

No. 26-\_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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WILLIAM JONES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

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PETITION FOR A WRIT OF CERTIORARI

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Pursuant to Criminal Justice Act

## QUESTIONS PRESENTED

1. Whether the Constitutional rights to confront witnesses and to present a defense require that Federal Rule Of Evidence 613(b) be interpreted to require the admission of evidence undermining a cooperating witness's claim that he had given the same account from the beginning of his cooperation ?
2. Whether Federal Rule Of Evidence 613(b) requires that testimony be admitted that would undermine a cooperating witness's claim that he had given the same account from the beginning of his cooperation?

PARTIES TO THE PROCEEDINGS BELOW

The parties to the proceeding in the court whose judgment is sought to be reviewed were the United States of America against William Jones.

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## **PETITION FOR A WRIT OF CERTIORARI**

Petitioner prays for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

## **OPINION BELOW**

The United States Court of Appeals for the Second Circuit, by unpublished summary order, reproduced in the appendix at App. 1, affirmed the judgment of the United States District Court for the Southern District of New York.

## **JURISDICTION**

The summary order of the court of appeals was entered on April 21, 2026. This petition for a writ of certiorari is being timely filed within ninety days of the summary order, in compliance with Rule 13.3 of this Court's rules. The Court's jurisdiction is invoked under 28 U.S.C. § 1254.

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

United States Constitution, Amendment V, provides the following, in pertinent part:

No person shall be deprived of life, liberty, or property, without due process of law.

United States Constitution, Amendment VI, provides the following, in pertinent part:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury; ... to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Federal Rule of Evidence 613(b) provides the following, in pertinent part:

Unless the court orders otherwise, extrinsic evidence of a witness's prior inconsistent statement may not be admitted until after the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it.

#### **STATEMENT OF THE CASE**

1. Petitioner was initially charged by indictment filed on or about August 9, 2021, alleging multiple counts of murder of a federal informant, identified as Frederick Delacruz, as well as murder through use of a firearm, in connection with the Trinitarios street gang, which the indictment identified as a "racketeering enterprise," although Petitioner was not charged with racketeering or any racketeering-related offenses. He was put in pre-trial detention and has remained in custody since his arrest. By superseding indictment filed on or about May 10, 2023, the allegations regarding Delacruz being a federal informant were supplemented with charges of racketeering conspiracy and murder in aid of racketeering, with the Trinitarios formally alleged as the racketeering enterprise.

2. In October, 2023, Petitioner proceeded to trial, and was convicted of the counts indicated above. The charges alleging murder of a federal informant were not submitted to the jury. On May 7, 2024, Petitioner was sentenced principally to life imprisonment on each of the three counts. The prosecution theory was that Petitioner was the leader of a set of the Trinitarios gang called 3MB, and that Delacruz was a high-ranking member. The Trinitarios had a strict rule against cooperating with law enforcement, and when Petitioner learned that Delacruz had been acting as an informant, he determined that Delacruz would be killed, and that Petitioner personally shot Delacruz several times, causing his death.

3. The Government's theory was principally advanced through the testimony of cooperating witness Albert Castillo, himself a high-ranking member of 3MB, who claimed that Petitioner had discussed his plans to kill Delacruz, that he had accompanied Petitioner, Delacruz, and other 3MB members to the murder location, and that he had personally witnessed Petitioner shoot Delacruz. The Government introduced evidence of communications between Petitioner and other members of 3MB, as well as other communications and social media posts. The defense theory was that the cooperating witnesses, especially Castillo, had stronger motives of their own to kill Delacruz, since his cooperation put them at considerable risk of arrest

for the crimes they had committed together, and that they were in fact falsely implicating Petitioner in order to avoid prosecution for their own participation in the murder. The defense case was made largely through cross-examination of the prosecution witnesses.

Of Particular significance to this Petition, according to Castillo, he subsequently accompanied Petitioner and a few other Trinitarios to Yonkers, New York, and Petitioner supposedly said "this would be a really good place to kill [Delacruz]." Ultimately however, a few weeks went by, and no action was taken against Delacruz. Significantly, on cross-examination it was revealed that Castillo had told investigators that he understood Petitioner's statement that he would "take care of it" to only mean that Delacruz would be punished, and it was only in late-August, 2023—shortly before trial was scheduled to begin, and 18 months after he started cooperating—that Castillo first mentioned that Petitioner had said he planned to kill Delacruz.

4. At the conclusion of the Government's case, the defense alerted the court that it intended to call the case agent in order to elicit testimony regarding three inconsistent statements that Castillo had made, including that—from the outset of his cooperation—he had told investigators about the meeting in Yonkers at which Petitioner supposedly discussed his plan to kill Delacruz. (Petitioner William Jones Ct. of App.

Appendix at 292) In response to the Government's argument that the proffered testimony was not inconsistent, defense counsel went on to point out that when he confronted Castillo with the fact that he had not said anything about the planning until months after he began cooperating, during preparation for trial:

And he said, from the moment I started speaking with the government, I told them what happened.

Well, he actually said the opposite. The very first meeting, he actually told the government that he didn't know that Mr. Delacruz was going to be murdered until the day of, when he pulled up on 159 and was confronted with the plot.

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No. 1, he was incorrect that he did not tell them in the first session that he was involved in the planning, and that, in fact, I was right. And then, ultimately, the only time -- or the next time that he talks about that, the very next time he talks about being involved in the planning was essentially during trial prep a few weeks ago, a month and a half ago. And I think that I'm entitled to explore that sequence, because I think it's incredibly misleading information that was provided to the jury by his response. (Petitioner William Jones Ct. of App. Appendix at 298)

When the district court asked for clarification as to specifically what the conflict was, defense counsel reiterated:

Well, the conflict is he said he told them that from the beginning.

And when I asked him, isn't it a fact that you didn't tell them about your trip to Yonkers and your discussions about planning until August, well into maybe your 5th, 6th --probably about your 7th or 8th proffer session, he said he didn't recall. (Petitioner William Jones Ct. of App. Appendix at 304)

After the court indicated that it was not inclined to allow the testimony, but asked for further input overnight, the Government submitted a letter objecting to the testimony under Federal Rules of Evidence 401, 403, and 801. (Petitioner William Jones Ct. of App. Appendix at 340; Gov. October 10, 2023 Letter) The Government took the position that the proffered testimony was of limited relevance, that the defense had already crossed Castillo on the subject matter and should not be permitted to introduce extrinsic evidence, and that it would create a "trial within a trial." (Petitioner William Jones Ct. of App. Appendix at 340; Gov. October 10, 2023 Letter)

The following morning, the district court confirmed that it would not allow the testimony, stating the following:

I did receive the government's letter concerning, what we'll call the third reported inconsistent statement by Mr. Castillo. I'm happy to hear further, Mr. Turano, but I am inclined, for the reasons discussed yesterday and the reasons set forth in the government's letter, not to allow cross-examination on that topic. (Petitioner William Jones Ct. of App. Appendix at 305)

In light of the court's ruling, defense counsel alerted the court that he would not be calling the case agent—since there would be nothing to ask him—and that the defense would rest. (Petitioner William Jones Ct. of App. Appendix at 308; T 885) As noted, the case went to the jury, and the jury returned with a guilty verdict on the racketeering, VICAR, and murder with the use of a firearm counts.

5. Petitioner raised this issue on appeal, arguing that the district court had deprived him of his constitutional rights to present a defense and to call witnesses on his behalf, and constituted an abuse of discretion.

The Second Circuit rejected these arguments, stating as follows:

At trial, the government called Castillo to testify about the organization of the Trinitarios and Jones's role in the murder of Delacruz. During cross-examination, Jones's counsel asked Castillo whether he had told the government, before trial preparation, that he had been involved in planning to kill Delacruz. Dist. Ct. Doc. No. 83 at 416. Castillo answered that he had been truthful with the government "[f]rom the moment that [he] started speaking with the[m]." Id. Jones's counsel then asked Castillo to explain or deny whether he had told the government, before trial preparation, about his role in planning the murder, and Castillo answered that he could not have known that Jones would actually kill Delacruz because he had never seen anyone in the Trinitarios kill anyone until Jones killed Delacruz. Id. at 417.

After Castillo's cross-examination, Jones attempted to call a detective to testify that, during his first proffer with the government, Castillo did not mention a conversation he had with Jones in Yonkers during which they discussed locations where Jones might kill Delacruz. Jones argued that this omission was inconsistent with Castillo's earlier testimony about being truthful "from the moment" he started proffering, and thus undermined his credibility. The district court precluded the detective's testimony, concluding that Castillo's omission was not inconsistent with his prior testimony and that, in any event, the introduction of extrinsic evidence concerning possible omissions during the initial proffer was likely to confuse the jury and waste time.

We cannot say that the district court abused its discretion in precluding the detective's testimony.

For starters, the district court's finding that there was no inconsistency between Castillo's direct testimony and his omission was neither "arbitrary" nor "irrational," *White*, 692 F.3d at 244 (internal quotation marks omitted), since the failure to mention every detail in an initial proffer is not the same as making false or misleading statements. But even if it could be argued that Castillo's omission of the Yonkers conversation from his first proffer had a bearing on Castillo's credibility, the district court's desire to avoid a mini-trial on that issue was by no means irrational. Given the "great deference" that we owe to the trial judge's "superior position" in assessing the probative value and prejudice associated with such testimony, we find no error in the district court's decision to exclude the detective's testimony. *Kelly*, 128 F.4th at 424. And even if the district court had erred manifestly, the error would still have been harmless because the government presented overwhelming evidence that Jones killed Delacruz. See *United States v. Okatan*, 728 F.3d 111, 121 (2d Cir. 2013) ("The strength of the prosecution's case is probably the single most critical factor in determining whether error was harmless." (internal quotation marks omitted)). (A 8-10)

Petitioner did not seek panel rehearing or rehearing en banc in the Court of Appeals.

## REASONS FOR GRANTING THE PETITION

**The Court Should Grant Certiorari To Make Clear Federal Rule Of Evidence 613(b) Requires That Testimony Be Admitted That Would Undermine A Cooperating Witness's Claim That He Had Given The Same Account From The Beginning Of His Cooperation.**

1. This Court has seldom had occasion to address the parameters of Federal Rule of Evidence 613(b), governing "prior inconsistent statements," despite the centrality of such evidence to the core constitutional right of a criminal defendant to confront witnesses against him and to present witnesses in his own defense. This case, in which the district court declined to allow the defense to present evidence that the central cooperating witness had not told law enforcement about a meeting at which the Petitioner allegedly planned a murder until shortly before trial, despite the witness having claimed that "I told them everything from the beginning," provides the court with the opportunity to make clear to lower courts that testimony showing that the witness had not made those statements until shortly before trial is squarely within the type of testimony contemplated in Federal Rule of Evidence 613(b), and should be admitted to protect the defendant's right to confront witnesses and to present a defense.

2. "Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation Clauses of the Sixth Amendment, 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)).

"The rights to confront and cross-examine witnesses and to call witnesses in one's own behalf have long been recognized as essential to due process." Chambers v. Mississippi, 410 U.S. 284, 294 (1973); Pennsylvania v. Ritchie, 480 U.S. 39, 56 (1987) ("Our cases establish, at a minimum, that criminal defendants have the right to the government's assistance in compelling the attendance of favorable witnesses at trial and the right to put before a jury evidence that might influence the determination of guilt").

"The right of cross-examination ... is implicit in the constitutional right of confrontation, and helps assure 'the accuracy of the truth-determining process.'" Chambers v. Mississippi, 410 U.S. at 295. Courts of Appeals have recognized, of course, that "while the right to cross-examination is not absolute, it is effectively denied when a defendant is prohibited from 'expos[ing] to the jury the facts from which jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witness.'" Howard v. Walker, 406 F.3d 114, 129 (2d Cir. 2005), quoting Davis v. Alaska, 415 U.S. 308, 318 (1974).

Nevertheless, if a defendant is prevented from effectively using cross-examination to expose the jurors to the relevant facts, "he 'states a violation of the Confrontation Clause.'" Howard v. Walker, 406 F.3d at 129 (finding confrontation clause violation), quoting Delaware v. Van Arsdall, 475 U.S. 673, 680 (1986).

Federal Rule of Evidence 613(b), governing "Extrinsic Evidence of a Prior Inconsistent Statement," states the following, in pertinent part:

Unless the court orders otherwise, extrinsic evidence of a witness's prior inconsistent statement may not be admitted until after the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it.

Id.

This Court has not announced a clear test for whether a witness's prior silence is covered by Rule 613(b), and as a result, the various courts of appeals have essentially established their own standards for admissibility, generally affording the district courts with considerable discretion. The Second Circuit has determined that "[a] witness's prior silence regarding critical facts may constitute a prior inconsistent statement where failure to mention those matters ... conflict[s] with that which is later recalled." United States v. Strother, 49 F.3d 869, 874 (2d Cir. 1995) (reversing and remanding for new trial after holding that error in excluding prior

inconsistent statement was not harmless). The Second Circuit has also recognized that “[a]t the same time, ‘statements need not be diametrically opposed to be inconsistent.’” Id. at 874, quoting United States v. Agajanian, 852 F.2d 56, 58 (2d Cir. 1988); see also Udemba v. Nicoli, 237 F.3d 8, 18 (1st Cir. 2001); United States v. Denetclaw, 96 F.3d 454, 458 (10th Cir. 1996); United States v. Dennis, 625 F.2d 782, 795-96 (8th Cir. 1980).

Under the Second Circuit test, a court considering a proffer of extrinsic evidence of a prior inconsistent statement must take into account the following factors: 1) whether the proffered statement in fact is inconsistent with the testimony sought to be impeached; 2) whether the proponent has given the witness an opportunity to explain or deny the prior inconsistent statement and the opposite party an opportunity to question the witness about it; 3) whether the extrinsic evidence is competent and admissible; 4) whether it relates to a material, as opposed to a collateral, matter; and 5) whether its admission would result in unfair prejudice, confusion, or delay in violation of Federal Rule of Evidence 403. See United States v. Ghailani, 761 F. Supp. 2d 114, 117-18 (S.D.N.Y. 2011), citing United States v. Hale, 422 U.S. 171, 180 n. 7 (1975), United States v. Trzaska, 111 F.3d 1019, 1024-25 (2d Cir. 1997).

Other courts of appeals have similarly relied on their own precedent in determining the boundaries for admissibility under Rule 613(b). See, e.g., United States v. Barile, 286 F.3d 749, 755 (4<sup>th</sup> Cir. 2002) ("prior statement is inconsistent if it, taken as a whole, either by what it says or by what it omits to say affords some indication that the fact was different from the testimony of the witness whom it sought to contradict"); United States v. DeSimone, 488 F.3d 561, 572 (1<sup>st</sup> Cir. 2007) ("Although statements need not be directly contradictory in order to be deemed inconsistent within the purview of Rule 613(b),... decision whether an inconsistency exists 'lies within the sound discretion of the district court'").

3. The circumstances here, however, illustrate the need for clear guidance from this Court, as opposed to leaving the critical right to confront witness and present evidence in one's own defense to the discretion of trial court judges. By all indications, the evidence by Petitioner was inconsistent with the testimony of the Government witness, the defense confronted the witness regarding the claimed inconsistency, the proffered statement was not hearsay, pertained directly to the proof and the charged offenses, and thus was not collateral, and was not unduly prejudicial or confusing, and thus the defense should have been permitted to introduce it. The Court should grant

certiorari in order to establish clear guidelines for admissibility under Rule 613(b).

At the outset, and as defense counsel urged repeatedly, Castillo had testified in no uncertain terms, with respect to his meetings with investigators, that "I told them everything from the beginning." The proffered testimony, however, would have shown that he first mentioned the planning of the Delacruz shooting in August, 2023, long after he began cooperating, after numerous sessions, and only shortly before trial. (Petitioner William Jones Ct. of App. Appendix at 298) Defense counsel did give Castillo multiple opportunities to explain the conflict, specifically referencing the disparity over the course of several pages. (Petitioner William Jones Ct. of App. Appendix at 227-30)

On direct appeal, the Government's principal contention was that there was no inconsistency between Castillo's trial testimony and his proffer statements is premised on the conclusory statement that Castillo's testimony—"[f]rom the moment that I started speaking with the government, I told them what happened"—could only be intended to convey that Castillo "had told the truth from the beginning," as opposed to having "told them the entire story from the beginning." (Gov. Second Cir. Brf. at 28-29) However, the Government's interpretation as to what Castillo "clearly intended to convey" was belied by

both the plain meaning and context of Castillo's testimony, as shown in the following exchange:

Q. In fact, you didn't tell the government about this until well after you started cooperating.

A. I told them everything from the beginning.  
(Trial Tr. at 431)

It is self-evident, based on a natural reading of the response, that the question and answer related expressly to the temporal nature of that information, not to the truthfulness of it. Even expanding the time-frame somewhat by taking into account Castillo's subsequent testimony that he had told investigators "everything I could remember" at the initial session, and then added information at the next sessions (T 431), it is impossible to reconcile his claim that "I told them everything from the beginning" with the proffered testimony that Castillo had only made the statements relevant to this issue shortly before trial about the claimed plan to shoot Delacruz in Yonkers.

4. Accordingly, especially in light of Castillo's importance to the case, the equally important nature of his cooperation, and ultimately his credibility with respect to the core allegations in the case, see Howard v. Walker, 406 F.3d 114, 129 (2d Cir. 2005), the proffered testimony was in fact inconsistent with Castillo's own testimony pursuant to Federal Rule of Evidence 613(b). The district court's reliance on its

own impressionistic interpretation as to what it believed Castillo really meant in his testimony should not be afforded substantial deference.

As the above facts and argument demonstrate, the clear mandate of Federal Rule of Evidence 613(b) requiring that omissions and other prior statements inconsistent with the declarant's testimony at trial is central to protecting the defendant's right to confrontation and to present evidence in his behalf. The trial court's failure here to admit evidence that fell squarely within the ambit of Rule 613(b), and the Second Circuit's endorsement of that decision, highlights the need for this Court to make clear to the court system throughout the nation that those rights cannot be undermined through an improperly narrow interpretation of "inconsistent" or excused as a simple exercise of discretion.

### **Conclusion**

The petition for a writ of certiorari should be granted.

Dated: New York, New York  
July 15, 2026

Respectfully

Submitted,



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