No. 26-6017

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IN THE

SUPREME COURT OF THE UNITED STATES

GABRIEL HAWTHORNE — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

GABRIEL HAWTHORNE
(Your Name)

FMC SPRINGFIELD P.O. BOX 4000
(Address)

SPRINGFIELD, MO 65801-4000
(City, State, Zip Code)

INCARCERATED
(Phone Number)

NO.: _____

IN THE SUPREME COURT OF THE UNITED STATES

Gabriel Hawthorne, Petitioner

v.

United States of America, Respondent

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

Gabriel Hawthorne, pro se, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Questions Presented

1. Whether the Sixth Amendment's Confrontation Clause permits the Government to prove a defendant's identity as the source of supply in a narcotics conspiracy through the out-of-court statements of a non-testifying intermediary, Andrea Mitchell, where the Government did not produce Mitchell for cross-examination and instead relied on recorded statements, law-enforcement narration, and agent interpretations of her words to establish the defendant's role.

2. Whether the evidence was constitutionally sufficient to support conspiracy and possession-with-intent-to-distribute convictions when no witness observed petitioner transfer narcotics to Mitchell, no video or photograph captured a hand-to-hand

exchange, and the Government's case depended largely on Mitchell's uncrossed out-of-court statements, call timing, and surveillance inferences.

3. Whether the district court's admission and use of Mitchell's uncrossed statements, viewed cumulatively with the inferential proof offered at trial, denied petitioner the fair trial guaranteed by the Sixth Amendment and the Due Process Clause.

Parties to the Proceeding

Petitioner is Gabriel Hawthorne, defendant-appellant below.

Respondent is the United States of America, plaintiff-appellee below.

Opinions Below

The opinion of the United States Court of Appeals for the Fifth Circuit was entered on March 17, 2026, in No. 24-30154, and affirmed the judgment of conviction and sentence. The Fifth Circuit disposition is unpublished.

The district-court proceedings occurred in the United States District Court for the Western District of Louisiana, Case No. 6:23-CR-90-1, before the Honorable Robert R. Summerhays. The attached trial transcripts reflect the proceedings on November 13, 14, 15, and 16, 2023, and February 28, 2024.

Jurisdiction

The court of appeals entered judgment on March 17, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

Constitutional and Statutory Provisions Involved

The Sixth Amendment to the United States Constitution provides in relevant part: "In all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him."

The Fifth Amendment to the United States Constitution provides in relevant part: "No person shall ... be deprived of life, liberty, or property, without due process of law."

18 U.S.C. § 2, 21 U.S.C. §§ 841(a)(1), 841(b), and 846 were the principal federal criminal provisions underlying the prosecution reflected in the record.

Statement of the Case

A. The prosecution's theory depended on Andrea Mitchell

The Government's theory at trial was that Andrea Mitchell acted as the intermediary who sold fentanyl to the undercover officer and obtained the drugs from petitioner. In opening statement, the Government told the jury that Mitchell repeatedly traveled to ZZ's Kitchen, that petitioner owned the restaurant, and that Mitchell was obtaining narcotics from "Malachi's brother," whom the Government identified as Gabriel Hawthorne.

The trial record shows that Mitchell, not petitioner, was the person who met the undercover officer during the controlled purchases. The Government therefore relied on Mitchell's recorded statements, her movements, her phone contacts, and officers' interpretations of her words to connect petitioner to the charged conspiracy and possession counts.

B. The Government did not call Mitchell, but repeatedly used her out-of-court statements

Undercover officer Bordelon testified that Mitchell said she had to "holla at Malachi," that she had to get the drugs from "him" or "his brother," and that the Government later concluded the brother was petitioner. Bordelon acknowledged that his understanding of these references depended on Mitchell's statements and the subsequent investigation rather than on any personal observation by him of petitioner supplying drugs to Mitchell.

The date-summary document likewise shows that agents repeatedly described petitioner as Mitchell's source of supply based on their inferences from her statements, travel, and call activity. For example, the summary states that "[a]gents believe that Mitchell is supplied narcotics by Gabriel Hawthorne," and similar notes recur in the chronology of the investigation.

On April 27, 2022, after Mitchell was stopped, officers testified that she cooperated, identified petitioner as her supplier, and then met petitioner with state-provided money. Yet officers admitted that no video or photograph captured an actual hand-to-hand exchange, and surveillance was later terminated without an arrest of petitioner that day.

C. Trial counsel raised a Confrontation Clause objection, but the court admitted the evidence

On November 15, 2023, during testimony about the May 11 calls, defense counsel objected on hearsay and Confrontation Clause grounds because Mitchell was

not present for cross-examination. The district court overruled the objection after hearing the recordings in camera, reasoning that petitioner's statements were admissible as party-opponent admissions and that Mitchell's words were merely contextual, while also suggesting that she was an alleged co-conspirator.

That ruling allowed the Government to continue presenting Mitchell's uncrossed side of the conversations and agent explanations of what she meant. The defense repeatedly argued that Mitchell's absence mattered because the Government's case depended on the jury accepting her statements and the officers' interpretations of them without any opportunity to cross-examine her about meaning, perception, bias, motivation, mental state, or credibility.

D. The Government's proof against petitioner remained inferential

The Government introduced call-detail records and surveillance testimony showing temporal contact between Mitchell and a phone associated with petitioner. Agent Coyman testified that the toll records revealed a pattern of contact between Mitchell and petitioner around the dates of the controlled buys.

But the same record also shows substantial evidentiary gaps. Officers conceded there were no photos or videos of many key surveillance events, no direct surveillance showing petitioner obtaining drugs from any upstream supplier, and no witness who testified to actually seeing petitioner hand fentanyl to Mitchell.

The defense highlighted that agents often used phrases such as "agents believe" when describing petitioner as the supplier, that "brother" could have more than one

meaning, that Mitchell used coded language, and that she shifted topics or used names inconsistently. The defense also stressed that the Government never produced Mitchell even though she was the central narrator of the prosecution's conspiracy theory.

E. The Rule 29 motions were denied and the Fifth Circuit affirmed

After the Government rested, petitioner moved under Rule 29; the district court denied the motion. Petitioner renewed the Rule 29 motion later, and the court denied it again.

On direct appeal, the Fifth Circuit held that, viewing the evidence in the light most favorable to the verdict, a reasonable juror could find that petitioner was Mitchell's source of supply and that he conspired to distribute and possess fentanyl with intent to distribute. The Fifth Circuit also rejected petitioner's new-trial and sentencing claims and affirmed.

Reasons for Granting the Petition

I. This case presents an important and recurring Confrontation Clause problem

Modern criminal prosecutions increasingly rely on recorded calls, text exchanges, and agent narration rather than live testimony from the person whose statements directly accuse the defendant. This case squarely presents whether the Government may avoid confrontation by declining to call its intermediary witness, then using that witness's recorded words and officers' interpretations to prove the defendant's identity and role.

Mitchell was the indispensable accuser in substance. The Government used her to explain who "him" was, who "his brother" was, why petitioner supposedly mattered, and why movements to and from ZZ's Kitchen supported the conspiracy charge. Without Mitchell's uncrossed statements, the Government was left with call timing, surveillance inferences, and proximity—not direct proof that petitioner knowingly joined the charged scheme.

II. The district court's "context" rationale illustrates the constitutional issue cleanly

The district court overruled the Confrontation Clause objection on the theory that petitioner's own statements were admissible and Mitchell's statements merely gave context to them. But in a case like this, "context" was the very thing that made the exchanges incriminating. The Government used Mitchell's side of the conversations not for background alone, but to establish the identity of the supplier and the meaning of petitioner's alleged role.

That question is cert-worthy because labeling an absent declarant's words "context" cannot end the Sixth Amendment inquiry when those words carry the accusatory force of the case. Here, the Government's theory repeatedly required the jury to rely on Mitchell's words for their truth or substantive import, while petitioner had no opportunity to test those words through cross-examination.

III. The confrontation issue mattered because the remaining evidence was not overwhelming

This case is not one in which the Government produced direct evidence independent of the absent declarant. No witness saw petitioner transfer fentanyl to Mitchell. No recording captured petitioner supplying drugs. No video or photograph documented the alleged hand-to-hand exchange.

Instead, the Government stacked inferences: Mitchell said she had to contact "him" or "his brother"; calls occurred between Mitchell and a phone associated with petitioner; Mitchell went to or near ZZ's Kitchen; petitioner was present in vehicles near relevant times; and officers believed he was the source of supply. Those pieces created suspicion, but their force depended on Mitchell's uncrossed narrative.

Because the proof was cumulative and inferential, the Confrontation Clause issue was outcome-determinative. If Mitchell's statements had been excluded or meaningfully limited, the Government's case would have looked very different under the sufficiency standard.

IV. The Fifth Circuit's sufficiency affirmance underscores the importance of the constitutional question

The Fifth Circuit held that a reasonable juror could find petitioner was Mitchell's source of supply and a conspirator. That holding necessarily rested on the same evidentiary mosaic presented at trial.

This Court's review is warranted because the lower courts permitted the Government to build that mosaic around an absent intermediary whose statements were never tested. The constitutional problem and the sufficiency problem are therefore

intertwined: the out-of-court statements supplied the key inferential link, and the court of appeals accepted the resulting narrative as enough to affirm.

V. This case is an especially suitable vehicle

The trial transcripts make the confrontation issue concrete and reviewable. Defense counsel expressly invoked the Confrontation Clause during the dispute over the May 11 recordings, and the district court expressly ruled on the objection.

The record is also compact. The Fifth Circuit's opinion is short, the relevant trial events are identifiable by date, and the core legal question does not depend on unresolved factual disputes. This case therefore presents a clean opportunity to address whether the Government may prove guilt through an absent intermediary's recorded statements and officer gloss while avoiding live confrontation.

Conclusion

The petition for a writ of certiorari should be granted.

Respectfully submitted,

/s/ Gabriel Hawthorne

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