No. 24-125

In the Supreme Court of the United States

AHMED ALAHMEDALABDALOKLAH, 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 attacks on U.S. property abroad are exempt from 18 U.S.C. 844(f), which prohibits "maliciously damag[ing] or destroy[ing], * * * by means of fire or an explosive, any * * * property in whole or in part owned or possessed by, or leased to, the United States, or any department or agency thereof."

2. Whether the district court erred in denying petitioner's motion to compel the government to search throughout the whole of the Department of Defense for information potentially favorable to petitioner's defense.

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OPINIONS BELOW

The amended opinion of the court of appeals (Pet. App. 1a-104a) is reported at 94 F.4th 782. The order of the district court denying petitioner's motion to dismiss the indictment in part (Pet. App. 105a-111a) is available at 2017 WL 2929448.

JURISDICTION

The judgment of the court of appeals was entered on February 28, 2024. A petition for rehearing was denied on March 4, 2024 (Pet. App. 112a). On May 19, 2024, Justice Kagan extended the time within which to file a petition for a writ of certiorari to and including August 1, 2024, and the petition was filed on that date. 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 District of Arizona, petitioner was convicted of conspiring to use a weapon of mass destruction, in violation of 18 U.S.C. 2332a(a)(1) and (3); conspiring to maliciously damage or destroy U.S. government property by means of an explosive, in violation of 18 U.S.C. 844(f)(1) and (n); possessing a destructive device in furtherance of a crime of violence and aiding and abetting, in violation of 18 U.S.C. 924(c)(1)(A) and (B)(ii) and 2; and conspiring to possess a destructive device in furtherance of a crime of violence, in violation of 18 U.S.C. 924(*o*). Judgment 1. The district court sentenced petitioner to life imprisonment. *Ibid.* The court of appeals affirmed the first two convictions, reversed the latter two, and remanded for resentencing. Pet. App. 1a-104a.

1. Improvised explosive devices (IEDs) were "used with devastating effect on American troops in the wars in Iraq and Afghanistan." *Glynn* v. *EDO Corp.*, 710 F.3d 209, 211 (4th Cir. 2013). As of 2007, IEDs had "caused over 70% of all American combat casualties in Iraq and 50% of combat casualties in Afghanistan, both killed and wounded." Clay Wilson, Cong. Research Serv., *Improvised Explosive Devices (IEDs) in Iraq and Afghanistan: Effects and Countermeasures* 1-2 (updated Nov. 21, 2007).

Petitioner produced custom-made electronic IED switches for the 1920s Revolution Brigades, an Iraqi insurgent group that sought to "drive the U.S. military out" of Iraq and pursued that end by "using IEDs that were detonated remotely as military vehicles passed by." Pet. App. 4a-5a; see Gov't C.A. Br. 6. In 2006, U.S. military personnel raided a facility in Baghdad and "discovered what at the time was one of the largest IED

caches ever found in Iraq." Gov't C.A. Br. 7. "Investigators found [petitioner's] fingerprints on many" items associated with IEDs that were found at the facility. Pet. App. 10a.

The IED-associated items with petitioner's fingerprints "includ[ed] tape on a * * * completed IED switch, a document describing how to use a cell phone to detonate an explosive device, and tape on a Scanlock 2000 bug detector that can be used to test IED controllers." Pet. App. 9a-10a. And investigators also found "identification documents * * * bearing [petitioner's] photo and fingerprints." *Id.* at 10a. In addition, after a raid on another site in Baghdad a year later, where U.S. military personnel discovered "explosives, boxes, radios, triggers, circuits, and tools hidden behind a wall," investigators found petitioner's fingerprint inside a box containing a circuit board. *Ibid.*

In 2007, one of the Brigades' leaders, Harith al-Dhari, was killed in an attack by the al Qaeda terrorist organization. Gov't C.A. Br. 4, 9. Some Brigades members left the group, stopped using IEDs, and began working with the U.S. military. *Id.* at 109-110; Pet. App. 5a. Petitioner, however, continued his IED work for the Brigades, even after moving to China in 2006 or 2007. See Pet. App. 3a, 7a; Gov't C.A. Br. 10.

In November 2008, petitioner sent al-Dhari's cousin Jamal e-mails about protecting their communications from "'spying'" when they discussed "'the resistance'" and "indicating that [petitioner] was sending 10 transmitters and 100 receivers from China to the Brigades." Pet. App. 7a. IEDs need more receivers than transmitters, because the receivers are exposed to the explosion. See *ibid.* On another occasion, petitioner informed a Brigades sympathizer that he was sending 1000 circuit

boards, of a type used to trigger explosions, to the Brigades. *Id.* at 2a, 9a; Gov't C.A. Br. 10.

After being expelled from China in 2010, petitioner traveled to Turkey, where he was arrested in 2011. Pet. App. 3a; Gov't C.A. Br. 11. He was extradited to the United States in 2014. *Ibid.*

2. a. A federal grand jury in the District of Arizona returned a second superseding indictment charging petitioner with six felonies arising from his production of IEDs for the Brigades: conspiring to use a weapon of mass destruction, in violation of 18 U.S.C. 2332a(a)(1) and (3); conspiring to maliciously damage or destroy U.S. government property by means of an explosive, in violation of 18 U.S.C. 844(f)(1) and (n); possessing and conspiring to possess a destructive device in furtherance of a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A), (B)(ii), and (*o*); conspiring to commit murder, in violation of 18 U.S.C. 2332(b)(2); and providing material support to terrorism, in violation of 18 U.S.C. 2339A. Indictment 1-6.

Petitioner moved to dismiss Counts 2, 3, and 4 on the theory that the relevant provisions of Sections 844 and 924 do not apply extraterritorially, and the district court denied his motion. Pet. App. 105a-111a.

b. In the leadup to trial, the government repeatedly acknowledged that the Brigades sought to expel multinational forces. See D. Ct. Doc. 745, at 4-5 (Jan. 29, 2018) (compiling disclosures and pretrial filings by the government). And in a motion eight months before trial, petitioner described "the crux of the Government's case" as allegations that he conspired with the Brigades for the purpose of "repelling Coalition forces from Iraq." D. Ct. Doc. 201, at 26 (May 22, 2017).

Nonetheless, the weekend before trial, petitioner filed a discovery request premised on the theory that the government had just acknowledged, "for the first time," that the Brigades' priority was fighting "multinational" forces. D. Ct. Doc. 806-4, at 1 (Jan. 27, 2018). On the theory that the multinational character of the targeted forces was relevant to whether petitioner had conspired to target U.S. persons or property for purposes of 18 U.S.C. 844(f) and 2332a(a), petitioner sought production of "all information, data, [and] records * * * indicating that the 1920 Revolutionary Brigades w[ere] militarily fighting against anyone other than U.S. Forces" or "assisting U.S. Forces by providing information, technical advice, or assisting militarily," as well as any material "indicating that U.S. Forces paid and/or otherwise provided benefits to the 1920 Revolutionary Brigades for their assistance." D. Ct. Doc. 806-4, at 1-2; see Pet. 5-6.

The district court ordered the government to search for the requested information while the trial proceeded, Pet. App. 96a-97a, although the court and defense counsel agreed that the search need not extend to the entire Department of Defense (DoD), C.A. E.R. 3620. The government searched records of the FBI and the relevant U.S. Attorney's Office and several DoD data sources, including: the archived website of the Combined Explosives Exploitation Cell-Iraq, which was the DoD component primarily engaged in the collection, analysis, and storage of evidence that would later be used in the case; "the Combined Information Data Network Exchange database, which is a database developed for theater-wide use in Iraq and Afghanistan"; and "the U.S. Army National Ground Intelligence Center, which is DoD's 'primary producer of ground forces intelligence.'" Pet.

App. 97a; see *id.* at 10a; Gov't C.A. Br. 6-7. Those searches yielded about 200 pages of material, which the government turned over to the defense. C.A. E.R. 1143.

The government also contacted U.S. Central Command (CENTCOM), the overarching "military authority for U.S. forces in the Middle East," which responded that for it to search for the requested categories of information "would require a search of all DoD holdings, including several DoD subcomponents, followed by filtering, review, and declassification." Pet. App. 97a; see C.A. E.R. 1144 (explaining that CENTCOM "constitutes a headquarters element without any military units permanently assigned to it"). Consistent with the agreement of the parties and the district court that no DoD-wide search was necessary, the government did not ask CENTCOM to initiate one. D. Ct. Doc. 833, at 7 (Feb. 26, 2018).

Petitioner filed an emergency motion to compel that search of "all DoD holdings." Pet. App. 97a. In opposing the motion, the government acknowledged that "[f]rom time to time, and mainly in response to [petitioner's] discovery requests, the Government ha[d] queried CENTCOM for documents that could not be located from the DOD files and databases to which the FBI and the USAO had ready access." D. Ct. Doc. 833, at 7. But it emphasized that a DoD-wide search "would take several months, and would involve searching for and gathering information from multiple components, followed by filtering, review and declassification." *Ibid.* The district court denied the motion. Pet. App. 97a-98a.

c. At trial the government introduced, *inter alia*, the evidence from the Baghdad raids, see pp. 2-3, *supra*, as well as testimony by Jamal al-Dhari and others, to establish that petitioner conspired with the Brigades to

deploy IEDs against American troops in Iraq. Pet. App. 5a-10a. Petitioner's defense focused in part on the argument that "because portions of the Brigades were working *with* American forces, the Government could not prove that [petitioner] targeted Americans." *Id.* at 12a. He relied on testimony that some Brigades members "split off * * * to assist [U.S. forces] in the fight against Al-Qaeda." *Id.* at 71a-72a; see, *e.g.*, C.A. E.R. 5387-5391; C.A. E.R. 6743 (government's closing argument recognizing that "some members became cooperators"). Other evidence showed, however, that "the U.S. military was the main component of the multinational force that the Brigades were attempting to expel"; that the "split" in the Brigades did not occur until March 2007, well after petitioner's IED activities began; and that those persons who assisted the Americans were not permitted to use IEDs. Pet. App. 12a & n.4, 71a-72a; C.A. E.R. 5387, 6001.

The jury found petitioner guilty of conspiring to use a weapon of mass destruction, in violation of 18 U.S.C. 2332a(a)(1) and (3); conspiring to maliciously damage or destroy U.S. government property by means of an explosive, in violation of 18 U.S.C. 844(f)(1) and (n), and two counts of possessing and conspiring to possess a destructive device in furtherance of a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A), (B)(ii), and (*o*). Judgment 1. The jury acquitted petitioner on the other two counts. *Ibid.* The district court imposed concurrent sentences of life imprisonment on the Section 2332a count and one of the Section 924 counts; another concurrent sentence of 240 months of imprisonment on the Section 844 count; and a consecutive 360 months of imprisonment on the other Section 924 count. *Ibid.*

3. The court of appeals affirmed in part, reversed in part, and remanded. Pet. App. 1a-104a. The court agreed with the parties that petitioner's Section 924 convictions were invalid under this Court's decision in *United States* v. *Davis*, 588 U.S. 445 (2019). Pet. App. 101a. The court therefore reversed those convictions. *Id.* at 103a. But it affirmed the convictions under Sections 2332a and 844 (Counts 1 and 2). *Ibid.*

a. The court of appeals rejected petitioner's argument that his conduct fell outside the scope of 18 U.S.C. 844(f) and (n) because his conspiracy to destroy U.S. government property with explosives occurred abroad. Pet. App. 13a-29a. Based on this Court's precedents, the court applied the "presumption against extraterritoriality," which requires assessing whether "'the statute gives a clear, affirmative indication'" that it applies outside the United States. *Id.* at 14a (quoting *RJR Nabisco, Inc.* v. *European Cmty.*, 579 U.S. 325, 337 (2016)).

In making that assessment, the court took account of *United States* v. *Bowman*, 260 U.S. 94 (1922), in which this Court upheld the extraterritorial application of a law without an explicit extraterritoriality proviso, because it was a "criminal statute[]" that was "enacted because of the right of the Government to defend itself" and was "not logically dependent on the[] locality" of the relevant conduct. *Id.* at 98; see Pet. App. 16a-23a. Explaining that *Bowman* can "be reconciled with" this Court's recent extraterritoriality decisions, the court of appeals found that Section 844(f)—and, by extension, the conspiracy provision in Section 844(n)—applies abroad because it "implicates the right of the government to defend itself" and confining it to domestic applications would "'leave open a large immunity' for acts causing damage or destruction of federal property that

are 'as easily committed . . . on the high seas and in foreign countries as at home.'" *Id.* at 22a-24a (quoting *Bowman*, 260 U.S. at 98).

b. The court of appeals also rejected petitioner's claim that the district court should have "order[ed] the Government to search the entire Department of Defense for relevant documents." Pet. App. 96a. The court of appeals took note that, under *Brady* v. *Maryland*, 373 U.S. 83 (1963), and related decisions, the government must disclose exculpatory evidence "if it is held by members of the prosecution team, such as investigating agents, or if it is held by other executive branch agencies and the prosecutor has 'knowledge of and access to' the evidence." Pet. App. 98a (citation omitted). But the court rejected petitioner's treatment of "the entirety of DoD," which "comprises 33 agencies and subcomponents" populated by "3.4 million service members and civilians," as the investigating agency. *Id.* at 99a.

The court of appeals additionally found that the prosecution did not have the requisite knowledge and access for these purposes, observing that "the prosecution team was relegated to requesting CENTCOM's assistance" and CENTCOM "could not readily" search "*all* DoD components." Pet. App. 99a-100a. And while it noted that, months after the appeal was argued and submitted, defense counsel filed a supplemental-authority letter and a motion for judicial notice asserting the belated discovery of exculpatory material, the court explained that "none of the documents identified by the defense changes our analysis of these issues." *Id.* at 100a n.39.

ARGUMENT

Petitioner renews his contention (Pet. 20-22) that his conviction for conspiring to destroy U.S. property should be set aside because the conspiracy occurred abroad.

He also contends (Pet. 30-32) that the district court erred in declining to order a search of Department of Defense records. The petition for a writ of certiorari arises in an interlocutory posture, however, which itself provides a sufficient reason to deny it. In any event, petitioner's claims do not warrant this Court's review. His extraterritoriality claim is unsound and has not been accepted or even addressed by any other court of appeals. His discovery claim, to the extent that it was preserved below, is highly factbound, lacks merit, and does not conflict with any decision of another court of appeals. No further review is warranted.

1. As a threshold matter, review of the issues advanced by petitioner would be premature because the decision below is interlocutory: the court of appeals reversed the district court's judgment in part and remanded the case for resentencing. Pet. App. 103a. And the interlocutory posture of the case "alone furnishe[s] sufficient ground for the denial of the application." *Hamilton-Brown Shoe Co.* v. *Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916); see, *e.g.*, *National Football League* v. *Ninth Inning, Inc.*, 141 S. Ct. 56, 57 (2020) (statement of Kavanaugh, J., respecting the denial of certiorari).

The Court routinely denies interlocutory petitions in criminal cases. See Stephen M. Shapiro et al., *Supreme Court Practice* § 4.18, at 4-55 n.72 (11th ed. 2019). That practice promotes judicial efficiency, because proceedings on remand may affect the consideration of issues presented in a petition for a writ of certiorari. It also enables issues raised at different stages of a lower-court proceeding to be consolidated in a single petition. See *Major League Baseball Players Ass'n* v. *Garvey*, 532 U.S. 504, 508 n.1 (2001) (per curiam) ("[W]e have authority to consider questions determined in earlier stages of

the litigation where certiorari is sought from the most recent of the judgments of the Court of Appeals.").

2. In any event, the court of appeals correctly upheld the extraterritorial application of 18 U.S.C. 844(f) and (n), and that issue does not warrant further review.[1]

a. "It is a longstanding principle of American law that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States." *Abitron Austria GmbH* v. *Hetronic Int'l, Inc.*, 600 U.S. 412, 417 (2023) (citation and internal quotation marks omitted). The presumption against extraterritoriality "serves to avoid the international discord that can result when U.S. law is applied to conduct in foreign countries" and "also reflects the more prosaic 'commonsense notion that Congress generally legislates with domestic concerns in mind.'" *RJR Nabisco, Inc.* v. *European Cmty.*, 579 U.S. 325, 335-336 (2016) (citation omitted).

This Court's decision in *Morrison* v. *National Australia Bank Ltd.*, 561 U.S. 247 (2010), made clear that while a "clear indication of extraterritoriality" is necessary to rebut the presumption, that requirement is not a "'clear statement rule,'" and it can be satisfied by contextual indications of extraterritorial scope. *Id.* at 265 (citation omitted). *Morrison* and other recent extraterritoriality decisions have, in turn, focused on civil laws enforceable by private parties. See *id.* at 250 (Securi-

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[1] Petitioner raises no independent argument regarding the extraterritoriality of 18 U.S.C. 844(n), the conspiracy provision he was convicted of violating in conjunction with Section 844(f), so we refer only to the latter provision hereafter. See *RJR Nabisco, Inc.* v. *European Cmty.*, 579 U.S. 325, 341 (2016) ("assum[ing] without deciding" that a conspiracy provision's territorial scope "tracks that of the provision underlying the alleged conspiracy").

ties Exchange Act); see also, *e.g.*, *Abitron*, 600 U.S. at 415 (Lanham Act); *Kiobel* v. *Royal Dutch Petroleum Co.*, 569 U.S. 108, 112 (2013) (Alien Tort Statute). They have not addressed the application of criminal laws prohibiting crimes that directly victimize the United States.

This Court did address that issue in *United States* v. *Bowman*, 260 U.S. 94 (1922). The question presented there was whether a criminal statute prohibiting false claims to the United States or corporations in which it owns stock (now codified at 18 U.S.C. 287) applied to conduct committed abroad. 260 U.S. at 97-98; see *id.* at 100 n.1. In a unanimous opinion by Chief Justice Taft, the Court reasoned that "[c]rimes against private individuals or their property" generally apply only domestically, and "it is natural for Congress to say so in the statute" if it intends otherwise. *Id.* at 98. "But the same rule of interpretation should not be applied," the Court explained, "to criminal statutes which are, as a class, not logically dependent on their locality for the Government's jurisdiction, but are enacted because of the right of the Government to defend itself." *Ibid.*

Bowman observed that while some such offenses are inherently "local," "[o]thers are such that to limit their *locus* to the strictly territorial jurisdiction would be greatly to curtail the scope and usefulness of the statute and leave open a large immunity" for offenses against the government. 260 U.S. at 98. And it recognized that in the latter set of cases, "Congress has not thought it necessary to make specific provision in the law that the *locus* shall include the high seas and foreign countries, but allows it to be inferred from the nature of the offense." *Ibid.* Accordingly, *Bowman* upheld the extraterritorial application of the false-claims statute, not-

withstanding the absence of an express extraterritoriality provision. *Id.* at 101-102.[2]

b. Under this Court's precedents, Section 844(f) applies to foreign conduct like petitioner's. The statute prohibits "maliciously damag[ing] or destroy[ing], or attempt[ing] to damage or destroy, by means of fire or an explosive, any" property "owned or possessed by, or leased to, the United States." 18 U.S.C. 844(f)(1). Although Section 844(f) contains no "explicit statement of extraterritorial reach," context establishes its extraterritorial scope based on the logic of *Bowman*. Pet. App. 23a-24a; see *Morrison*, 561 U.S. at 265.

As petitioner appears to accept (Pet. 21-22), Section 844(f) was "enacted because of the right of the Government to defend itself" against attacks on its property. *Bowman*, 260 U.S. at 98. Because the United States possesses vast amounts of property located abroad, see Pet. App. 24a, nothing in Section 844(f) is "logically dependent" on domestic activity, and confining it to domestic applications "would be greatly to curtail the scope and usefulness of the statute and leave open a large immunity" for attacks on federal property, *Bowman*, 260 U.S. at 98.

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[2] It makes no material difference whether the presumption against extraterritoriality is viewed as inapplicable or rebutted for this type of statute, although the latter is more precise. See Pet. App. 15a ("the presumption applies 'in all cases'") (quoting *Morrison*, 561 U.S. at 261). When the government has on occasion imprecisely argued that the presumption does not apply at all to criminal statutes, Pet. 23-24, courts have disagreed with that framing. See *United States* v. *Vasquez*, 899 F.3d 363, 373 n.6 (5th Cir. 2018), cert. denied, 139 S. Ct. 1543 (2019); *United States* v. *Coffman*, 574 Fed. Appx. 541, 557 (6th Cir. 2014), cert. denied, 574 U.S. 1104, and 575 U.S. 915 (2015).

Section 844(f) accordingly applies extraterritorially under *Bowman*. And because *Bowman* predates Section 844(f)'s enactment (as well as the more recent decisions of this Court on which petitioner relies), see Pet. 21, it would be particularly inappropriate to expect Congress to have gone further than *Bowman* requires in articulating the statute's extraterritorial reach. Instead, Congress would have understood from *Bowman* that criminal laws prohibiting conduct that victimizes the government could potentially be applied extraterritorially. See *Merck & Co.* v. *Reynolds*, 559 U.S. 633, 648 (2010) ("We normally assume that, when Congress enacts statutes, it is aware of relevant judicial precedent.").

Indeed, Section 844(f) does not raise the concerns underlying the presumption against extraterritoriality. Section 844(f) is a criminal statute enforceable only by the Executive, so the "check imposed by prosecutorial discretion," *Sosa* v. *Alvarez-Machain*, 542 U.S. 692, 727 (2004), limits the potential for "international discord" that may more readily arise when a federal statute is applicable abroad and enforceable by private parties, *RJR Nabisco*, 579 U.S. at 335. See *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579, 610 (1952) (Frankfurter, J., concurring) (recognizing the President's "vast share of responsibility for the conduct of our foreign relations"). And although "Congress generally legislates with domestic concerns in mind," *RJR Nabisco*, 579 U.S. at 336 (citation omitted), attacks on property of the United States—such as the IED attacks petitioner facilitated against the U.S. military in Iraq—are inherently matters of domestic concern, no matter where they occur. There is no sound basis for limiting Section 844(f) to U.S. soil.

c. Petitioner's contrary arguments lack merit. He attempts (Pet. 16-17) to cabin *Bowman* to its facts based on the Court's observation in that opinion that Congress had amended the false-claims statute at issue "evidently intend[ing]" to protect from fraud a federal corporation engaged in "ocean transportation." 260 U.S. at 101-102. But *Bowman* did not hinge on that statute's legislative history, see pp. 12-13, *supra*; the Court noted, for example, that its holding would apply to several other offenses against the government set forth in the Criminal Code, see 260 U.S. at 98-100.

Petitioner questions "*Bowman*'s continued force" in light of more recent extraterritoriality cases. Pet. 23; see Pet. 12, 17. As explained above, *Bowman* "sit[s] comfortably side by side," *Mallory* v. *Norfolk S. Ry. Co.*, 600 U.S. 122, 137 (2023) (plurality opinion), with those decisions. See Pet. App. 20a-21a. *Bowman* provides a robust statement of the presumption against extraterritoriality and explains that it is rebutted for a specific category of criminal laws in light of the context and nature of the offenses. 260 U.S. at 98; see *United States* v. *Lawrence*, 727 F.3d 386, 394 (5th Cir. 2013) (observing that *Bowman* "articulated when the presumption against extraterritoriality may be overcome in the context of criminal statutes"), cert. denied, 571 U.S. 1222 (2014). The Court has not silently overruled *Bowman*, and petitioner does not argue that doing so would be justified as a matter of stare decisis.

Petitioner also invokes two other statutes in which "Congress has expressly provided for extraterritorial application for * * * offenses involving U.S. property." Pet. 21 (citing 18 U.S.C. 832(c) and 2332a(a)(3)). But elsewhere, he accepts (Pet. 13) that no such express

statement is required. And the cited statutes shed little light on Section 844(f).

Both were enacted decades after Section 844(f) was. See Weapons of Mass Destruction Prohibition Improvement Act of 2004, Pub. L. No. 108-458, Tit. VI, Subtit. I, § 6803(c)(2), 118 Stat. 3768 (enacting Section 832); Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 60023(a), 108 Stat. 1980 (enacting Section 2332a); cf. Pet. 21. And those statutes' references to federal property located "within or outside of the United States" are embedded within provisions that, in contrast with Section 844(f), extend beyond protecting the government. See 18 U.S.C. 832(c) (also prohibiting, *e.g.*, developing radiological weapons in general); 18 U.S.C. 2332a(a) (also protecting U.S. nationals). Even under *Bowman*, Congress had reason to be more explicit about extraterritoriality in those provisions.

Tracing Section 844(f)'s enactment in 1970 to a "spate of bombings in American cities," petitioner contends that the legislative history shows Congress "was concerned with solely domestic affairs." Pet. 21. But even if that were relevant, see *Morrison*, 561 U.S. at 261, the specific impetus for protecting U.S. property does not suggest the absence of an intent to protect it wherever it lies. Cf. *RJR Nabisco*, 579 U.S. at 343 (rejecting an extraterritoriality argument that "would lead to strange gaps in [the statute's] coverage").

d. Contrary to petitioner's contention (Pet. 17-20), the decision below does not implicate any conflict in the courts of appeals. Indeed, the decision below is the first time any court of appeals has addressed the territorial scope of Section 844(f). See U.S. Br. at 18-21, *United States* v. *Microsoft Corp.*, 584 U.S. 236 (2018) (No. 17-2)

(extraterritoriality analysis "must proceed on a provision-by-provision basis").

Petitioner principally asserts a conflict with the D.C. Circuit's decision in *United States* v. *Garcia Sota*, 948 F.3d 356 (2020). But that case involved a different law—namely, 18 U.S.C. 1114, which criminalizes killing federal officers and employees—and found that it lacked extraterritorial effect based on particular features of the statute that are not present here. 948 F.3d at 358-359 (emphasizing that Congress explicitly made a closely related statute extraterritorial at the same time as it amended Section 1114, and that nearly all federal personnel work in the United States). Unlike petitioner, the D.C. Circuit accepted *Bowman*'s vitality, but the court distinguished it based on the lower "probability that the criminalized conduct" in Section 1114 "would occur abroad." *Id.* at 360.

As the decision below noted, *Garcia Sota* conflicted with Ninth Circuit precedent holding "that *§ 1114* applies abroad." Pet. App. 21a (citing *United States* v. *Lopez-Alvarez*, 970 F.2d 583, 596 (9th Cir. 1992)) (emphasis added). And both the decision below and *Garcia Sota* appear to recognize the continued vitality of the D.C. Circuit's decision in *United States* v. *Delgado-Garcia*, 374 F.3d 1337 (2004), cert. denied, 544 U.S. 950 (2005), which applied *Bowman* in upholding the extraterritorial application of a criminal statute. *Id.* at 1347; see Pet. App. 21a; *Garcia Sota*, 948 F.3d at 360.

Moreover, even as to Section 1114, Congress promptly resolved the conflict by amending Section 1114 in 2021 to further clarify that it applies extraterritorially. See Jaime Zapata and Victor Avila Federal Officers and Employees Protection Act, Pub. L. No. 117-59, § 3, 135 Stat. 1469 (18 U.S.C. 1114(b)). The 2021 law

explicitly disapproved *Garcia Sota* (and approved contrary decisions by the Ninth Circuit and other circuits), finding that it did not reflect the original meaning of Section 1114, § 2(3)-(6), 135 Stat. 1468, reinforcing "that Congress is mindful of *Bowman*'s longstanding rule." Pet. App. 22a.

Petitioner also errs in asserting a conflict between the decision below and *United States* v. *Rolle*, 65 F.4th 1273 (11th Cir. 2023). *Rolle* too involved a different statute, 8 U.S.C. 1324(a), and applied *Bowman* in holding that the relevant provisions *do* apply extraterritorially despite the lack of an express statement. See 65 F.4th at 1277-1279. Petitioner notes (Pet. 18) that the Eleventh Circuit described *Bowman* and *Morrison* as "two approaches to analyzing extraterritoriality," 65 F.4th at 1276, but the court did not view them as in conflict, given its conclusion that "*Bowman* survives *Morrison*" and that none of the Court's recent extraterritoriality decisions indicates "that *Bowman* has been overturned," *id.* at 1276-1277. Petitioner highlights (Pet. 18) *Rolle*'s view of *Bowman* as limited to laws whose "scope and usefulness" would be greatly "curtail[ed]" if confined to domestic applications. 65 F.4th at 1276-1277 (quoting *Bowman*, 260 U.S. at 98). But the Ninth Circuit here applied a similar principle. Pet. App. 24a.

Petitioner therefore cannot show that his challenge to his Section 844(f) conviction would succeed in any circuit, and he acknowledges that it would fail in several. Pet. 19-20 (citing *United States* v. *Leija-Sanchez*, 820 F.3d 899, 900 (7th Cir. 2016), cert. denied, 580 U.S. 1212 (2017); *United States* v. *Vilar*, 729 F.3d 62, 73 (2d Cir. 2013), cert. denied, 572 U.S. 1146 (2014); *United States* v. *Ayesh*, 702 F.3d 162, 166 (4th Cir. 2012), cert. denied, 568 U.S. 1243 (2013); *United States* v. *Leija-Sanchez*,

602 F.3d 797, 798-799 (7th Cir.), cert. denied, 562 U.S. 955 (2010)). And for that reason, the government has no reason to engage in the sort of forum-shopping that petitioner supposes, Pet. 24.

e. At all events, this case is a poor vehicle for considering the extraterritorial application of Section 844(f) because a decision in petitioner's favor on that issue would have no practical effect on his sentence. See *Supervisors* v. *Stanley*, 105 U.S. 305, 311 (1882) (explaining that this Court does not grant a writ of certiorari to "decide abstract questions of law * * * which, if decided either way, affect no right" of the parties). As noted above, the court of appeals affirmed petitioner's conviction for conspiring to use a weapon of mass destruction, in violation of 18 U.S.C. 2332a(a)(1) and (3), Pet. App. 103a, and petitioner acknowledges (Pet. 21) that Section 2332a(a) applies abroad. Petitioner received a sentence of life imprisonment on that count. Judgment 1. It is unlikely that his sentence would change if his conviction and 240-month sentence for violating Section 844(f) were invalidated on extraterritoriality grounds. See C.A. E.R. 6830 (district court stating at original sentencing, "I do not believe that if [petitioner] was not given life in prison that he would not repeat this offense").

3. Petitioner additionally contends (Pet. 30-32) that the district court erred in declining to order that U.S. Central Command search for records potentially favorable to the defense. That claim is unsound and, for that and other reasons, does not warrant this Court's review.

a. Although petitioner refers (*e.g.*, Pet. 26) to a requested search of "CENTCOM's documents," he does not appear to dispute that a request to CENTCOM—a "headquarters element without any military units per-

manently assigned to it," C.A. E.R. 1144—would have amounted to a search of all of DoD's holdings. See Pet. 25-27. The decision below accordingly understood petitioner to be seeking a "search [of] the entire Department of Defense for relevant documents." Pet. App. 96a; see Pet. C.A. Br. 5, 127.[3] The lower courts correctly determined that the government was not required to undertake that DoD-wide search.

Under *Brady* v. *Maryland*, 373 U.S. 83 (1963), "the Government must produce to the defense exculpatory or impeaching evidence in the prosecutor's possession." Pet. App. 98a. "Information is in the prosecutor's 'possession,'" the court of appeals explained, "if it is held by members of the prosecution team, such as investigating agents, or if it is held by other executive branch agencies and the prosecutor has 'knowledge of and access to' the evidence." *Ibid.* (citation omitted); see *Kyles* v. *Whitley*, 514 U.S. 419, 437 (1995). Petitioner does not dispute that formulation of the legal standard, and the court of appeals correctly applied it.

DoD "as a whole" was not part of the investigative team in this case. Pet. App. 99a. There is no indication that the prosecution had "knowledge" of any exculpatory evidence held by various DoD components. *Ibid.* Nor did the prosecution have "access" merely because it could have asked CENTCOM to undertake a months-long search of DoD records. See *Kyles*, 514 U.S. at 437 ("We have never held that the Constitution demands an open file policy"); Pet. App. 99a-100a; *id.* at 98a (recognizing that prosecutors "need not comb the files of

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[3] To the extent petitioner intends to make a narrower claim about an obligation to search some narrower set of documents, his claim was neither pressed nor passed upon below and is thus unsuitable for certiorari. See *United States* v. *Williams*, 504 U.S. 36, 41 (1992).

every federal agency which might have documents" regarding the defendant) (quoting *United States* v. *Zuno-Arce*, 44 F.3d 1420, 1427 (9th Cir. 1995)); D. Ct. Doc. 833, at 7. Furthermore, even assuming the evidence petitioner sought would have been favorable to him, it would not have been material under *Brady*.

There is no "reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different," *United States* v. *Bagley*, 473 U.S. 667, 682 (1985). Petitioner requested a search for evidence that members of the 1920s Revolution Brigades fought anyone other than the U.S. military, or assisted U.S. forces. See pp. 4-6, *supra*. But there was already ample evidence to that effect that was presented at petitioner's trial; indeed, the government stipulated that the Brigades fought multinational forces. See *ibid.*; see also, *e.g.*, *United States* v. *Bartko*, 728 F.3d 327, 339 (4th Cir. 2013) (rejecting a *Brady* claim grounded in evidence that "would have been cumulative"), cert. denied, 571 U.S. 1183 (2014). Petitioner's defense merely faltered against other evidence showing that, for example, Brigades members did not start working with the Americans until after the charged conspiracy had begun and that those individuals did not use IEDs. See pp. 2-7, *supra*.

b. Petitioner's contrary arguments lack merit. He contends (Pet. 30-31) that "CENTCOM/DoD" were part of the prosecution team because they "had authority over the DoD personnel in Iraq who collected physical evidence and investigated the offense" and had earlier provided certain documents that the prosecution requested (including on petitioner's behalf, D. Ct. Doc. 833, at 7). But no authority holds that an entity's mere

presence in the chain of command or compliance with document requests renders it part of the prosecution.

Petitioner further errs in asserting that the court of appeals determined "that the prosecution lacked access to CENTCOM's evidence *solely* because it had to request that agency's assistance," Pet. 31 (emphasis added), and that it committed legal error in doing so. The court instead applied a "'case-by-case approach'" to find that, in this case, the prosecution lacked access because it "was relegated to requesting CENTCOM's assistance" *and* petitioner's request would have required "a search of nothing less than *all* DoD components." Pet. App. 99a-100a (citation omitted). As discussed above, *Brady* does not support such a broad request. And petitioner does not dispute that the prosecution, even supposing it had "access" in the relevant sense, lacked "knowledge" of exculpatory material in DoD's holdings. *Id.* at 99a.

c. Petitioner errs in asserting (Pet. 26-30) that the decision below creates circuit conflicts.

First, petitioner contends that the court of appeals created a conflict by holding an agency can be part of the prosecution only if it acted on the prosecution's behalf in an investigative, not prosecutorial, capacity. Pet. 27-28 (citing *United States* v. *Reyeros*, 537 F.3d 270, 281-282 (3d Cir. 2008), cert. denied, 556 U.S. 1283 (2009), and *Smith* v. *Secretary*, 50 F.3d 801, 824-825 (10th Cir.), cert. denied, 516 U.S. 905 (1995)). But the court did not so hold. It observed that "[i]nformation is in the prosecutor's 'possession' if it is held by members of the prosecution team, *such as* investigating agents." Pet. App. 98a (emphasis added). It focused on the extent of DoD's investigative role because the prosecution was handled by the Department of Justice, not DoD.

Second, petitioner contends (Pet. 28) that the court of appeals created a conflict by holding that the prosecution lacked access to DoD's holdings "merely" because it had to request access via CENTCOM. As explained above, the court did not make such a holding. See pp. 9, 22, *supra*. The court's finding on the access issue noted both the prosecution's need to request access and the separation between the "prosecution team" and the whole of DoD, whose records were implicated by petitioner's request. Pet. App. 100a; see *id.* at 99a-100a.

Finally, petitioner contends (Pet. 29) that the court of appeals created a conflict by relying on "the burden of the search" in conflict "with decisions of the Third, Seventh, and D.C. Circuits." Two of the three decisions from other circuits that petitioner cites recognize that the specificity of a search's scope is relevant to a prosecutor's obligations. *United States* v. *Joseph*, 996 F.2d 36, 41 (3d Cir.) (contrasting searches for "specific identifiable information" with unwarranted "open-ended fishing expeditions"), cert. denied, 510 U.S. 937 (1993); *United States* v. *Brooks*, 966 F.2d 1500, 1503 (D.C. Cir. 1992) (finding "it highly relevant that defense counsel pinpointed files that can be searched without difficulty"). The third decision involved a far more targeted search for a particular witness's criminal record, which a State "had * * * at its disposal." *Crivens* v. *Roth*, 172 F.3d 991, 997 (7th Cir. 1999). It did not consider a request to federal prosecutors that would require searching "non-participating agencies" who may, *inter alia*, "have valid concerns over revealing sensitive information in cases wholly unrelated to the agencies' own area of expertise," particularly where (as here) such information may be classified, Pet. App. 100a.

Nor, in any event, did the Seventh Circuit address the entire combination of circumstances that informed the application of the "case-by-case" analysis, Pet. App. 99a, in the decision below. Petitioner thus fails to demonstrate that his claim would have succeeded in any circuit.

d. Further review of the discovery matter is unwarranted for several additional reasons.

As a threshold matter, petitioner's claim is closely fact-bound, focusing on the particularities of DoD's "record-keeping practices" (Pet. 27) and the investigation of petitioner's atypical offenses. Accordingly, further review may not yield useful guidance for future cases.

Furthermore, the contours of petitioner's claim at this stage (and thus whether the claim was preserved below) are uncertain. See pp. 19-20 & n.3, *supra*. And because petitioner challenges the district court's denial of a request to broaden a search for *Brady* material, rather than raising a due-process claim based on the non-disclosure of particular evidence, see *Strickler* v. *Greene*, 527 U.S. 263, 281-282 (1999) (describing the elements of a "true *Brady* violation"), the question presented implicates discretionary judgments of the kind this Court seldom reviews. See *United States* v. *Clarke*, 573 U.S. 248, 256 (2014) ("matters of case management, discovery, and trial practice" are reviewed for abuse of discretion).[4]

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[4] Indeed, although petitioner now asserts (Pet. 33-34) that he has identified *Brady* material that would have been discovered if the district court had ordered his requested search, he did not present that material until after his appeal was argued and submitted, Pet. App. 100a n.39, despite having found it while his "appeal was being briefed," Pet. 10. The district court therefore had no opportunity to

Finally, the putative *Brady* claim is unviable in any event. As noted above, evidence is material under *Brady* only if there is a reasonable probability that its disclosure would have affected the outcome. See *Bagley*, 473 U.S. at 682. Petitioner claims (Pet. 33) that the relevant document, a U.S. Army report about the Iraqi insurgency, is material because it "show[s] that many Brigades members cooperated with United States forces against Al Qaeda." As discussed above, however, pp. 4-6, 21, *supra*, the evidence at petitioner's trial established that point, which the government did not dispute. The government simply proved that petitioner conspired to deploy IEDs against American troops before and after the Brigades split. And nothing suggests that a far-reaching search of the entire DoD would uncover evidence that petitioner himself was among the "specific members and factions of the Brigades [that] stood with U.S. forces against Al Qaeda," Pet. 10.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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address it, and the court of appeals did so only in passing. Pet. App. 100a n.39.