No. 09-49

In the Supreme Court of the United States

PAVEL IVANOVICH LAZARENKO, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the indictment in petitioner's case omitted an element of the alleged money laundering offenses.

2. Whether the term "extortion," as used in the federal money laundering statute's definition of "specified unlawful activity," 18 U.S.C. 1956(c)(7)(B)(ii), includes extortion under color of official right and other non-violent forms of extortion.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1-45) is reported at 564 F.3d 1026.

JURISDICTION

The judgment of the court of appeals was entered on September 26, 2008. A petition for rehearing was denied on April 10, 2009 (Pet. App. 1-2). The petition for a writ of certiorari was filed on July 9, 2009. The jurisdiction of this Court is invoked under 28 U.S.C. 1254.

STATEMENT

Following a jury trial in the United States District Court for the Northern District of California, petitioner was convicted on one count of conspiring to commit money laundering, in violation of 18 U.S.C. 1956(h); seven counts of money laundering, in violation of 18

U.S.C. 1956(a)(1)(B) and (2)(B); five counts of wire fraud, in violation of 18 U.S.C. 1343 (1994) and 18 U.S.C. 1346; and one count of interstate transportation of stolen property, in violation of 18 U.S.C. 2314. He was sentenced to 108 months of imprisonment, to be followed by three years of supervised release. Pet. App. 10, 45-49. The court of appeals affirmed the conspiracy and money laundering convictions, reversed the wire fraud and interstate transportation of stolen property convictions, vacated petitioner's sentence, and remanded for resentencing. *Id.* at 1-45.

1. Petitioner served as a high-ranking public official in Ukraine during the 1990s. Petitioner exploited his government position to "form[] multiple business relationships and engage[] in a tangled series of transactions that netted him millions of dollars." Pet. App. 2-3; see *id.* at 3-8 (describing the five separate arrangements that formed the basis for the charges against petitioner). Petitioner "kept his money in foreign bank accounts, transferring funds from one account to another across the globe in an effort * * * to disguise and conceal the sources and ownership of the proceeds from the Ukrainian people," and the funds "passed through bank accounts in the United States from Swiss, off-shore, and other accounts." *Id.* at 2. Petitioner left Ukraine around February 1999 and subsequently came to the United States. He was arrested in April 1999. Gov't C.A. Br. 22.

2. A grand jury charged petitioner with a single count of conspiracy to commit money laundering (Count 1); seven counts of money laundering, in violation of 18 U.S.C. 1956(a)(2) (Counts 2-5) and 18 U.S.C. 1956(a)(1)(B) (Counts 6-8); 22 counts of wire fraud (Counts 9-30); and 23 counts of interstate transportation

of stolen property (Counts 31-53). Pet. App. 8-9; see *id.* at 74-121 (Second Superseding Indictment). Count 1 alleged that petitioner conspired to commit money laundering by conducting financial transactions that involved the proceeds of extortion, wire fraud, and receipt and transfer of stolen property. *Id.* at 76-91. The substantive money laundering counts were likewise based on the "specified unlawful activities" of:

> receipt and transfer of property that was stolen, unlawfully converted, and taken by fraud in violation of 18 U.S.C. § 2314 and § 2315; extortion as specified in 18 U.S.C. § 1956(c)(7)(B)(ii); and wire fraud in violation of 18 U.S.C. § 1343 and § 1346.

Id. at 92.

Petitioner moved for a bill of particulars identifying the provisions of Ukrainian law that the government alleged that he violated. The district court denied that motion. Gov't C.A. E.R. 62-66. The court stated that petitioner would, "at some point, [be] entitled to know the specific Ukrainian laws which he is accused of violating." *Id.* at 64. The court noted, however, that petitioner was "not being charged pursuant to foreign statutes or laws" and stated that although "a violation of Ukrainian law may be relevant to establishing an element of the alleged offense, * * * it is not the offense itself." *Ibid.* The district court also stated that petitioner had "offer[ed] no legal support for the proposition that such information must be included in the indictment or a bill of particulars." *Ibid.*; see Pet. C.A. E.R. 90-91 (denying petitioner's subsequent motion to dismiss the indictment and reiterating the court's previous rejection of the view "that a violation of foreign law is a necessary 'element' of any of the offenses pled in the indictment");

Gov't C.A. E.R. 70-72 (denying petitioner's motion to preclude the government from attempting to prove certain theories of liability at trial and reiterating the court's previous view that the indictment "adequately alleges the offenses for which [petitioner] * * * is culpable").

Petitioner also moved to dismiss the money laundering charges on the ground "that the extortion allegations could not serve as a specified unlawful activity underlying the charge[s] because only extortion by force, as opposed to extortion under color of office, could be the specified unlawful activity." Pet. C.A. E.R. 55. The district court denied that motion, concluding "that the allegations of extortion, fraud, and interstate transportation of stolen property [contained in the indictment] can service as the specified unlawful activity required under the money laundering statute." *Id.* at 57.

Petitioner was tried before a jury. At the close of the government's case in chief, the district court granted petitioner's motion for a judgment of acquittal on 12 of the 22 counts charging wire fraud and 12 of the 23 counts charging interstate transportation of stolen property. The jury found petitioner guilty on the remaining counts. After the jury's verdict, the district court granted petitioner's renewed motion for a judgment of acquittal with respect to five additional wire fraud counts and ten additional interstate transportation of stolen property counts. The district court declined to disturb the jury's verdict with respect to the one count charging conspiracy to commit money laundering, the seven counts charging money laundering, and one count charging interstate transportation of stolen property. Pet. App. 9-11.

3. The court of appeals affirmed petitioner's conspiracy and money laundering convictions, reversed the wire fraud and interstate transportation of stolen property convictions, vacated petitioner's sentence, and remanded for resentencing. Pet. App. 1-45.

a. The court of appeals rejected petitioner's argument that "the indictment must be dismissed because it failed to allege that his conduct violated Ukrainian law." Pet. App. 11. The court stated that "[a]n indictment is sufficient if it (1) 'contains the elements of the offense charged and fairly informs a defendant of the charge against which he must defend' and (2) 'enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense.'" *Ibid.* (quoting *Hamling* v. *United States*, 418 U.S. 87, 117 (1974)). It also stated that "[a]n indictment 'should be read in its entirety, construed according to common sense, and interpreted to include facts which are necessarily implied.'" *Ibid.* (quoting *United States* v. *Berger*, 473 F.3d 1080, 1103 (9th Cir. 2007), cert. denied, 128 S. Ct. 874 (2008)).

In this case, the court of appeals noted that "[t]he indictment tracks the statutory language in charging money laundering, wire fraud and interstate transportation of stolen property," language that the court of appeals had previously held "set forth the essential elements of these offenses." Pet. App. 12. The court stated that petitioner was "seek[ing] to import an additional element into these offenses [by] claiming that the Ukrainian law at issue is also an essential element because the government must prove a violation of Ukrainian law to sustain a conviction." *Ibid.* The court of appeals stated that petitioner's "challenge does not achieve novelty status simply because it involves foreign law" and it noted that the general rule is that, "when bringing

charges of money laundering, the government need not allege all the elements of the 'specified unlawful activity,' i.e., the underlying offense." *Ibid.* "Here," the court of appeals explained, "the violation of Ukrainian law is the specified unlawful activity." *Ibid.*

The court of appeals also determined that "the omission of a citation to foreign law" in the indictment had not prejudiced petitioner, noting both that "[t]he indictment provided detailed allegations regarding the basis for the charges, including dates, amounts, account numbers, and sources of the money" and that "the [petit] jury was instructed that it had to find a violation of [Ukrainian] law and was provided with the elements of the relevant [Ukrainian] statutes." Pet. App. 12-13. The court rejected petitioner's reliance on *Richardson* v. *United States*, 526 U.S. 813 (1999), both because this Court did "not comment on the sufficiency of an indictment in *Richardson*" and because "here the indictment identified interstate transportation of stolen property, extortion, and wire fraud as the 'specified unlawful activit[ies]' and provided detailed allegations regarding each of these offenses." Pet. App. 13 (brackets in original).

b. The court of appeals held that the evidence at trial was insufficient to sustain petitioner's convictions for wire fraud (Counts 25-29) and interstate transportation of stolen property (Count 31). Pet. App. 18-21, 28-34. The court rejected petitioner's argument that the reversal of the wire fraud convictions also required reversal of the convictions on the money laundering counts charged in Counts 6-8. *Id.* at 21-22.

c. The court of appeals also rejected petitioner's challenge to the money laundering convictions based on Counts 2-5. Pet. App. 22-27. As the court explained,

Section 1956 "criminalizes the laundering of the proceeds of a 'specified unlawful activity.'" *Id.* at 23. At the time of petitioner's charged conduct, "specified unlawful activity" was defined to include: "with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving * * * extortion." 18 U.S.C. 1956(c)(7)(B) and (B)(ii) (1994).

The court of appeals rejected petitioner's argument "that 'extortion' as it was used in the money laundering statute * * * is limited to extortion through violence" and excludes extortion that "is more akin to bribery" or extortion committed "under color of official right." Pet. App. 23-24. The court cited the "familiar maxim that a statutory term is generally presumed to have its common law meaning," *id.* at 25 (quotation marks omitted) (quoting *Evans* v. *United States*, 504 U.S. 255, 259 (1992)), and it noted that, "[a]t common law, extortion was a crime that resembled what we know as bribery, and involved an abuse of power by a public official," and had only later been "expanded * * * to include the obtaining of property by force," *ibid.* The court of appeals noted that Section 1956(c)(7)(B)(ii) did not "qualify the term in any way that suggests that we should read 'extortion' as excluding the common law definition," *id.* at 25-26, and stated that petitioner "has not directed us to any statute where Congress used the word 'extortion' and meant only extortion by violence *or* only extortion under color of official right," *id.* at 27.

In 2001, after the conduct at issue in this case, Congress amended the definition of "specified unlawful activity" to include "bribery of a public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official." 18 U.S.C.

1956(c)(7)(B)(iv); see International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001, Pub. L. No. 107-56, Tit. III, § 315(1)(C), 115 Stat. 308. The court of appeals determined that this amendment "does not become superfluous if we read 'extortion' to include extortion under color of official right," because "[b]ribery and extortion under color of official right are not co-extensive." Pet. App. 26; see *ibid.* (noting that "'[b]ribery of a public official' extends to the individual who offers the bribe as well as the public official who accepts the bribe").[1]

ARGUMENT

Petitioner contends (Pet. 5-13) that the omission of an element of a criminal offense from a federal indictment can never constitute harmless error. Petitioner also asserts (Pet. 13-20) that his conduct did not constitute "extortion" for purposes of 18 U.S.C. 1956(c)(7)(B)(ii) (1994). Those claims do not merit further review.

1. The petition for a writ of certiorari should be denied because this case is in an interlocutory posture. The court of appeals reversed six of petitioner's convictions, vacated petitioner's sentence, and remanded for resentencing on the remaining eight counts. Pet. App. 45. Following the district court's final disposition of the case, petitioner will be able to raise his current claims—together with any other claims that may arise during resentencing—in a single petition for a writ of certiorari. See *Major League Baseball Players Ass'n* v. *Garvey*, 532 U.S. 504, 508 n.1 (2001) (per curiam) (stating

[1] The court of appeals also rejected petitioner's claim that he was entitled to a new trial on grounds of retroactive misjoinder. Pet. App. 34-44. Petitioner does not renew that claim before this Court.

that this Court "ha[s] authority to consider questions determined in earlier stages of the litigation where certiorari is sought from" the most recent judgment). The interlocutory posture of the case "alone furnishe[s] sufficient ground for the denial of" the petition for a writ of certiorari. *Hamilton-Brown Shoe Co.* v. *Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916); see *VMI* v. *United States*, 508 U.S. 946 (1993) (Scalia, J., respecting the denial of the petition for a writ of certiorari); see also Robert L. Stern et al., *Supreme Court Practice* § 4.18, at 258 n.59 (8th ed. 2002) (noting that this Court routinely denies petitions for a writ of certiorari filed by criminal defendants challenging interlocutory determinations that may be reviewed at the ultimate conclusion of the proceedings and explaining that this practice promotes judicial efficiency).

2. Petitioner contends (Pet. 5-13) that this Court should grant a writ of certiorari to determine whether the omission of an element of a criminal offense from a federal indictment can constitute harmless error. As petitioner notes (Pet. 5), this Court granted review to decide that question three years ago, but it ultimately resolved the case by finding that the indictment in question contained all the elements of the offense and thus presented no harmless-error issue. See *United States* v. *Resendiz-Ponce*, 549 U.S. 102 (2007). The pre-*Resendiz-Ponce* split continues to exist. The majority of the courts of appeals have held that such an omission (or the omission of a sentence-enhancing fact) is subject to harmless-error analysis. See *United States* v. *Allen*, 406 F.3d 940, 943-945 (8th Cir. 2005) (en banc), cert. denied, 549 U.S. 1095 (2006); *United States* v. *Robinson*, 367 F.3d 278, 285-286 (5th Cir.), cert. denied, 543 U.S. 1005 (2004); *United States* v. *Higgs*, 353 F.3d 281, 304-307

(4th Cir. 2003), cert. denied, 543 U.S. 999 (2004); *United States* v. *Trennell*, 290 F.3d 881, 889-890 (7th Cir.), cert. denied, 537 U.S. 1014 (2002); *United States* v. *Cor-Bon Custom Bullet Co.*, 287 F.3d 576, 580-581 (6th Cir.), cert. denied, 537 U.S. 880 (2002); *United States* v. *Prentiss*, 256 F.3d 971, 981-985 (10th Cir. 2001) (per curiam) (en banc); *United States* v. *Corporan-Cuevas*, 244 F.3d 199, 202 (1st Cir.), cert. denied, 534 U.S. 880 (2001). The Third and Ninth Circuits, in contrast, have held that such omissions constitute structural error and require reversal. See *United States* v. *Du Bo*, 186 F.3d 1177, 1179-1181 (9th Cir. 1999); *United States* v. *Spinner*, 180 F.3d 514, 515-516 (3d Cir. 1999).

This case, however, does not present the question on which petitioner seeks review. The court of appeals did not conclude that petitioner's indictment omitted an element of the offense but that the omission was harmless. Instead, the court held that the indictment was not defective in the first place. See Pet. App. 11-13. As a result, this Court could not reach the harmless-error question in this case unless it were first to consider—and then disagree with—the actual basis for the court of appeals' decision.[2]

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[2] As noted in the text, the Ninth Circuit has previously held that the omission of an element of the offense from a federal indictment constitutes structural error. Petitioner suggests that the Ninth Circuit implicitly repudiated *Du Bo* in this case and effectively "held that any error in the failure to allege a foreign offense was harmless in this case." Pet. 10. But that is not what the court of appeals said; instead, it held that "[t]he indictment against [petitioner] was legally sufficient." Pet. App. 13. Even if there were any tension between the Ninth Circuit's decisions in *Du Bo* and in this case—and there is not—an intra-circuit conflict would not warrant this Court's review. See *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957) (per curiam).

Petitioner does not seek this Court's review of the court of appeals' conclusion that "[t]he indictment against [him] was legally sufficient." Pet. App. 13; see Pet i. Petitioner likewise does not assert that that holding conflicts with any decision of another court of appeals. See Pet. 5-9. Further review on that issue is therefore unwarranted.

In any event, the court of appeals correctly held that the indictment in this case was legally sufficient. As the court of appeals explained (Pet. App. 12), an indictment is sufficient if it contains the elements of the offense charged, fairly informs the defendant of the charge against him, and contains sufficient information to enable him to plead an acquittal or conviction as a bar to future prosecutions. See, *e.g.*, *Resendiz-Ponce*, 549 U.S. at 108; *Hamling* v. *United States*, 418 U.S. 87, 117 (1974). An indictment that tracks the language of the statute is generally adequate for these purposes. See, *e.g.*, *United States* v. *Bailey*, 444 U.S. 394, 414 (1980); *Hamling*, 418 U.S. at 117.

In this case, "[t]he indictment track[ed] the statutory language." Pet. App. 12. Compare *id.* at 77, 92, 94, with 18 U.S.C. 1956(a)(1)(B)(i), (2)(B)(i) and (h). Those statutory sections set forth the essential elements of the respective money laundering offenses. See, *e.g.*, *United States* v. *Vanhorn*, 296 F.3d 713, 717-718 (8th Cir. 2002) (so stating with respect to Section 1956(a)(1)(B)(i)), cert. denied, 537 U.S. 1167 (2003); *United States* v. *Ladum*, 141 F.3d 1328, 1341 (9th Cir.) (same), cert. denied, 525 U.S. 898, and 525 U.S. 1021 (1998); *United States* v. *Savage*, 67 F.3d 1435, 1441 (9th Cir. 1995) (so stating with respect to Section 1956(a)(2)(B)(i)), cert. denied, 516 U.S. 1136 (1996); *United States* v. *Carr*, 25 F.3d 1194, 1204 (3d Cir.) (similar), cert. denied, 513 U.S. 939 (1994),

and 513 U.S. 1086 (1995). In addition, "[t]he indictment provided detailed allegations regarding the basis for the charges, including dates, amounts, account numbers, and sources of the money," Pet. App. 13. Accordingly, the indictment contained sufficient information to permit petitioner to prepare a defense to the charges against and to raise a double jeopardy defense against a future prosecution for the same offenses.

Petitioner erroneously contends (Pet. 6-7) that the indictment was defective with respect to the money laundering offenses because it did not allege that his underlying conduct violated Ukrainian law and did not include a citation to "any specific provisions of the Ukrainian Criminal Code." Pet. 6. The crimes with which petitioner was charged, however, were not violations of Ukrainian law; rather, they were violations of the federal money laundering statute. One of the elements of the money laundering offense is that the property involved must be "the proceeds of specified unlawful activity," 18 U.S.C. 1956(a)(1) (1994), or be used "to promote the carrying on of specified unlawful activity," 18 U.S.C. 1956(a)(2)(A). But "the elements of money laundering do not include the elements of the 'specified unlawful activity.'" *United States* v. *Lomow*, 266 F.3d 1013, 1017 (9th Cir. 2001). As a result, a money laundering indictment need not allege the elements of the specified criminal activity. See Pet. App. 12; *United States* v. *Caldwell*, 302 F.3d 399, 413 (5th Cir. 2002); *United States* v. *McGauley*, 279 F.3d 62, 70-71 (1st Cir. 2002); *United States* v. *Mankarious*, 151 F.3d 694, 703 (7th Cir.), cert. denied, 525 U.S. 1056 (1998); *United States*

v. *Smith*, 44 F.3d 1259, 1265 (4th Cir.), cert. denied, 514 U.S. 1113 (1995).[3]

As the court of appeals observed, the district court charged the petit jury "that it had to find a violation of [Ukrainian] law" in order to return a guilty verdict and "provided [the jury] with the elements of the relevant [Ukrainian] statutes." Pet. App. 13. Petitioner asserts that "an element is an element" and "[t]here is no distinction between an element for the purposes of pleading and an element for the purposes of petit jury instructions." Pet. 8-9. But it is far from unusual for a trial court's jury instructions to contain more detailed information about the nature of the charged offense than was contained in the indictment. See, *e.g.*, *United States* v. *Cherry*, 330 F.3d 658, 667-668 (4th Cir. 2003) (upholding money laundering convictions where the indictment had not contained the elements of the specified unlawful activity but the district court had instructed the petit jury about the elements of the specified unlawful activity).

3. Petitioner contends (Pet. 13-20) that his conduct did not constitute "extortion" as that term is used in the federal money laundering statute's definition of "specified unlawful activity" because that term is limited to "extortion by threats of violence." Pet. 15. That claim does not merit further review.

a. Petitioner does not assert that the court of appeals' rejection of his claim about the meaning of the term "extortion" in the pre-2001 version of the money

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[3] Petitioner provides no support for his assertion that "[w]hen the specified unlawful alleged is 'extortion,'" the elements of a federal money laundering offense "include that the offense be 'against a foreign nation.'" Pet. 9 n.1 (quoting 18 U.S.C. 1956(c)(7)(B)(ii) (1994)). In any event, the indictment provided adequate notice by alleging extortion as well as the provision that made extortion a specified unlawful activity.

laundering statute conflicts with the decisions of this Court or of another court of appeals. Indeed, petitioner cites no other court of appeals decision that even considered this particular question. Standing alone, the absence of any claim of conflict warrants denial of the petition for a writ of certiorari with respect to the second question on which petitioner seeks this Court's review.

b. This Court's review also is unwarranted because the meaning of the pre-2001 version of the money laundering statute is an issue of little, if any, continuing importance. As petitioner acknowledged before the court of appeals, the sort of conduct in which he engaged is clearly covered by the post-2001 version of the statute. See Pet. C.A. Br. 83 ("With the passage of the Patriot Act, conduct of the sort charged in Counts 1 to 8 came within the scope of the money laundering statutes."). It is unlikely that any significant number of future money laundering cases will be brought based on corrupt predicate activity that predated the enactment of a statute that already has been in effect for eight years.

c. In any event, the court of appeals correctly held that petitioner's conduct constituted "specified unlawful activity" under the pre-2001 version of the money laundering statute. Pet. App. 22-27. The version of the statute in effect at the time of petitioner's offenses defined "specified unlawful activity" to include "an offense against a foreign nation involving * * * extortion." 18 U.S.C. 1956(c)(7)(B) and (B)(ii) (1994). "It is a familiar 'maxim that a statutory term is generally presumed to have its common law meaning.'" *Evans* v. *United States*, 504 U.S. 255, 259 (1992) (quoting *Taylor* v. *United States*, 495 U.S. 575, 592 (1990)). This Court has explained that, "[a]t common law, extortion was an offense committed by a public official who took 'by colour

of his office' money that was not due to him for performance of his official duties," and that extortion thus "was the rough equivalent of what we would now describe as 'taking a bribe.'" *Id.* at 260. Here, as in *Evans*, "[i]t is clear that petitioner committed that offense." *Ibid.*

Petitioner has failed to identify any "contrary direction" by Congress. *Evans*, 504 U.S. at 259 (quoting *Morissette* v. *United States*, 342 U.S. 246, 263 (1952)). As the court of appeals correctly observed, "Congress did not qualify the term in any way that suggests that we should read 'extortion' as excluding the common law definition." Pet. App. 25-26. Petitioner observes (Pet. 16) that the term "extortion" is included in the same statutory section as kidnapping and robbery. See 18 U.S.C. 1956(c)(7)(B)(ii) (1994). That fact, however, does not compel a court "to give the term a narrower meaning or one predicated on force or violence." Pet. App. 26. To the contrary, it is equally plausible that Congress grouped those three undefined predicate offenses together because they all were crimes at common law. Petitioner also contends (Pet. 15) that "[t]he term 'extortion' has many different meanings" and that "it has covered different kinds of conduct" "in various statutes and at various times." As the court of appeals noted, however, petitioner has failed to identify "any statute where *Congress* used the word 'extortion' and meant only extortion by violence *or* only extortion under color of official right." Pet. App. 27 (first emphasis added).

Petitioner errs in asserting (Pet. 14-15) that Congress's decision in 2001 to amend the definition "specified unlawful activity" to include "bribery of a public official" demonstrates that his conduct was not covered by the pre-2001 version of the statute. He relies (Pet.

17-18) on statements by Executive Branch officials in seeking legislative changes. But the question is not whether the pre-2001 version of the money laundering statute covered "bribery" in a general sense—which is the issue addressed in the statements quoted by petitioner, see *ibid.*—but whether petitioner's particular conduct constituted "extortion," which was specifically included in the pre-2001 statute.

At any rate, as the court of appeals explained (Pet. App. 26), its interpretation of the term "extortion" in the pre-2001 statutes does not render the 2001 amendment superfluous. "Bribery and extortion under color of official right are not co-extensive," because the "'[b]ribery of a public official' extends to the individual who offers the bribe as well as the public official who accepts the bribe." *Ibid.*; see *ibid.* (explaining that the words "[m]isappropriation, theft, or embezzlement of public funds by or for the benefit of a public official," which also were added by the 2001 amendments, "will also capture conduct not punishable as 'extortion under color of official right' because misappropriation, theft, and embezzlement do not necessarily require the quid pro quo of an official action").

Finally, petitioner cites the "fair warning requirement" discussed by this Court in *United States* v. *Lanier*, 520 U.S. 259 (1997), and appears to invoke the rule of lenity in particular. See Pet. 19 (citing the maxim that "[w]here criminal statutes are reasonably susceptible of two interpretations, the narrower interpretation must be chosen"). As the court of appeals correctly recognized, "[t]he term 'extortion' has an ordinary meaning and it is not ambiguous." Pet. App. 27. The version of the statute in effect at the time of petitioner's offense thus provided more than "a fair warning * * *

of what the law intends to do if a certain line is passed." *Arthur Andersen LLP* v. *United States*, 544 U.S. 696, 703 (2005) (citation omitted). There likewise is no reason to resort to the rule of lenity, which is reserved for cases involving a "grievous ambiguity" in the statutory text such that, "after seizing everything from which aid can be derived, . . . [the Court] can make no more than a guess at what Congress intended." *Muscarello* v. *United States*, 524 U.S. 125, 138-139 (1998) (internal quotation marks and citations omitted).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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