No. 19- _____

IN THE

Supreme Court of the United States

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ARACELIS N. AYALA,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

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PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Ninth Circuit in *United States v. Sanchez-Gomez*, 859 F.3d 649 (9th Cir. 2017) (*en banc*) held that the Fifth Amendment presumptively prohibits the shackling of criminal defendants in all court proceedings. *Id*. at 661. This Court vacated the *Sanchez-Gomez* decision on mootness grounds. *See United States v. Sanchez-Gomez*, 138 S.Ct. 1532 (2018). In this case, similar to *Sanchez-Gomez,* the District Court of the Virgin Islands has a blanket shackling policy.

The first question presented is: whether a blanket policy of shackling criminal defendants without an individualized determination of need violates due process?

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

PARTIES TO THE PROCEEDING

The Parties to the proceeding are the Petitioner, Aracelis N. Ayala, and the United States of America.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Aracelis N. Ayala, 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 published and reported at *United States v. Ayala,* 917 F.3d 752 (3d Cir. March 6, 2019), and is reproduced in the Appendix herein at App. 003. The denial of Petitioner's Petition for Rehearing, issued on April 16, 2019, is not officially reported and is reproduced in the Appendix herein at App. 026. The denial of Petitioner's disqualification motion, issued on April 16, 2019, is not officially reported and is reproduced in the Appendix herein at App. 027.

JURISDICTION

The opinion of the United States Court of Appeals for the Third Circuit affirming the District Court's judgment was entered on March 6, 2019. A petition for panel rehearing was denied on April 16, 2019. The present petition is being filed by postmark on or before July 15, 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. amend. V provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall

> be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

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 two straightforward and important question of constitutional import.

1. "[T]he primary role and mission of the United States Marshals Service [is] to provide for the security" for federal judges. 28 U.S.C. § 566(a). The Marshals Service performs its functions in "consult[ation] with the Judicial Conference of the United States," but "retains final authority regarding security requirements for the judicial branch of the Federal Government." 28 U.S.C. § 566(i). Presumably, pursuant to this grant of statutory authority, in 2011 the U.S. Marshals Service adopted "a national

policy" where every criminal defendant would be brought into court "in maximum restraints."[1]

Notwithstanding this grant of statutory authority, the ability of the Marshals Service is circumscribed by the Due Process Clause of the Fifth Amendment. To that end, the rule against shackling criminal defendants "has deep roots in the common law." *Deck v. Missouri*, 544 U.S. 622, 626 (2005). The common law "forbids routine use of visible shackles during the guilt phase," and "a version of the rule forms part of the Fifth ... Amendment['s] due process guarantee." *Id.* at 626–27 (citation omitted). This right is "deeply rooted in this Nation's history and tradition." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997). "The gist of the Due Process Clause, as understood at the founding and since, was to force the Government to follow those common law procedures traditionally deemed necessary before depriving a person of life, liberty, or property." *Hamdi v. Rumsfeld*, 542 U.S. 507, 556 (2004) (Scalia, *J.*, dissenting).

2. The trial court concluded that the ten-year period referred to in 48 U.S.C. § 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 express 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

[1] *See* https://www.youtube.com/watch?v=9xz4L7OLf8Y at 44:15-44:45.

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 Hobbs Act robbery, conspiracy to commit Hobbs Act robbery, brandishing a firearm during a crime of violence, under Title 18 of the United States Code and local level robbery under the Virgin Islands Code. *See* 48 U.S.C. § 1612(c) (providing for the District Court of the Virgin Islands to have concurrent jurisdiction with local level trial courts).

The Petitioner engaged in pre-trial motion practice and, relevant for the instant petition, moved to disqualify the trial judge. The legal basis for the disqualification motion was that District Judge Curtis V. Gomez had exceeded his statutory ten-year limited term. The motion was denied via a written order. App. 027.

The Petitioner proceeded to trial, which occurred over three days in February 2017, and was found guilty. The sentencing hearing occurred in June 2017, when the Petitioner was brought into the courtroom in shackles. The Petitioner objected to the use of shackles and informed the District Court of the then recently issued Ninth Circuit *Sanchez-Gomez* decision holding the use of shackles to be impermissible. C.A. JA-0457 (Tr. 3:11-19). The Appellant's objection to the use of shackles was overruled by the District Court (C.A. JA-0458 (Tr. 4:13-25)), which sentenced the Petitioner to

11 years (48 months followed by a seven-year mandatory minimum). C.A. JA-0487 (Tr. 33:2-7)).

Petitioner timely appealed her conviction to the Court of Appeals contesting, *inter alia,* the trial court's shackling decision and the ability of the judge of the District Court of the Virgin Island's ability to preside over the Petitioner's case. During the pendency of the appeal the Petitioner filed two Fed. R. App. P. 28(j) letters (App. 030; App. 031) addressing whether there was a shackling policy. Additionally, the Petitioner provided a transcript of hearing (App. 032) which proved that the U.S. Marshall's Service had a blanket policy of shackling all criminal defendants in the district. App. 033.

In respect to the Petitioner's contention that the district judge had exceeded his ten-year statutory term limit, the Court of Appeals rejected the contention as "[t]he clear language of the statute necessitates the conclusion that a judge of the District Court of the Virgin Islands may serve past the expiration of the term, until the President nominates and the Senate confirms a successor." *Ayala*, 917 F.3d at 758; App. 012. In rejecting the argument that an unlimited term offends Article III, the court below focused on "the fact that a successor may be chosen and qualified at any time." *Id.*; App. 014.

In respect to the Petitioner's contention that she was improperly shackled given that there was never any individualized determination that she was a danger or a flight risk, the Court of Appeals concluded such was not problematic, rejected the reasoning of the Ninth Circuit's *Sanchez-Gomez* decision, and approved of the

reasoning set forth in the Second and Eleventh Circuits' respective decisions in *United States v. Zuber*, 118 F.3d 101 (2d Cir. 1997) and *United States v. LaFond*, 783 F.3d 1216 (11th Cir. 2015). *See Ayala,* 917 at 763; App. 024.

Critically, the Court of Appeals rejected Petitioner's reliance on *Sanchez-Gomez* stating: "[b]ut even if the Supreme Court had not vacated this decision as moot, it would not help Ayala. Ayala was not subjected to a blanket policy requiring shackling; instead, the Marshals recommended she be shackled and the District Court agreed." *Id.*; App.024. However, subsequent to Ayala's sentencing, but before the Court of Appeals issued its opinion, the truth that there exists a blanket policy of shackling criminal defendants had been exposed. App.033.[2]

REASONS FOR GRANTING THE PETITION

I. THIS COURT SHOULD DEFINITELY STATE WHETHER CRIMINAL DEFENDANTS MAY BE SHACKLED WITHOUT AN INDIVIDUALIZED FINDING OF NECESSITY.

A. This case squarely presents the constitutional question presented but left unanswered in *Sanchez-Gomez.*

Respondent, in its petition for a writ of certiorari in *Sanchez-Gomez*, sought review of the question the Petitioner presents here. Respondent forcefully argued that the Ninth Circuit's decision "that application of physical restraints on a detainee in pretrial nonjury proceedings invariably requires an individualized justification"[3] warranted this Court's review. At bottom Respondent argued that "[i]t should not be

[2] Counsel for the Petitioner was unaware of the "national policy" where every criminal defendant would be brought into court "in maximum restraints," and only recently became aware of such policy when reviewing the oral argument before the Ninth Circuit sitting *en banc* in *Sanchez-Gomez.* *See* https://www.youtube.com/watch?v=9xz4L7OLf8Y at 44:15-44:45.

[3] United States pet. for cert. in case no. 17-312 at p. 20.

impossible for the Marshals Service to rely on the general concerns that justify the use of restraints on pretrial detainees at other locations to justify a default policy of leaving those restraints in place in the courtroom, subject to the detainee's ability to make an individualized objection to the judge."[4]

But Respondent's position cannot be squared with the Ninth Circuit's *en banc* decision. In *Sanchez-Gomez* the majority observed that criminal defendants have a constitutional right "to be free of unwarranted restraints." 859 F.3d at 666. Such is the case because "[c]riminal defendants, like any other party appearing in court, are entitled to enter the courtroom with their heads held high." *Id.* Indeed, the animating reason behind the *Sanchez-Gomez* decision is that the "the right to be free from unwarranted restraints" is one of "most basic constitutional liberties." *Id.* at 660. Undoubtably, this right can give way, but only when an "essential state interest [] such as the interest in courtroom security," *id.*, is directly tied to the particular defendant, *see United States v. Brown*, 454 F. App'x 44, 47 (3d Cir. 2011). *Cf. Sanchez-Gomez*, 859 F.3d at 664 (quoting 4 William Blackstone, *Commentaries on the Laws of England* 317 (1769)) ("A prisoner 'must be brought to the bar without irons, or any manner of shackles or bonds; *unless there be evident danger of an escape*.'") (emphasis added).

This Court should provide guidance to this country's trial courts as to their ability to defer to the United States Marshals Service (and equivalent state courtroom personnel) and when (and in what circumstances) such is appropriate. This Court

[4] United States pet. for cert. in case no. 17-312 at p. 25.

should take this opportunity to espouse a proposition of law consistent with the majority in *Sanchez-Gomez* because American courts "don't have a tradition of deferring to correctional or law enforcement officers as to the treatment of individuals appearing in public courtrooms." *Sanchez-Gomez*, 859 F.3d at 665. Such is invariably true because

> [i]n the courtroom, law enforcement officers have no business proposing policies for the treatment of parties as a class. Insofar as they have information pertaining to particular defendants, they may, of course, bring it to the court's attention. But a blanket policy applied to all defendants infuses the courtroom with a prison atmosphere.

Id.

Consequently, "[c]ourts must decide whether the stated need for security outweighs the infringement on a defendant's right. This decision cannot be deferred to security providers or presumptively answered by routine policies. All of these requirements apply regardless of a jury's presence or whether it's a pretrial, trial or sentencing proceeding." *Id*. at 666 (emphasis added).

B. Jurists are divided on the question of blanket shackling decisions.

The Ninth Circuit was divided 6-5 in *Sanchez-Gomez,* the Second Circuit in *Zuber* and a state intermediate court of appeals had concurrences[5], while the Eleventh Circuit's decision in *LaFond* was unanimous. *See Sanchez-Gomez*, 859 F.3d at 666 (Ikuta, *J*. dissenting) (the majority's decision "creates an unjustifiable circuit split"). At its core there exists two divergent schools of thought.

[5] *See Larsen v. Nooth*, 425 P.3d 484, 485 (2018) (James, *J*. concurring).

On one hand, as the *Sanchez-Gomez* majority demonstrates, numerous appellate judges view there to be a fundamental right to be free of unwarranted restraints. *See* 859 F.3d at 659. Thus, according to this perspective, criminal defendants have a constitutional right to be free of restraints because shackling "diminish[es] the presumption of innocence, impair[s] the defendant's mental capabilities, interfere[s] with the defendant's ability to communicate with counsel, detract[s] from the dignity and decorum of the courtroom or cause[s] physical pain." *Id*. at 660. Consequently, the right to be free from unwarranted restraints "applies whether the proceeding is pretrial, trial, or sentencing, with a jury or without," because criminal defendants have "the right to be treated with respect and dignity in a public courtroom, not [treated] like a bear on a chain." *Id*. at 661; *see also Zuber*, 118 F.3d at 105 (Cardamone, *J*. concurring) ("before a defendant is subjected to the humiliating prospect of pleading his case in chains, a trial judge must make an inquiry regarding the necessity for the restraints-*even if no jury is present*.") (emphasis added).

This legal perspective is buttressed by the belief that one important component of the American criminal justice system "is the dignity with which court proceedings should be conducted." *Sanchez-Gomez*, 859 F.3d at 666 (Schroeder, *J*. concurring. Shackling individuals unnecessarily degrades those that "stand before a court in chains without having been convicted, or in many instances, without even having been formally charged with any crime." *Id*. (Schroeder, *J*. concurring); *see also Zuber* 118 F.3d at 105-06 (Cardamone, *J*. concurring) ("Physical restraints detract from the

dignity and decorum of court proceedings, and on that basis alone are disfavored.") (citing *Illinois v. Allen*, 397 U.S. 337, 344 (1970)). Indeed, one state jurist has observed:

> [R]outinized shackling of defendants inspires no greater confidence in the judicial system if it only occurs when the jury is not present. In fact, the opposite may be true—for the truest test of the confidence we should imbue to the justice system is how it treats people when the public is not looking.

Larsen, 425 P.3d at 488 (James, *J.* concurring).

Moreover, this Court has stated that

> judges must seek to maintain a judicial process that is a dignified process. The courtroom's formal dignity, which includes the respectful treatment of defendants, reflects the importance of the matter at issue, guilt or innocence, and the gravity with which Americans consider any deprivation of an individual's liberty through criminal punishment. And it reflects a seriousness of purpose that helps to explain the judicial system's power to inspire the confidence and to affect the behavior of a general public whose demands for justice our courts seek to serve.

Deck, 544 U.S. at 631.

On the other hand, as the *Sanchez-Gomez* dissent demonstrates, numerous appellate judges are of the view that "the common law rule identified in *Deck*" does not extend to instances where there is no jury because "Blackstone and other English authorities recognized that the rule did not apply at 'the time of arraignment,' or like proceedings before the judge." *Sanchez-Gomez*, 859 F.3d at 677 (Ikuta, *J.* dissenting) (citations omitted). This view is buttressed by various state cases from the nineteenth and early twentieth centuries, which held that shackling was generally allowed. *See id.* at 679-80 (Ikuta, *J.* dissenting) (collecting cases from Mississippi, Missouri, California, and Arizona).

This legal perspective is grounded in the belief that "judges are assumed not to be prejudiced by impermissible factors, [thus] it d[oes] not violate due process for a trial judge (in the absence of the jury) to defer to the judgment of the U.S. Marshals Service without comment or extended colloquy on the issue of restraints." *Id.* at 680 (Ikuta, *J.* dissenting) (cleaned up and citing to *Zuber, supra*). *See also id.* at 681 (Ikuta, *J.* dissenting) ("the rule against shackling pertains only to a jury trial" and "does not apply to a sentencing hearing before a district judge.") (quoting *Lafond, supra* at 1225); *but see Larsen*, 425 P.3d at 488 (James, *J.* concurring) ("Finally, the effect shackling has on a factfinder is not limited to juries. Judges do not become immune to the inherent, unconscious, biases present in the human mind by virtue of their office.").

C. This case presents a recurring question of national importance.

The U.S. Marshals produce prisoners into courtrooms in every district courthouse in the country. While the number of criminal cases varies throughout the country, each district has criminal defendants that come before it on a regular basis. The appropriate role of the U.S. Marshals (and the equivalent courtroom personnel in the respective state systems, which process substantially more criminal defendants than the federal system) on courtroom security speaks to the heart of how the criminal justice system operates on a daily basis throughout the country.

The Ninth Circuit in *United States v. Howard*, 429 F.3d 843, 851 (9th Cir. 2005), drew the distinction as to the role of the Marshals wherein it concluded that "[r]estrictions on defendants during judicial proceedings, however, are not within the realm of correctional officials. The conduct of judicial proceedings is the domain of the

courts." *See also Zuber*, 118 F.3d at 105 (Cardamone, *J.* concurring) ("In my view, the trial court's responsibility to satisfy itself by means of such inquiry may not be delegated to the federal marshals or other custodial personnel; a trial court may not hand over to others this duty which, like any other facet of running its courtroom, is imposed on it."). But there are those that view this as an "artificial construct" because, according to their perspective, "courthouse security and the safety of inmates within their charge does not end at the courtroom door."[6]

With this concern in mind, Respondent has recognized at the *en banc* oral argument in *Sanchez-Gomez* that it would "prefer the court reach the substance of this case."[7] Respondent has likewise argued (which the Petitioner disputes) that "it will generally not be feasible to make an individualized showing of necessity at the early stages of a case,"[8] which further demonstrates the importance of the instant case to the vast majority of criminal cases in this country.

II. 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,

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[6] *Amicus* br. of California State Sheriffs' in case no. 17-312 at p. 11.
[7] *See* https://www.youtube.com/watch?v=9xz4L7OLf8Y at 43:37-44:04.
[8] United States reply br. in support of cert. in case no. 17-312 at p. 9-10.

> 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*.

Undoubtably "[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

extension, 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).

III. THIS CASE PRESENTS A GOOD VEHICLE.

This case squarely presents both questions presented as both were raised before the trial court and before the Court of Appeals. Both issues have been meticulously preserved.

As to the first question presented, there are multiple reasoned opinions by the lower courts, and no vehicle problems, which presents an excellent opportunity for the Court to provide essential guidance to the lower courts by answering the question presented by Respondent in *Sanchez-Gomez*.

As to the second question presented, as appeals from the non-Article III district courts are only heard by the Ninth and Third Circuits, respectively, no further consideration by the Courts of Appeals would aid in allowing the issue to develop.

CONCLUSION

For the foregoing reasons, the petition should be granted.

Respectfully submitted,

By: /s/ Joseph A. DiRuzzo, III Digitally signed by /s/ Joseph A. DiRuzzo, III Date: 2019.06.01 11:48:29 -04'00' Dated: June 1, 2019

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