

No. 19- _____

IN THE

Supreme Court of the United States

ALEXANDRO GERANDINO-ARACENA,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

Joseph A. DiRuzzo, III
DiRUZZO & COMPANY
401 East Las Olas Blvd., Suite 1400
Ft. Lauderdale, Florida 33301
Office: (954) 615-1676
Fax: (954) 827-0340
Email: jd@diruzzolaw.com

QUESTION PRESENTED

The Revised Organic Act of the Virgin Islands provides for the District Court of the Virgin Islands, 48 U.S.C. § 1612, and for the appointment of judges to the bar of the District Court, 48 U.S.C. § 1614. As to appointment and tenure: “[t]he President shall, by and with the advice and consent of the Senate, appoint two judges for the District Court of the Virgin Islands, who shall hold office for terms of ten years and until their successors are chosen and qualified, unless sooner removed by the President for cause.” 48 U.S.C. § 1614(a). In this case the judge that presided over the Petitioner’s case exceeded (and continues to exceed) his ten-year statutory term.

The question presented is: can non-Article III judges serve indefinitely?

PARTIES TO THE PROCEEDING

The Parties to the proceeding are the Petitioner, Alejandro Gerandino-Aracena, and the United States of America.

TABLE OF CONTENTS

QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING	ii
TABLE OF CONTENTS.....	iii
INDEX TO THE APPENDIX	iv
TABLE OF AUTHORITIES	v
PETITION FOR WRIT OF CERTIORARI	1
OPINION BELOW.....	1
JURISDICTION.....	1
CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED	2
INTRODUCTION	2
STATEMENT.....	3
REASONS FOR GRANTING THE WRIT	3
I. THIS COURT SHOULD ADDRESS WHETHER NON-ARTICLE III JUDGES CAN SERVE INDEFINITE TERMS.....	3
CONCLUSION.....	6

INDEX TO THE APPENDIX

Appendix A: Judgment of the United States Court of Appeals For the Third Circuit.....	App. 001
Appendix B: Opinion of the United States Court of Appeals For the Third Circuit.....	App. 002
Appendix C: Opinion of the United States Court of Appeals For the Third Circuit in the related case of <i>United States v. Ayala</i>	App. 004

TABLE OF AUTHORITIES

Cases

<i>Birdman v. Office of the Governor</i> , 677 F.3d 167 (3d Cir. 2012).....	4
<i>Mookini v. United States</i> , 303 U.S. 201 (1938)	4
<i>Santillan v. Sharmouj</i> , 289 F. App'x 491 (3d Cir. 2008).....	4
<i>Selkridge v. United of Omaha Life Ins. Co.</i> , 360 F.3d 155 (3d Cir. 2004)	5
<i>Semper v. Gomez</i> , 2013 WL 2451711 (D.V.I. June 4, 2013) <i>aff'd in part, remanded in part</i> , 747 F.3d 229 (3d Cir. 2014).....	4
<i>Stern v. Marshall</i> , 564 U.S. 462 (2011).....	2, 3, 4
<i>United States v. Ayala</i> , 917 F.3d 752 (3d Cir. March 6, 2019).....	1, 5
<i>United States v. George</i> , 625 F.2d 1081 (3d Cir. 1980).....	4
<i>United States v. Gerandino-Aracena</i> , 758 Fed. Appx. 279 (Mem) (3d Cir. March 21, 2019)	1

Statutes

28 U.S.C. § 1254.....	1
48 U.S.C. § 1541, <i>et seq.</i>	2
48 U.S.C. § 1612.....	i
48 U.S.C. § 1614.....	i
48 U.S.C. § 1614(a)	i, 2

Rules

Sup. Ct. R. 10(c)	6
Sup. Ct. R. 13.1	1
Sup. Ct. R. 13.3	1
Sup. Ct. R. 29.2	1
Sup. Ct. R. 30.1	1

Constitutional Provisions

U.S. CONST. art. III, § 1	2
---------------------------------	---

PETITION FOR WRIT OF CERTIORARI

Petitioner, Alejandro Gernandino-Aracena, respectfully petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Third Circuit.

OPINION BELOW

The judgment of the United States Court of Appeals for the Third Circuit is reproduced in the Appendix herein at App. 001. The opinion of the United States Court of Appeals for the Third Circuit is unpublished and reported at *United States v. Gerandino-Aracena*, 758 Fed. Appx. 279 (Mem) (3d Cir. March 21, 2019), and is reproduced in the Appendix herein at App. 002. The decision below incorporated by reference an opinion of a related case of the United States Court of Appeals for the Third Circuit, which is published and reported at *United States v. Ayala*, 917 F.3d 752 (3d Cir. March 6, 2019); the *Ayala* decision is reproduced in the Appendix herein at App. 004.

JURISDICTION

The opinion of the United States Court of Appeals for the Third Circuit affirming the District Court's judgment was entered on March 21, 2019. The present petition is being filed by postmark on or before June 20, 2019. Supreme Court Rules 13.1, 13.3, 29.2, and 30.1. This Court properly has jurisdiction over this matter pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

U.S. CONST. art. III, § 1 provides:

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

The Revised Organic Act of the Virgin Islands, 48 U.S.C. § 1541, *et seq.*, established the District Court of the Virgin Islands and provided for judges of that court. As to the appointment and tenure of the judges of the District Court of the Virgin Islands, “[t]he President shall, by and with the advice and consent of the Senate, appoint two judges for the District Court of the Virgin Islands, who shall hold office for terms of ten years and until their successors are chosen and qualified, unless sooner removed by the President for cause.” 48 U.S.C. § 1614(a).

INTRODUCTION

This case presents a straightforward and important question that goes to the heart of this country’s constitutional design. The trial court concluded that the ten-year period referred to in Section 1614(a) is a floor and not a cap for a district judge’s term, and thus concluded that the term is not finite.

Although Section 1614 has no term limit, this Court in *Stern v. Marshall*, 564 U.S. 462, 469 (2011) “conclude[d] that, although the Bankruptcy Court had the statutory authority to enter judgment on Vickie’s counterclaim, it lacked the constitutional authority to do so.” Such is the case here, while Section 1614(a) may have given the trial judge the statutory authority to sit on the bench indefinitely,

judges of the District Court of the Virgin Islands lack the constitutional authority to do so because Article III limits indefinite terms to Article III judges.

STATEMENT

This case comes to this Court from the Court of Appeals' affirmance of the Petitioner's federal conviction in the District Court of the Virgin Islands. Petitioner was convicted for participating in a drug-trafficking conspiracy and illegal possession of a firearm in violation of Titles 18 and 21 of the United States Code. Petitioner timely appealed his conviction to the Court of Appeals attacking, *inter alia*, the legality of the judge of the District Court of the Virgin Islands presiding over a case when the judge had exceeded the ten-year statutory term.

REASONS FOR GRANTING THE WRIT

I. THIS COURT SHOULD ADDRESS WHETHER NON-ARTICLE III JUDGES CAN SERVE INDEFINITE TERMS.

“Article III is an inseparable element of the constitutional system of checks and balances that both defines the power and protects the independence of the Judicial Branch.” *Stern*, 564 U.S. 483 (cleaned up). “Article III protects liberty not only through its role in implementing the separation of powers, but also by specifying the defining characteristics of Article III judges.” *Id.*

By appointing judges to serve *without term limits*, and restricting the ability of the other branches to remove judges or diminish their salaries, the Framers sought to ensure that each judicial decision would be rendered, not with an eye toward currying favor with Congress or the Executive, but rather with the clear heads and honest hearts deemed essential to good judges.

Id. at 484 (cleaned up, emphasis added). Indeed, “Article III could neither serve its purpose in the system of checks and balances nor preserve the integrity of judicial

decision making if the other branches of the Federal Government could confer the Government’s ‘judicial Power’ on entities outside Article III.” *Id.*

Undoubtedly “[t]he District Court of the Virgin Islands derives its jurisdiction from Article IV, § 3 of the United States Constitution, which authorizes Congress to regulate the territories of the United States.” *United States v. Gillette*, 738 F.3d 63, 70 (3d Cir. 2013). By operation of the 1984 amendments to the Revised Organic Act, the District Court of the Virgin Islands “now possesses the jurisdiction of an Article III District Court of the United States, though it remains an Article IV Court.” *Birdman v. Office of the Governor*, 677 F.3d 167, 175 (3d Cir. 2012) (cleaned up).

While the District Court of the Virgin Islands is an Article IV court, it is not a court of the United States created under Article III, section 1. The fact that its judges do not hold office during good behavior and that the court is thus excluded from the definition of ‘court of the United States’ which is contained in 28 U.S.C. s 451 is confirmatory of this. *United States v. George*, 625 F.2d 1081, 1088-89 (3d Cir. 1980). *See also Mookini v. United States*, 303 U.S. 201, 205 (1938) (holding that “vesting a territorial court with jurisdiction similar to that vested in the District Courts of the United States does not make it a ‘District Court of the United States’”).

“While [the District Court of the Virgin Islands] has the jurisdiction of a District Court of the United States, its judges serve for a term of ten years and not for life. 48 U.S.C. §§ 1612(a) and 1614(a).” *Semper v. Gomez*, 2013 WL 2451711, at *4 (D.V.I. June 4, 2013) *aff’d in part, remanded in part*, 747 F.3d 229 (3d Cir. 2014). *See also Santillan v. Sharmouj*, 289 F. App’x 491, 497 (3d Cir. 2008) (“the judges who sit on the District Court of the Virgin Islands have terms that are capped at 10

years.”); *Selkridge v. United of Omaha Life Ins. Co.*, 360 F.3d 155, 162 n. 4 (3d Cir. 2004) (same).

The Petitioner asserted below that once a District Court of the Virgin Islands judge’s term expires he/she cannot sit on the bench because doing so would violate the Constitution. Accordingly, since the Hon. Curtis V. Gomez has been presiding since 2005, Judge Gomez’s ten-year term had expired and absent another constitutionally compliant appointment his tenure and attendant rulings in the case below were constitutionally void *ab initio*.

Given that the ten-year term established by Section 1614(a) expired, at the latest by 2015, how can a District Court of the Virgin Islands judge (who as an Article IV judge never had lifetime appointment) serve after the expiration of his statutory term? The answer is that one cannot; although Section 1614(a) provides the statutory authority to do so, the application of Section 1614(a) violates Article III.

The Court of Appeals erroneously concluded that because “a successor may be chosen and qualified at any time,” *Ayala*, 917 F.3d at 758, such did not offend Article III. But there is no limiting principle for this conclusion. Taken to its logical conclusion, a judge could be appointed to position of a limited term (e.g. one year), but sit on the bench indefinitely (limited only by retirement or death) because the President, subject to the advice and consent of the Senate, potentially could appoint a successor (but may never do so).

This Court has never held whether indefinite terms for non-Article III judges pass constitutional muster, but should do so with this case as it addresses an

“important question of federal law that has not been, but should be, settled by this Court.” Sup. Ct. R. 10(c).

CONCLUSION

For the foregoing reasons, the Petitioner prays that this Court grant his Petition for a Writ of Certiorari.

Respectfully submitted,

By: _____
Joseph A. DiRuzzo, III
DIRUZZO & COMPANY
401 East Las Olas Blvd., Suite 1400
Ft. Lauderdale, Florida 33301
Office: (954) 615-1676
Fax: (954) 827-0340
Email: jd@diruzzolaw.com

Dated: May 6, 2019