No. 19-1000

In the Supreme Court of the United States

HEON-CHEOL CHI, 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

NOEL J. FRANCISCO
Solicitor General
Counsel of Record
BRIAN A. BENCZKOWSKI
Assistant Attorney General
JAMES I. PEARCE
Attorney

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether the court of appeals correctly determined that petitioner's violation of Article 129 of South Korea's Criminal Code qualified as "an offense against a foreign nation involving * * * bribery of a public official" under 18 U.S.C. 1956(c)(7)(B)(iv), for purposes of his prosecution for U.S.-connected monetary transactions in the proceeds of such a foreign crime, in violation of 18 U.S.C. 1957.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statutes:

Statutes—Continued: Page

Statutes—Continued: Page

In the Supreme Court of the United States

No. 19-1000

HEON-CHEOL CHI, 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

OPINION BELOW

The amended opinion of the court of appeals (Pet. App. 1-26) is reported at 942 F.3d 1159.

JURISDICTION

The judgment of the court of appeals was entered on August 30, 2019. A petition for rehearing was denied on November 19, 2019 (Pet. App. 25-26). 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 Central District of California, petitioner was convicted of engaging in a monetary transaction in criminally derived property exceeding $10,000, in violation of 18 U.S.C. 1957 and 2(b). Judgment 1. He was sentenced to 14 months of imprisonment, to be followed by one year of supervised release. *Ibid.* The court of appeals affirmed. Pet. App. 1-24.

1. Petitioner, a citizen of South Korea, worked as a seismologist at the Korea Institute of Geoscience and Mineral Resources (Institute), a geological research institution funded by the South Korean government. Pet. App. 3, 5. Petitioner also served on a technical working group for the United Nations Comprehensive Test Ban Treaty Organization, and he advised the President of South Korea on nuclear-weapons testing. *Id.* at 5.

Over time, petitioner gained familiarity with the Institute's extensive purchases of geological equipment and became involved in the procurement process. Pet. App. 5. And he took money on the side from two private companies—one based in California (Kinemetrics) and another based in England (Guralp Systems)—in exchange for recommending and purchasing their products. *Id.* at 5-7. Petitioner also sold Kinemetrics confidential information about its competitors. *Id.* at 7. In his communications with the companies, petitioner was "surprisingly candid" about the illicit nature of his activity. *Ibid.* He "often admitt[ed]" to Kinemetrics "that his conduct was against the law." *Ibid.* And petitioner stated to representatives of Guralp Systems that he was "a government officer," that he "should not have any contact with [a] private company," and that "it is illegal to assist any company" in having the Institute test its equipment. Presentence Investigation Report (PSR) ¶ 13.

Between 2009 and 2016, Kinemetrics and Guralp collectively paid petitioner more than $1 million, which they deposited, at his request, in a Bank of America account in California. Pet. App. 7. Petitioner transferred more than $500,000 from that account to a Merrill Lynch account in New Jersey. *Ibid.* For example, in November 2016, petitioner deposited a $56,000 check

drawn from his California Bank of America account into the New Jersey Merrill Lynch account. *Id.* at 4 n.1.

In 2015, a Guralp official twice confronted petitioner with concerns that petitioner's conduct was unlawful. Pet. App. 6. Petitioner again acknowledged that he was a government official and that his prior arrangements with Guralp had indeed been unlawful, but nevertheless requested additional payments. *Id.* at 7. The Guralp official subsequently contacted law enforcement in the United Kingdom. *Ibid.* The Federal Bureau of Investigation (FBI) also began investigating, and in December 2016, FBI agents arrested petitioner in San Francisco when he traveled there for a seismology convention. *Id.* at 7-8.

2. A federal grand jury in the Central District of California returned a superseding indictment charging petitioner with six counts of engaging in monetary transactions in property exceeding $10,000 that was derived from a "specified unlawful activity," in violation of 18 U.S.C. 1957 and 2(b). Superseding Indictment 1-6. The superseding indictment charged that the "'specified unlawful activity'" in petitioner's case was "an offense against a foreign nation involving * * * bribery of a public official," 18 U.S.C. 1956(c)(7)(B)(iv). See Superseding Indictment 6; Pet. App. 8. And the particular foreign offense that the superseding indictment identified was a violation of Article 129 of the South Korean Criminal Code. Pet. App. 8. As translated in the district court, Article 129 provides in pertinent part that "[a] public official or an arbitrator who receives, demands or promises to accept a bribe in connection with his/her duties, shall be punished by imprisonment for not more than five years or suspension of qualifications for not more than ten years." *Id.* at 8 n.4.

Petitioner moved to dismiss the superseding indictment. D. Ct. Doc. 68 (May 15, 2017). As relevant here, petitioner contended that, for conduct "to constitute 'bribery of a public official'" within the meaning of Section 1956(c)(7)(B)(iv), it must "violate not only" the foreign law—here, Article 129 of the South Korean Criminal Code—but must "also constitute 'bribery of a public official,' as that term is commonly understood under US law." *Id.* at 15 (emphasis omitted). Petitioner further argued that 18 U.S.C. 201 supplies the relevant U.S.-law definition, such that U.S.-connected financial transactions in the proceeds of foreign bribery crimes would be unlawful only if the foreign jurisdiction's bribery law includes every limitation that Section 201 imposes on domestic prosecutions for substantive bribery. D. Ct. Doc. 68, at 15 (emphasis omitted); see *id.* at 16-17. The district court denied the motion. C.A. E.R. 186-190.

At trial, the district court instructed the jury that, to find petitioner guilty under Sections 1956(c)(7)(B)(iv) and 1957, it had to find beyond a reasonable doubt that (among other things) petitioner's conduct involved property "derived from bribery of a public official in violation of * * * Article 129 of South Korea's Criminal Code." C.A. E.R. 2. The court further instructed the jury that "Article 129 prohibits a public official from receiving, demanding, or promising to accept a bribe in connection with his duties," and that, to establish a violation of Article 129, the government had to prove beyond a reasonable doubt both that petitioner was a public official and that he had "received, demanded, or promised to accept a payment in exchange for exercising his official duties, or in other words, as a quid pro quo for exercising his official duties." *Id.* at 4. And the court instructed the jury that a "director or researcher

at" the Institute "is a public official for the purposes of Article 129." *Ibid.*

The district court rejected petitioner's contention that it also was required to instruct the jury on the definition of domestic federal bribery in 18 U.S.C. 201. C.A. E.R. 65. The court "agree[d] with [petitioner] that it must ensure that the definition of 'bribery' under Article 129 * * * falls within the category of conduct of bribery of a public official, as contemplated by Section 1956(c)." *Ibid.* But it disagreed with petitioner that Section 1956 "incorporate[s] the definition of 'bribery'" specific to the separate substantive federal bribery prohibition in Section 201. *Id.* at 66; see Pet. App. 8. And the court found that the prohibition on certain U.S.-connected transactions in the proceeds of foreign-law bribery crimes applies to the proceeds of violations of South Korea's Article 129, which the court considered "virtually identical" to the "traditional common law definition of 'bribery.'" C.A. E.R. 65.

The jury found petitioner guilty on one of the six counts, relating to the $56,000 check that petitioner wrote from his California Bank of America account and deposited in his New Jersey Merrill Lynch account in November 2016. Judgment 1; cf. Superseding Indictment 6. The jury was unable to reach a unanimous verdict on the remaining counts. PSR ¶ 4. The district court declared a mistrial on those counts, *ibid.*, and subsequently granted the government's motion to dismiss them, Judgment 2. The court sentenced petitioner to 14 months of imprisonment. Judgment 1.

3. The court of appeals affirmed. Pet. App. 1-24.

The court of appeals agreed with the district court that a bribery offense under South Korea's Article 129

qualifies as an offense "involving * * * bribery of a public official" under 18 U.S.C. 1956(c)(7)(B)(iv), thereby supporting prosecution for petitioner's U.S.-connected financial transactions in the proceeds of that foreign crime. Like the district court, the court of appeals viewed Article 129 to contain all of the elements of the "ordinary, contemporary, common meaning" of "bribery," which the court of appeals derived from secondary sources. Pet. App. 15 (quoting *Perrin* v. *United States*, 444 U.S. 37, 42 (1979)); see *id.* at 10-17. And like the district court, the court of appeals rejected petitioner's argument that Section 1956(c)(7)(B)(iv)'s reference to "'bribery of a public official,'" in the context of "offense[s] against a foreign nation," should be deemed to be "a reference to 18 U.S.C. § 201." *Id.* at 17; see *id.* at 17-19.

The court of appeals explained that petitioner's reading of the phrase as a reference to Section 201's substantive federal prohibition on domestic bribery was "belied by the rest of the statute." Pet. App. 17. The court observed that multiple other nearby clauses within Section 1956(c)(7)(B) include express references to other federal laws, see *id.* at 17-18 (citing 18 U.S.C. 1956(c)(7)(B)(i), (iii), (v)(I) and (II)), while Section 1956(c)(7)(B)(iv) "contains no such reference," *id.* at 18. The court additionally reasoned that, "even if 'bribery of a public official'" in Section 1956 (c)(7)(B)(iv) "were interpreted as a reference to a specific federal statute," it would not be "clear to which statute it would refer," given that "[v]arious federal statutes" in addition to Section 201 also encompass similar conduct by public officials. *Id.* at 18-19 (citing 5 U.S.C. 7353; 18 U.S.C. 208, 209).

The court of appeals also rejected petitioner's argument that the jury instructions improperly omitted a requirement to find a "corrupt intent to be influenced." Pet. App. 22. The court observed that petitioner's argument was premised on Section 201 and case law construing that provision and was "merely a restatement of [petitioner's] general argument" that "'bribery of a public official'" in Section 1956(c)(7)(B)(iv) "is to be defined by § 201," which the court had rejected. *Ibid.* (citation omitted). The court additionally found petitioner's reliance on this Court's decision in *McDonnell* v. *United States*, 136 S. Ct. 2355 (2016), to be misplaced in this particular context, stating that *McDonnell* had also concerned Section 201, and that the constitutional and federalism issues discussed in that case were absent here. Pet. App. 22 n.7.

ARGUMENT

Petitioner contends (Pet. 7-22) that the court of appeals erred in determining that a violation of Article 129 of South Korea's Criminal Code constitutes "an offense against a foreign nation involving * * * bribery of a public official," 18 U.S.C. 1956(c)(7)(B)(iv), for purposes of his prosecution under 18 U.S.C. 1957 for U.S.-connected monetary transactions in the proceeds of such a crime. The court of appeals correctly rejected his arguments, and its decision does not conflict with any decision of this Court or another court of appeals. Further review is not warranted.

1. As relevant here, Section 1957 makes it unlawful for any person "knowingly [to] engage[] or attempt[] to engage in a monetary transaction" in the United States "in criminally derived property of a value greater than $10,000" that "is derived from specified unlawful activity." 18 U.S.C. 1957(a); see 18 U.S.C. 1957(d)(1). The term

"specified unlawful activity" is defined in 18 U.S.C. 1956(c)(7) to encompass a wide range of criminal conduct. It enumerates many types of conduct that constitute offenses under U.S. law. See 18 U.S.C. 1956(c)(7)(A), (C), and (G). In addition, if the financial transaction "occurr[ed] in whole or in part in the United States," the term "'specified unlawful activity'" also includes seven categories of offenses under the laws of other nations. 18 U.S.C. 1956(c)(7)(B).

One of those categories of foreign crimes, set forth in 18 U.S.C. 1956(c)(7)(B)(iv), covers "an offense against a foreign nation involving * * * bribery of a public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official." The foreign crimes described in Section 1956(c)(7)(B)(iv) are distinct from domestic bribery crimes, such as violations of 18 U.S.C. 201, which are included in a separate category of "specified unlawful activity." See 18 U.S.C. 1956(c)(7)(A) (including offenses listed in 18 U.S.C. 1961(1)); 18 U.S.C. 1961(1) (including, *inter alia*, 18 U.S.C. 201). And Section 1956(c)(7)(B)(iv) does not authorize federal punishment of the foreign offenses to which it refers. Instead, Section 1956(c)(7)(B)(iv), as incorporated through Section 1957, 18 U.S.C. 1957(f)(3), prohibits people who have committed such foreign offenses, in violation of the laws of a foreign country, from engaging in certain U.S.-connected financial transactions in the proceeds of their foreign crimes.

2. Petitioner first contends (Pet. 7-10) that review is warranted to address whether Section 1956(c)(7)(B)(iv) calls for a comparison between the foreign crime at issue and a generic offense of "bribery of a public official." But petitioner asserts no error in the court of appeals' consideration of that issue. Instead, petitioner acknowledges (Pet. 8, 10), that the court of appeals'

decision adopted in substance the approach he advocates. Particularly given that he does not even suggest that adoption of the approach he disfavors would affect the outcome, further review of this issue is unwarranted.

a. As this Court has observed, some federal statutes that impose sentencing or other consequences for prior criminal offenses "require[] [a] court to come up with a 'generic' version of a crime—that is, the elements of 'the offense as commonly understood.'" *Shular* v. *United States*, 140 S. Ct. 779, 783 (2020) (citation omitted). For example, in *Taylor* v. *United States*, 495 U.S. 575 (1990), the Court was "confronted with" the "unadorned reference to 'burglary'" in 18 U.S.C. 924(e)(2)(B)(ii), a provision of the Armed Career Criminal Act of 1984 (ACCA), 18 U.S.C. 924(e), that enhanced the sentences of certain defendants with "burglary" convictions. *Shular*, 140 S. Ct. at 783 (discussing *Taylor* v. *United States*, *supra*). The Court in *Taylor* construed the term "burglary" by "identif[ying] the elements of 'generic burglary' based on the 'sense in which the term is now used in the criminal codes of most States.'" *Ibid.* (quoting *Taylor*, 495 U.S. at 598-599).

"In contrast," certain other statutes that impose consequences for prior convictions "ask the court to determine not whether the prior conviction was for a certain offense, but whether the conviction meets some other criterion." *Shular*, 140 S. Ct. at 783. In *Kawashima* v. *Holder*, 565 U.S. 478 (2012), for example, the Court construed a provision of the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, that referred to an offense that "'involves fraud or deceit'" to "mean[] offenses with elements that necessarily entail fraudulent or deceitful conduct," 565 U.S. at 484 (citing 8 U.S.C. 1101(a)(43)(M)(i)). In that context, "no identification of

generic offense elements was necessary," and the Court "simply asked whether the prior convictions before [the Court] met that measure." *Shular*, 140 S. Ct. at 783.

And earlier this Term in *Shular*, the Court addressed a different provision of the ACCA that referred to "an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance" that carried at least a 10-year maximum sentence. 140 S. Ct. at 784 (quoting 18 U.S.C. 924(e)(2)(A)(ii)). The Court determined that, like the statute in *Kawashima*, that provision requires only that the prior offense's elements necessarily entail particular conduct, and it does not require constructing a complete, generic analogue offense and comparing a prior offense to that analogue. *Id.* at 785-787.

b. The text and context of the phrase "involving * * * bribery of a public official" in 18 U.S.C. 1956(c)(7)(B)(iv) resemble those of the statutes at issue in *Kawashima* and *Shular* in certain respects. For example, like the statutes in those cases, Section 1956(c)(7)(B)(iv) turns on whether the prior offense "involv[ed]" certain activities, *ibid.*, not on whether the prior offense *is* a particular crime. See *Shular*, 140 S. Ct. at 785. In contrast, other portions of Section 1956(c)(7) define "specified unlawful activity" as either offenses or acts that would constitute crimes under various specific federal statutes. 18 U.S.C. 1956(c)(7)(A) and (C)-(G). In addition, the phrase "bribery of a public official" and other phrases that follow in the same clause—"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)—"are unlikely names for generic offenses," *Shular*, 140 S. Ct. at 785.

This case, however, is not an appropriate vehicle for considering petitioner's contention that the phrase "involving * * * bribery of a public official" in Section 1956(c)(7)(B)(iv) calls for a comparison to a generic analogue, like the provision in *Taylor*, rather than an analysis of whether an offense entails certain described activities, like the provisions in *Kawashima* and *Shular*. Petitioner advocated below for the generic-analogue approach and effectively prevailed on that argument. Petitioner himself asserts (Pet. 8) that, "[a]lthough the Ninth Circuit couched [its] definition in [different] phraseology, it is the same thing as the 'generic' federal definition, or the offense as generally understood in the United States." Petitioner simply maintains (*ibid.*) that the decision below was "correct" in this regard, and he asks (Pet. 10) this Court to "adopt" that "initial step" of the court of appeals' "analysis." But no sound reason exists for this Court to grant his petition for a writ of certiorari to address an issue that was resolved to his satisfaction. Indeed, he does not even suggest that the result in this case would be any different under the alternative approach that he opposes.

3. Petitioner's primary contention (Pet. 11-15) in seeking certiorari is that the court of appeals should have applied a different categorical definition of "bribery of a public official," 18 U.S.C. 1956(c)(7)(B)(iv). In his view, the set of foreign crimes that could qualify should be limited to those whose elements categorically match (or are narrower than) the elements of the substantive federal bribery crime set forth in 18 U.S.C. 201. No sound basis exists to interpret Section 1956(c)(7)(B)(iv)'s reference to foreign bribery crimes to be identical to Section 201's substantive prohibition of domestic bribery.

a. Section 1956(c)(7)(B)(iv) does not mention Section 201 or any other statute, and it does not otherwise indicate that courts should consult any other provision of federal law to determine whether a particular "offense against a foreign nation," 18 U.S.C. 1956(c)(7)(B), fits within its terms. That is especially significant in the context of Section 1956(c)(7) because, as the court of appeals observed, many other portions of the definition of "specified unlawful activity" in 18 U.S.C. 1956(c)(7) *do* expressly refer to other federal statutes. Pet. App. 17-18.

In particular, some portions of Section 1956(c)(7) define "specified unlawful activity" to mean violations of, or acts that would constitute violations of, specific federal statutes. See 18 U.S.C. 1956(c)(7)(A), (C)-(E), and (G); see also 18 U.S.C. 1956(c)(7)(F) (covering "any act or activity constituting an offense involving a Federal health care offense"). And still other portions incorporate definitions of specific terms set forth in other statutes. See 18 U.S.C. 1956(c)(7)(B)(i)-(iii). In Section 1956(c)(7)(B)(iv), however, Congress did neither. And particularly when set against the backdrop of Congress's inclusion of those links to other statutes in many other parts of Section 1956(c)(7), the omission of any such cross-reference in Section 1956(c)(7)(B)(iv) indicates that Congress did not intend to incorporate any other provision. See *Russello* v. *United States*, 464 U.S. 16, 23 (1983) (explaining that Congress's inclusion of language in one statutory provision and its omission in another, nearby provision of the statute is presumed to be purposeful).

Petitioner points to "the heading of § 201"—"Bribery of public officials and witnesses," 18 U.S.C. 201 (emphasis omitted)—which he asserts "corresponds with" the

reference to "'bribery of a public official'" in 18 U.S.C. 1956(c)(7)(B)(iv). Pet. 11 (citation omitted). Petitioner's reliance on the similarity between one phrase in the text of the provision at issue here and the heading of another, far-removed substantive provision is misplaced. This Court has cautioned against giving undue weight to statutory headings, which should not "take the place of the detailed provisions of the text." *Lawson* v. *FMR LLC*, 571 U.S. 429, 446 (2014) (quoting *Brotherhood of R.R. Trainmen* v. *Baltimore & Ohio R.R.*, 331 U.S. 519, 528 (1947)). It is highly unlikely that Congress signaled an unstated intention to incorporate the entire substance of Section 201 merely by employing a somewhat similar—but not identical—phrase in the text of 18 U.S.C. 1956(c)(7)(B)(iv). That is especially true because "bribery of a public official" appears in that text as just the first in a string of phrases describing unlawful conduct ("the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official"). *Ibid.* And the "public official[s]" referred to in Section 201 are acting on behalf of the *United States* government, see 18 U.S.C. 201(a)(1), a requirement that even petitioner would not incorporate in the context of the foreign-law violations covered by Section 1956(c)(7)(B)(iv).

Congress's determination not to tether Section 1956(c)(7)(B)(iv) to Section 201 or any other particular domestic federal crime likely reflects its recognition that the provision serves a fundamentally different purpose than substantive federal statutes proscribing domestic bribery. As noted above, Section 1956(c)(7)(B)(iv) is not a freestanding criminal prohibition; it is a definitional provision that applies to (among other provisions) 18 U.S.C. 1956 and 1957. Sections 1956 and 1957 make it unlawful to engage in certain financial and monetary

transactions in, or that are designed to promote or conceal "specified unlawful activity." 18 U.S.C. 1956(a)(1), 1957(a). Unlike Section 201 and other domestic bribery laws, Section 1956(c)(7)(B)(iv) thus does not attempt to proscribe bribery as such. It instead prohibits individuals who have engaged in bribery, theft, or another listed offense in violation of *foreign law* from channeling or concealing the proceeds through transactions in the United States, potentially making the United States the repository of ill-gotten gains.

In light of that objective, and given the heterogeneity of criminal law around the world, it is unlikely that Congress intended—without any indication in the statutory text—to cover only offenses under foreign bribery laws that happen to match (or be subsumed by) each of the elements set forth in the reticulated terms of a statute establishing a particular bribery offense under U.S. law. Cf. *Shular*, 140 S. Ct. at 786 (observing that, "if Congress was concerned that state drug offenses lacked clear, universally employed names, the evident solution" in 18 U.S.C. 924(e)(2)(A)(ii) "was to identify them * * * by conduct" rather than referring to complete generic offenses). Differences in language and judicial systems would significantly complicate efforts to precisely compare domestic and foreign laws. And foreign jurisdictions, like U.S. States, may decide to regulate bribery more broadly than the federal government does. Congress can, and evidently did, restrict access to the U.S. financial system for those who violate such foreign laws, even as it writes its own substantive federal bribery laws more narrowly.

Concerns that inform limitations on substantive federal bribery laws do not carry over to the separate prohibition on U.S.-connected transactions in the proceeds

of foreign bribery crimes. For example, while a broad substantive federal definition of bribery may present "significant federalism concerns," *McDonnell* v. *United States*, 136 S. Ct. 2355, 2373 (2016), criminalizing U.S.-connected transactions in the proceeds of foreign bribery crimes does not. A foreign jurisdiction that is exercising plenary authority to police its officials could well decide to enact substantive bribery laws less constrained than Congress's own. But that in no way suggests that Congress would want the United States to be a clearinghouse for the proceeds of that foreign crime. To the contrary, basic considerations of comity would lead Congress not to make its legal protections contingent on other countries' adoption of laws that directly match (or are narrower than) a specific federal U.S. regulation of bribery. See *United States* v. *Thiam*, 934 F.3d 89, 94 (2d Cir.), cert. denied, 140 S. Ct. 654 (2019).

b. Petitioner's contentions (Pet. 11-13, 19-22) that this Court's decisions require interpreting Section 1956(c)(7)(B)(iv) to incorporate all or part of Section 201 lack merit.

Petitioner errs in contending (Pet. 11-13) that the court of appeals' approach to defining "bribery of a public official" by consulting dictionaries and the Model Penal Code conflicts with *Esquivel-Quintana* v. *Sessions*, 137 S. Ct. 1562 (2017). In *Esquivel-Quintana*, this Court interpreted "sexual abuse of a minor" as used in a provision of the INA by employing the "normal tools of statutory interpretation," observing that "'everyday understanding * * * should count for a lot.'" *Id.* at 1569 (citation omitted). In construing the phrase, the Court consulted dictionaries and the Model Penal Code. See *id.* at 1569, 1571. The court of appeals followed the same approach here. See Pet. App. 19-20. Although in

Esquivel-Quintana the Court also consulted the "structure of the INA, a related federal statute, and evidence from state criminal codes," it did so to confirm the definition that it had already formulated. 137 S. Ct. at 1570. Far from foreclosing the court of appeals' approach here, *Esquivel-Quintana* supports its analysis. In all events, nothing in that decision compels petitioner's approach of construing Section 1956(c)(7)(B)(iv) to incorporate the substance of Section 201.

Petitioner also errs in contending (Pet. 19-22) that *McDonnell* v. *United States*, *supra*, requires reading "bribery of a public official" in Section 1956(c)(7)(B)(iv) to require an "official act" as defined in 18 U.S.C. 201(a). *McDonnell* concerned a prosecution for fraud and extortion under 18 U.S.C. 1343, 1349, and 1951(a), as to which the Court applied and construed the definition of an "official act" in Section 201(a)(3). See 136 S. Ct. at 2367-2373. To the extent that *McDonnell* establishes a generally applicable "definition of an 'official act'" (Pet. 19-20) for *substantive* bribery-related crimes under federal law, that would not require construing Section 1956(c)(7)(B)(iv) in the same fashion. As explained above, Section 1956(c)(7)(B)(iv) does not proscribe bribery as such, but prohibits transactions derived from bribery and other offenses in violation of the diverse criminal laws of other countries. See pp. 7-8, 13-15, *supra*. In light of the provision's markedly different operation and context, it need not incorporate every aspect of 18 U.S.C. 201 or other federal bribery laws.

4. Petitioner is also incorrect in suggesting (Pet. 7-10) that the decision below conflicts with the Second Circuit's decision in *United States* v. *Thiam*, *supra*. Indeed, the result in *Thiam*—affirmance of a conviction

for transactions in criminally derived property—is consistent with the result here.

The defendant in *Thiam* was a citizen of the United States who served as the Minister of Mines and Geology in the Republic of Guinea and who received $8.5 million in bribes from a Chinese entity. 934 F.3d at 92-93. He was charged with and convicted of (among other things) unlawful financial activity in the proceeds of a foreign crime covered by 18 U.S.C. 1956(c)(7)(B)(iv). 934 F.3d at 93. On appeal, he argued that the jury instructions' reference to Articles 192 and 194 of the Guinean Penal Code improperly allowed a conviction without requiring the government to prove an official act as defined in *McDonnell*. *Id.* at 92-93. The Second Circuit rejected that argument, finding that "[p]rinciples of international comity" counseled against applying *McDonnell*'s "'official act'" definition to Guinean law. *Id.* at 94.

The affirmance in *Thiam* does not suggest that the Second Circuit would have found any error in petitioner's conviction here. In rejecting the defendant's particular challenge to the jury instructions on international-comity grounds, the Second Circuit had no need to address broader questions of the interpretation of "bribery of a public official" in 18 U.S.C. 1956(c)(7)(B)(iv). Nor does *Thiam*'s approval of those jury instructions indicate that the Second Circuit would have disapproved of the instructions that petitioner's jury received. And to the extent petitioner nevertheless challenges the specific instructions in this case (Pet. 6, 11, 16-17), that fact-bound contention does not warrant further review.

5. In his petition, which was filed before this Court's decision in *Shular* v. *United States*, *supra*, petitioner alternatively argued (Pet. 22) that the Court should grant the petition for a writ of certiorari, vacate the

judgment below, and remand in this case in light of its then-forthcoming decision in *Shular*. The petition observed (*ibid.*) that, "in *Shular*, this Court may clarify how statutory definitions using the words 'offense' and 'involving' should be interpreted."

The Court has since issued its decision in *Shular*, in which it determined that Section 924(e)(2)(A)(ii) does not call for comparing a defendant's prior drug offense to a generic analogue drug offense. If that same reasoning were applied to Section 1956(c)(7)(B)(iv), it would further undermine petitioner's position by establishing that no comparison to any particular analogue, whether found in Section 201 or elsewhere, is required. In any event, as discussed above, the Court need not address that question here because the court of appeals—at petitioner's urging—in substance conducted such a comparison. See pp. 8-11, *supra*. Further review is not warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General
BRIAN A. BENCZKOWSKI
Assistant Attorney General
JAMES I. PEARCE
Attorney

MAY 2020