

IN THE SUPREME COURT OF THE UNITED STATES

MIGUEL ALGARIN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

REPLY TO BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether a party's failure to object to a magistrate's ruling under 28 U.S.C. § 636(b)(1)(A) creates a jurisdictional bar to appellate review, or merely waives the right to review subject to equitable exceptions?

PARTIES TO THE PROCEEDING

Parties to the proceeding include Miguel Algarin (Appellant/Petitioner), Dane K. Chase, Esquire (Appellant/Petitioner's Counsel), Maria Chapa Lopez, Esquire (United States Attorney), Todd B. Gandy (Assistant United States Attorney), Peter J. Scholl (Assistant United States Attorney), Jeffrey B. Hall, Esquire (Acting Solicitor General of the United States of America), Brian C. Rabbitt (Acting Assistant Attorney General), Thomas E. Booth (Attorney, Department of Justice).

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REASONS FOR GRANTING THE PETITION

I. THIS COURT SHOULD GRANT REVIEW TO RESOLVE THE CIRCUIT SPLIT REGARDING WHETHER THE FAILURE TO OBJECT TO A MAGISTRATE'S RULING UNDER 28 U.S.C. § 636(b)(1)(A) CREATES A JURISDICTIONAL BAR TO APPELLATE REVIEW.

The government agrees that the Eleventh Circuit's precedent which bound it to dismiss Mr. Algarin's appeal on jurisdictional grounds is erroneous and should be quashed by this Court (that concession alone should be reason enough for this Court to grant review). Additionally, the government does not dispute that if Mr. Algarin's claim were reviewed on the merits he would be entitled to relief. Nonetheless, the government argues that Mr. Algarin's Petition should be denied because it contends that had the Eleventh Circuit properly reviewed his claim that it would have found his argument waived under Fed. R. Crim. P. 59(a) and the end result of the proceeding would have been the same. Accordingly, it is the government's position that this Court should turn a blind eye to the Eleventh Circuit's erroneous precedent which has led to the improper dismissal of countless appeals and which will lead to the wrongful dismissal of countless more until this Court finally intervenes, because Mr. Algarin would not be entitled to relief even if his case were properly reviewed. The government's argument is wholly erroneous, and, as such, Mr. Algarin's Petition should be granted.

The Eighth Circuit recently explained that "A party who does not object to a non-dispositive order in accordance with Federal Rule of Criminal Procedure 59(a) waives the 'party's right to review.'" *United States v. Harlan*, 960 F.3d 1089, 1091 (8th Cir. 2020) (quoting, Fed. R. Crim. P. 59(a)). **However, because Rule 59(a) is a**

nonjurisdictional waiver provision, the Court of Appeals may excuse the default in the interests of justice.” *Harlan*, 960 F.3d at 1091 (citations and quotations omitted)(emphasis added).

In *Harlan*, the defendant sought substitute counsel, his request was denied by a magistrate, and counsel failed to object to the ruling. *Id.* at 1091. The defendant argued “his counsel could not ‘be reasonably expected to object to the ruling’ that retained him as counsel.” *Harlan*, 960 F.3d at 1091. The Court ultimately “[a]ssum[ed] without deciding that Harlan did not waive his right to appeal th[e] issue.” *Harlan*, 960 F.3d at 1092.

Additionally, as cited in Mr. Algarin’s Petition, in *United States v. Brown*, 79 F.3d 1499 (7th Cir. 1996), the Court explained:

The unchallenged pretrial ruling at issue here was a denial of a motion for substitute counsel. As noted, Brown argued before the magistrate that his attorney was inadequate and that they were no longer able to communicate with or trust each other. The magistrate rejected these claims and denied the motion. Under local rules, Brown was required to challenge this ruling before the district judge within ten days, which he failed to do, giving rise to the government’s claim of waiver. Yet we agree with Brown that it would be inequitable to foreclose appeal of this matter because the very attorney he claimed was inadequate and with whom he allegedly could not communicate failed to preserve the issue for appeal. If Brown is correct that his attorney was incompatible, if not incompetent, then he cannot fairly be held responsible for his attorney’s failure to timely object to the magistrate’s ruling. To bar appellate review under this limited circumstance would “defeat the ends of justice.” *Video Views*, 797 F.2d at 540. Therefore, we hold that Brown’s failure to request reconsideration of the magistrate’s choice of counsel ruling is excused and the issue is properly before us on appeal.

Brown, 79 F.3d at 1505.

Here, Mr. Algarin cannot be fairly held responsible for the failure of the trial counsel he was trying to discharge to preserve his argument that he was entitled to discharge. It would be perverse to say the least to conclude that Mr. Algarin was not entitled to review of his claim that he was entitled to discharge counsel he did not feel was acting adequately because the same counsel failed to adequately preserve his right to review his claim. *See, Id.* To find Mr. Algarin waived his right to review “under this limited circumstance would ‘defeat the ends of justice.’” *Brown*, 79 F.3d at 1504–05 (quoting, *Video Views*, 797 F.2d at 540).

Accordingly, because the government agrees that the Eleventh Circuit erred by dismissing Mr. Algarin’s case on jurisdictional grounds, the Rule 59(a) default was excusable, and the government does not dispute that if Mr. Algarin’s claim were reviewed on the merits he would be entitled to relief because he had the absolute right to discharge counsel under the circumstances of his case, Mr. Algarin’s case is the ideal case for this Court to establish that 28 U.S.C. § 636(b)(1)(A) does not make the filing of objections to a magistrate’s ruling a *jurisdictional* prerequisite to appellate review, and that a party’s failure to object to a magistrate’s ruling under 28 U.S.C. § 636(b)(1)(A) merely waives their right to review subject to equitable exceptions. Consequently, this Court should accept review, find that Mr. Algarin’s appeal was not subject to dismissal on jurisdictional grounds, quash the decision below, and order that Mr. Algarin’s appeal be reinstated.

CONCLUSION

For the reasons stated above and in Mr. Algarin's Petition, this Court should grant his Petition for Writ of Certiorari, and establish that a party's failure to object to a magistrate's ruling under 28 U.S.C. § 636(b)(1)(A) does not create a jurisdictional bar to review, but merely waives their right to review subject to equitable exceptions, quash the decision below, and order that Mr. Algarin's appeal be reinstated.

Respectfully Submitted,



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