count of distributing and possessing with intent to distribute five kilograms or more or cocaine on board a U.S.-registered aircraft, in violation of 21 U.S.C. 812, 959(c), 959(d), 960(a)(3), and 960(b)(1)(B). Pet. App. 22a; see Gov't C.A. Br. 2. Section 959(c) makes it unlawful for "any United States citizen on board any aircraft, or any person on board an aircraft owned by a United States citizen or registered in the United States," to "(1) manufacture or distribute a controlled substance or listed chemical; or (2) possess a controlled substance or listed chemical with intent to distribute." 21 U.S.C. 959(c). Section 959(d) explicitly specifies that "[t]his section is intended to reach acts of manufacture or distribution committed outside the territorial jurisdiction of the United States." 21 U.S.C. 959(d).

Petitioner nonetheless moved to dismiss the indictment, on the theory that it violated the Due Process Clause and extraterritoriality principles because he was not a U.S. citizen and none of his conduct took place in the United States, and the district court lacked jurisdiction over the charges against him. Pet. App. 153a-156a. The district court denied the motion, observing that circuit precedent had recognized the statute to cover "conduct that takes place entirely outside the United States." *Id.* at 154a-156a (citing *United States* v. *Epskamp*, 832 F.3d 154, 166 (2d Cir. 2016), cert. denied, 580 U.S. 1139 (2017)). The case proceeded to trial.

3. The government proceeded to trial solely on the conspiracy count. Gov't C.A. Br. 2. At trial, the government presented testimony from Enrique Santos, an investigative analyst and mobile phone forensics examiner at the U.S. Attorney's Office who reviewed the

seized cell phones and extraction reports, generated from the Cellebrite software program, concerning data on the cell phones. Pet. App. 64a. Santos testified that he had extensive training in mobile device forensics, particularly in using Cellebrite. *Id.* at 68a.

Santos detailed the three-step process by which a Cellebrite cell phone extraction is performed; his examination of the three seized cell phones and a hard drive containing the forensic images and extraction reports from Cellebrite generated in Croatia; and how he compared the identifying numbers listed on the extraction reports to those engraved on the cell phones in order to match each extraction report to the corresponding cell phone. Pet. App. 68a-70a. Excerpts of the reports were admitted into evidence, and Santos testified that he had matched the seized cell phones to specific attribution data contained in the extraction reports. *Id.* at 70a-71a.

The district court rejected petitioner's objection to Santos's testimony, which was premised on the absence of the Croatian technician who had run the Cellebrite program to generate the reports. Pet. App. 71a-74a, 130a-132a. In particular, the court found that Santos's testimony and the use of the extraction reports did not violate the Confrontation Clause because the data on which Santos relied did not involve any affidavits or certifications made by nonwitness analysts. *Id.* at 132a; see also *id.* at 81a-88a.

The jury found petitioner guilty. Pet. App. 2a. The district court sentenced him to 120 months of imprisonment, to be followed by five years of supervised release. *Id.* at 2a.

4. The court of appeals affirmed. Pet. App. 1a-21a.

Like the district court, the court of appeals rejected petitioner's contention that the government lacked

jurisdiction to prosecute his conduct under Section 959(c). Pet. App. 8a. The court observed that under its precedent, Section 959 "'appl[ies] extraterritorially in its entirety' including to 'acts of possession with intent to distribute.'" *Ibid.* (quoting *Epskamp*, 832 F.3d at 162-166) (brackets in original).

The court of appeals also found that the admission of the cell phone extractions did not constitute the admission of out-of-court testimonial statements for the truth of the matter asserted, in violation of the Sixth Amendment's Confrontation Clause. Pet. App. 18a-21a. The court explained that admission of the extraction reports did not implicate the Clause at all, because the reports "were not 'statements' in the first place," let alone testimonial ones. *Id.* at 19a. The court observed that the reports instead consisted of "raw, machine-created data" that "do not contain anything that can be characterized as an implicit or explicit declarative statement by the examiner." *Ibid.*

The court of appeals also found that even if the admission of the reports was error, any such error was harmless beyond a reasonable doubt. Pet. App. 19a-21a. The court observed that "when compared to the extensive evidence already supporting the jury's verdict, we conclude that the admission of the additional materials obtained from the cellphones, even if erroneous, did not substantially influence the jury's guilty verdict." *Id.* at 21a.

ARGUMENT

Petitioner renews his contention (Pet. 12-25) that 21 U.S.C. 959(c) does not apply extraterritorially when the conduct involves possession with intent to distribute controlled substances. Petitioner also renews his contention (Pet. 25-38) that the court of appeals erred by

finding that the cell phone extraction reports do not constitute testimonial statements of witnesses subject to the Confrontation Clause. The court of appeals correctly rejected both contentions, and its decision does not warrant further review.

1. a. As the court of appeals recognized, 21 U.S.C. 959(c) criminalizes extraterritorial acts of possession with intent to distribute controlled substances on a U.S.-registered aircraft. Although Congress is presumed not to intend application of its statutes outside the territory of the United States "unless a contrary intent appears," *Morrison* v. *National Australia Bank Ltd.*, 561 U.S. 247, 255 (2010) (citation omitted), "the presumption against extraterritoriality has been rebutted" when Congress provides "a clear, affirmative indication that [the statute] applies extraterritorially." *RJR Nabisco, Inc.* v. *European Cmty.*, 579 U.S. 325, 337 (2016).

Section 959 contains just such a "clear, affirmative indication." Specifically, the statute provides that "[t]his section"—that is, Section 959—"is intended to reach acts of manufacture or distribution committed outside the territorial jurisdiction of the United States." 21 U.S.C. 959(d). And as the court of appeals has correctly recognized, the text, structure, context, and history of the statute "reveal Congress's clear intent that the statute appl[ies] extraterritorially in its entirety," including to acts of possession with intent to distribute. *United States* v. *Epskamp*, 832 F.3d 154, 166 (2d Cir. 2016), cert. denied, 580 U.S. 1139 (2017); see *id.* at 162-166.

As a threshold matter, reading Section 959(d)'s express extraterritoriality provision to apply only to completed manufacturing or distribution offenses would

create anomalous and redundant results. Such a limitation would create "a purely domestic crime within a statute aimed at combatting international narcotics smuggling and importation where every other provision applies extraterritorially." *Epskamp*, 832 F.3d at 164. And requiring Section 959(c)(2) "to proscribe only domestic conduct would render it a redundancy within the federal statutory framework" given that federal law already penalized purely domestic possession of controlled substances with intent to distribute when Congress added Section 959(c). *Ibid.*

The statute proscribing domestic manufacture, distribution, or possession with intent to distribute, 21 U.S.C. 841(a), involves the same penalties for possession with intent to distribute as those in Section 959(c)(2)—meaning that if the latter lacks extraterritorial application, it has no independent force at all. See *Epskamp*, 832 F.3d at 164-165 & n.10. "It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." *TRW Inc.* v. *Andrews*, 534 U.S. 19, 31 (2001) (citation and internal quotation marks omitted). Petitioner notes (Pet. 20) that some overlap exists even if the intent-to-distribute prohibition applies extraterritorially, but that interpretation gives a clear function—extraterritorial application.

In addition, Congress's direction that the statute applies to extraterritorial "*acts of* * * * distribution," 21 U.S.C. 959(d) (emphasis added)—not merely "distribution"—logically covers violations of Section 959(c)(2). See *United States* v. *Thompson*, 921 F.3d 263, 273 (D.C. Cir.) (Millett, J., concurring in part and concurring in the judgment in part) ("When every word

of the extraterritoriality clause is accounted for and given its natural reach, that clause's statement as to '[t]his section['s]' scope operates to explain, rather than to constrain, Section 959's breadth.") (brackets in original), cert. denied, 589 U.S. 1077 (2019). And Section 959(c)(2) does not simply criminalize possession on board a U.S.-registered or American-owned aircraft—it criminalizes possession "with intent to distribute." Unlike possession simpliciter, possession with intent to distribute is an "act of distribution"—*i.e.*, an act of someone who is engaged in the distribution of controlled substances.

The statutory history reinforces that Congress is especially likely to have understood "act of distribution" in precisely that way. The initial version of Section 959 in 1970 contained an identical extraterritoriality clause—covering acts of manufacture or distribution—but it did not contain Section 959(c)'s prohibition on possession, manufacture, or distribution by a person on board a U.S.-registered or American-owned aircraft. 21 U.S.C. 959 (1970); see Controlled Substances Import and Export Act of 1970, Pub. L. No. 91-513, Tit. III § 1009, 84 Stat. 1289; *Epskamp*, 832 F.3d at 165-166. In 1986, Congress added the aircraft provisions at issue and placed them "within an existing statute that was expressly and wholly extraterritorial in nature." *Epskamp*, 832 U.S. at 166; see Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, § 3161, 100 Stat. 3207-94 to 3207-95.

b. The decision below accords with a decision of the Fifth Circuit, which likewise recognizes that Section 959(c)(2)'s prohibition on possession with intent to distribute is extraterritorial. See *United States* v. *Lawrence*, 727 F.3d 386, 390-396 (2013), cert. denied, 571

U.S. 1222 (2014). And while a nonunanimous panel of the D.C. Circuit in *United States* v. *Thompson*, took the view that Section 959(c)(2)'s prohibition on possession with intent to distribute does not fall within the extraterritoriality provision in Section 959(d), it ultimately held that because the defendant was charged with conspiring both to distribute under Section 959(c)(1)—which is indisputably extraterritorial—and to possess with intent to distribute under Section 959(c)(2), any error was harmless. 921 F.3d at 265-269.

Because petitioner's indictment likewise charged conspiracy both to distribute *and* to possess with intent to distribute, he fails to identify another circuit that would grant relief on his extraterritoriality claim. Here, as in *Thompson*, any error in charging petitioner with both distribution and possession with intent to distribute as the objects of the conspiracy was harmless. As the D.C. Circuit observed, "it is quite challenging to imagine any evidence that would be probative of a conspiracy to possess with intent to distribute that would not also be evidence of a conspiracy to distribute." 921 F.3d at 268-269. And the evidence here is equally probative of both: the jury had ample evidence before it showing that petitioner conspired to distribute a one-kilogram cocaine sample to potential buyers as part of a much larger conspiracy involving the planned distribution of many tons of cocaine. See Pet. App. 3a-4a; 26a-42a. Accordingly, any shallow circuit disagreement does not warrant further review in this case.

2. Petitioner separately contends (Pet. 25-38) that the admission of the cell phone extraction reports violated his Confrontation Clause rights, on the theory that the reports "reflect[] human input" and not just data from a phone or a computer. The decision of the

court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals. And in any event, as the court of appeals correctly found, any error was harmless.

a. The Sixth Amendment 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. That protection encompasses a right to cross-examine the maker of any "testimonial statements" admitted for the truth of the matter asserted at trial, and can include the right to cross-examine the author of a forensic report. *Smith* v. *Arizona*, 602 U.S. 779, 783 (2024); see *id.* at 783-789. But as petitioner appears to acknowledge (Pet. 32), this Court has not held that "raw, machine-produced data" is subject to cross-examination. See *Bullcoming* v. *New Mexico*, 564 U.S. 647, 660 (2011) (distinguishing analyst report from such data); see *id.* at 661 (similar).

As numerous courts of appeals have recognized, the Confrontation Clause does not in fact require "cross-examination" (of some indeterminate sort) of such data, which has no human author. See, *e.g.*, *United States* v. *Arce*, 49 F.4th 382, 392 (4th Cir. 2022); *United States* v. *Hill*, 63 F.4th 335, 358-359 (5th Cir.), cert. denied, 144 S. Ct. 175, 144 S. Ct. 190, and 144 S. Ct. 189 (2023); *United States* v. *Miller*, 982 F.3d 412, 437-438 (6th Cir. 2020), cert. denied, 141 S. Ct. 2797 (2021); *United States* v. *Juhic*, 954 F.3d 1084, 1089 (8th Cir. 2020). And the court of appeals correctly found that the extraction reports here were such "raw, machine-created data"—namely, the direct output of "an automated process within the Cellebrite program." Pet. App. 19a.[1]

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[1] Petitioner's attempt (Pet. 34-35) to distinguish "the phones' forensic images created during the extraction process's 'acquisition

As the court of appeals observed (Pet. App. 19a), the Croation technician whose name is listed on the reports is not their author. "Rather, the entire report was generated through an automated process within the Cellebrite program." *Ibid.* Petitioner errs in contending otherwise, as when he asserts (Pet. 28-29) that the inclusion in the reports of the inputs with which it was run turns the technician into the author. Instead, as the testifying expert Santos explained, the extraction reports constitute the software program's own reporting of which automated processes were run and what resulting data was extracted. Pet. App. 69a, 74a-75a. The reports accordingly detail only a machine's processing of the data, *i.e.*, that the software ran a certain type of extraction program, under certain parameters, and returned certain data. See *id.* at 19a.

The inputs were simply one set of those parameters—the machine's own understanding of the settings that it was given. They are not any human's interpretation of anything that the machine did. The interpretation of the raw, machine-produced data was instead done by Santos. Santos, not the reports themselves, connected the contents of the reports to the phones collected from petitioner and his coconspirator.

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phase'" from the "Extraction Reports" created "during the final 'reporting phase'" is unsound. First, petitioner is wrong to assert (Pet. 34) that "Santos did not even review the forensic images, which contain the raw data." Rather, Santos *did* review the forensic images and testified to that effect. Gov't C.A. Br. 58; C.A. App. A1217. And in any event, the extraction reports, like the images, were authored by the Cellebrite program, not the Croatian technician. They are simply the program's display of data regarding the extractions that the program performed and the images that the program created. C.A. App. A1217.

C.A. App. A1217. And Santos was available in court for petitioner to cross-examine.

b. Petitioner asserts (Pet. 32-34) that review is warranted because the court of appeals' decision conflicts with Confrontation Clause decisions in several circuits and state courts. But each of the decisions on which he relies is consistent with the decision below.

The Fourth Circuit's decision in *United States* v. *Arce* recognizes that "a Cellebrite report that stopped at downloading the files"—which is all that the reports here did—"would not typically implicate the Confrontation Clause." 49 F.4th at 392. The court perceived a Confrontation Clause problem only from the conclusion, reflected in the report in that case, that images on the device matched "known" images of child pornography, a classification to which it deemed a human classifier necessary to testify. See *id.* at 392-393. Similarly, the Eighth Circuit in *United States* v. *Juhic* found that a report's "inadmissible hearsay" was introduced into an "otherwise automated process" through "notations" that used "human statements and determinations" to "classify the files as child pornography." 954 F.3d at 1089.[2]

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[2] Petitioner also cites (Pet. 33) the district court decision in *United States* v. *Hajbeh*, 565 F. Supp. 3d 773 (E.D. Va. 2021). A district court decision cannot create a conflict that warrants this Court's review. See Sup. Ct. R. 10 (referring to conflicts in the federal "court[s] of appeals" or "state court[s] of last resort"). And in any event, the court there perceived a Confrontation Clause problem with the introduction of "affidavits" from government agents "to authenticate file extractions." *Hajbeh*, 565 F. Supp. 3d at 777; see *id.* at 774-777. No similar affidavits are at issue here, where the government provided in-court testimony from Santos. See *State* v. *Green*, 543 P.3d 484, 492-493 (Idaho 2024) (distinguishing *Hajbeh*

c. At all events, this case would be an unsuitable vehicle to consider the question presented, because the court of appeals found that any Confrontation Clause violation was harmless beyond a reasonable doubt. See Pet. App. 19a-21a. Although petitioner attempts to downplay the strength of the government's evidence against him, he ignores that the government "brought forth a great deal of other evidence that both corroborated [his coconspirator's] testimony and directly proved [petitioner's] guilt," including recordings of meetings and calls in which petitioner's participation in the conspiracy was discussed, as well as petitioner's own admission, after his arrest, that he knew one of the coconspirators and that the particular coconspirator used planes to engage in drug smuggling. *Id.* at 20a-21a. This Court ordinarily leaves such fact-bound harmless-error review to the lower courts. See, *e.g.*, *Carella* v. *California*, 491 U.S. 263, 266-267 (1989) (per curiam); *Pope* v. *Illinois*, 481 U.S. 497, 504 (1987). Petitioner provides no sound reason for the Court to deviate from that practice here, and he accordingly would not be entitled to relief even if his merits argument on the second question presented were correct.

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where a witness testified concerning the extraction process and his analysis of the extracted data).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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