No. _____

IN THE SUPREME COURT OF THE UNITED STATES

DAVID ENRIQUE MEZA,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Jessica Agatstein
Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, California 92101
Telephone: (619) 234-8467

Attorneys for Mr. Meza

QUESTIONS PRESENTED

1. In *Marinello v. United States*, 138 S. Ct. 1101, 1109–10 (2018), the Court held that, to prove obstruction, the government must show that the defendant's efforts had a nexus to a particular proceeding and that the proceeding itself was pending or "reasonably foreseeable by the defendant." After *Marinello*, does the nexus element require a *mens rea* of:

(a) knowledge that the defendant's conduct will affect an existing investigatory proceeding, as the Sixth Circuit has held;

(bi) knowledge that the conduct will affect a foreseeable proceeding, as the Fourth and Eighth Circuits have held; or

(c) no knowledge as to how the conduct will affect a foreseeable proceeding, as the Ninth Circuit held in this case?

2. The Court and a vast majority of circuits agree that a waiver of one's *Miranda* rights must be knowing and intelligent, taking into account the totality of the circumstances. Does the Ninth Circuit's factor-based tests for determining a waiver's validity improperly narrow this totality-of-the-circumstances test?

PARTIES, RELATED PROCEEDINGS, AND RULE 29.6 STATEMENT

The parties to the proceeding below were Petitioner David Enrique Meza and the United States. There are no nongovernmental corporate parties requiring a disclosure statement under Supreme Court Rule 29.6.

All proceedings directly related to the case, per Rule 14.1(b)(iii), are as follows:

- *United States v. Meza*, No. 15-CR-3175-JLM, U.S. District Court for the Southern District of California, Order denying motion to dismiss superseding indictment issued April 7, 2017.

- *United States v. Meza*, No. 15-CR-3175-JLM, U.S. District Court for the Southern District of California, Order denying motion to suppress statements issued August 25, 2016.

- *United States v. Meza*, No. 17-50432, U.S. Court of Appeals for the Ninth Circuit, Memorandum issued January 21, 2020.

- *United States v. Meza*, No. 17-50432, U.S. Court of Appeals for the Ninth Circuit, Order denying petition for panel rehearing and rehearing en banc issued May 4, 2020.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Federal Cases **Page(s)**

Federal Statutes

Other

IN THE SUPREME COURT OF THE UNITED STATES

DAVID ENRIQUE MEZA,
Petitioner,

- v. -

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner David Meza respectfully petitions for a writ of certiorari to review the order of the United States Court of Appeals for the Ninth Circuit entered on May 4, 2020.

OPINIONS BELOW

On January 21, 2020, the Ninth Circuit Court of Appeals affirmed Mr. Meza's convictions for conspiracy to obstruct justice, 18 U.S.C. § 1512(c)(2), (k), and foreign domestic violence resulting in death, 18 U.S.C. § 2261(a)(1) (attached here as Petitioner's Appendix A ("Pet. App. A.")). Mr. Meza filed a petition for panel rehearing and rehearing en banc. On May 4, 2020, the panel denied Mr. Meza's petition for panel rehearing, and the full court declined to hear the matter en banc. *See* Pet. App. B.

JURISDICTION

On January 21, the Court of Appeals affirmed Mr. Meza's convictions. *See* Pet. App. A. On May 4, the Court of Appeals denied rehearing. *See* Pet. App. B. The Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTE INVOLVED

Section 1512(c) and (k) of Title 18 of the U.S. Code states:

> (c) Whoever corruptly—
>
> * * *
>
> (2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so, shall be fined under this title or imprisoned not more than 20 years, or both.
>
> * * *
>
> (k) Whoever conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

18 U.S.C. § 1512(c), (k).

STATEMENT OF THE CASE

David Meza is serving a life sentence for two convictions. One was obtained under a growing split as to the *mens rea* of federal obstruction offenses. The other was obtained in violation of *Miranda*'s basic principles.

Mr. Meza's criminal charges stem from the murder of his lover, Jake Merendino. The night of Mr. Merendino's death, Mr. Meza drove his motorcycle near a hotel where Mr. Merendino was staying in Rosarito, Mexico, and then crossed back into the United States. The following day, Mr. Merendino's body was found at the bottom of a ravine near a Mexican highway.

After Mr. Merendino's body was found, Mr. Meza spoke with a friend in Tijuana. He asked the friend to say that, if police asked, his girlfriend and he had stayed with him in Tijuana that evening. Mr. Meza initially told this same story to a detective during a custodial interrogation, but quickly recanted, admitting that this story was false and that he had indeed visited Mr. Merendino in Rosarito that night.

Before Mr. Meza began answering questions, the detective gave him an unorthodox *Miranda* advisal. In the advisal, the detective spoke at a rapid, occasionally unintelligible pace. The detective did not ask for an explicit written or oral waiver of Mr. Meza's *Miranda* rights.

The government later charged Mr. Meza with foreign domestic violence resulting in death, 18 U.S.C. § 2261(a)(1), and conspiracy to obstruct a grand jury proceeding and criminal proceeding, 18 U.S.C. §§1512(c)(2), (k). In its indictment,

the government alleged that Mr. Meza "did conspire to corruptly obstruct, influence and impede an official proceeding, that is, a foreseeable Federal Grand Jury proceeding and a foreseeable criminal proceeding before a Court of the United States regarding the death of Jake Clyde Merendino."

At trial, after over a week of deliberations, and after re-listening to the entirety of Mr. Meza's recorded statements introduced at trial, a jury found Mr. Meza guilty on both counts. The trial judge sentenced Mr. Meza to life imprisonment on the first count, and to the statutory maximum sentence of twenty years on the second.

On appeal, Mr. Meza argued that his waiver of *Miranda* rights was neither knowing nor intelligent. He also argued that the government did not properly indict him on the obstruction offense, as it did not allege the proper *mens rea* as to how his conduct would affect a particular criminal proceeding. While the indictment alleged that Mr. Meza conspired to impede "foreseeable" proceedings, Mr. Meza argued that it should have alleged a particular *mens rea* as to those proceedings—i.e., that he had knowledge of the foreseeable proceedings, or, in simpler words, that he actually *foresaw* them.

The Ninth Circuit rejected both arguments. It reasoned that a defendant need not have knowledge of a foreseeable grand jury proceeding—instead, the proceeding need only be foreseeable. It also applied a six-factor test to hold that Mr. Meza had knowingly and intelligently waived his *Miranda* rights. Applying this factor-specific test meant that the court failed to consider other circumstances

of the purported *Miranda* waiver, including the confusing nature of the advisal of rights and the chaotic circumstances of Mr. Meza's arrest. *See* Pet. App. A. This petition for a writ of certiorari follows.

REASONS FOR GRANTING THE PETITION

This case presents recurring, important questions about the *mens rea* element of federal obstruction offenses. Two years ago in *Marinello v. United States*, 138 S. Ct. 1101, 1104 (2018), the Court reiterated that obstruction offenses must have a "narrower scope." Among other things, "the Government must show" both (1) a "'nexus' between the defendant's conduct and a particular administrative proceeding," and (2) a pending proceeding, "or, at the least," a proceeding that was "reasonably foreseeable by the defendant." *Id.* at 1109–10.

Yet, as they were before *Marinello*, courts of appeal remain split on the elements of federal obstruction. Some, like the Sixth Circuit, have added a nexus to more obstruction offenses, but continued to require that a defendant be "aware" of a "pending" federal action. *United States v. Rankin*, 929 F.3d 399, 405 (6th Cir. 2019). Others, like the Eighth Circuit, have interpreted *Marinello* to "add[] two elements—a nexus *and* knowledge of a currently-pending or reasonably foreseeable proceeding." *United States v. Beckham*, 917 F.3d 1059, 1064 (8th Cir. 2019) (emphasis added). And still others, like the Ninth Circuit in this case, require only that a proceeding be "foreseeable." Pet. App. A at 4. In other words, the Ninth Circuit does not require that the defendant *know* of that foreseeable proceeding.

The Court should grant certiorari to resolve these incompatible approaches to federal obstruction law. Courts of appeal remain confused as to the murky meaning of what, exactly, is a sufficient "nexus" between a defendant's *mens rea*, a defendant's conduct, and the proceeding to be obstructed. And this confusion and ongoing split affect a broad swath of federal obstruction offenses—from white collar offenses to the murder-related offense here. Without intervention, courts' approaches to these offenses will continue to diverge from one another in growing, incompatible ways.

This petition also addresses another circuit split, this time concerning the test for what constitutes a knowing and intelligent *Miranda* waiver. The Court and the vast majority of court of appeals has made clear that the applicable test is one of a totality of the circumstances. But the Ninth Circuit has narrowed the relevant circumstances to a list of factors. As a result, in cases like this one, the Ninth Circuit often ignores relevant facts bearing on *all* the circumstances of a *Miranda* a waiver, solely because they are not included in a narrow, multi-factor test. The Court should resolve this deepening departure from the Court's totality-of-the-circumstances test.

I. Reasons for Granting the Petition on the Elements of Obstruction

A. The Courts of Appeals Remain Confused as to the Elements of Obstruction Offenses, Even After *Marinello*.

Courts have long taken opposing stances on the elements of federal obstruction. This Court has, most recently, tried to resolve these discrepancies in *Marinello v. United States*, 138 S. Ct. 1101 (2018). Yet the courts of appeals have taken only more entrenched, and split, positions on the elements of a federal obstruction charge since.

The Court first addressed this ongoing confusion in modern times in *United States v. Aguilar*, 515 U.S. 593 (1995). There, *Aguilar* confronted an obstruction conviction obtained based on a theory that the defendant lied to the FBI. The defendant had known about pending grand jury proceedings, but the government had not shown that the defendant "knew that his false statement would be provided to the grand jury." *Id.* at 601. *Aguilar* explained that was not enough: "The action taken by the accused must be with an intent to influence judicial or grand jury proceedings; it is not enough that there be an intent to influence some ancillary proceeding, such as an investigation independent of the court's or grand jury's authority." *Id.* at 599. The Court called this requirement the "nexus" element of an obstruction offense, and explained that it has a *mens rea* component. *Id.* In other words, under the nexus element, "if the defendant lacks knowledge that his actions are likely to affect the judicial proceeding, . . . he lacks the requisite intent to obstruct." *Id.* The Court reaffirmed this principle in *Arthur Andersen L.L.P. v. United States*, 544 U.S. 696, 707–08 (2005).

But there was still confusion. So, in *Marinello*, the Court tried to clarify when a defendant's conduct and *mens rea* are sufficiently connected to a federal proceeding to constitute obstruction of that proceeding. In *Marinello*, out of concern that a tax-related obstruction crime would be overbroad, the Court adopted a "nexus" requirement for that statute. Under that nexus, "the defendant's 'act must have a relationship in time, causation, or logic with the judicial proceedings.'" *Marinello*, 138 S. Ct. at 1106 (quoting *Aguilar*, 515 U.S. at 599). In addition, the Court held that the obstructed proceeding itself must either be "pending," "or, at the least, . . . reasonably foreseeable by the defendant." *Id.* at 1110.

But what is the relationship between the nexus and the pending or foreseeable proceeding? Does the nexus requirement demand that a defendant have foreseen a particular investigation? Does it require knowledge as to *both* the obstructive act and its effect on a pending or foreseeable investigation? Or is it enough for the pending proceeding itself to be objectively foreseeable, without any additional *mens rea* as to the nexus *or* the pending investigation? Two years after *Marinello*, the circuits have articulated three different approaches to integrate the nexus and foreseeability requirements.

The first approach is seen in the Sixth Circuit. There, "the defendant must be aware that the [relevant] action was pending at the time of his obstructive conduct." *Rankin*, 929 F.3d at 405. It is not enough that a defendant foresee a future action, or that an objective person be able to foresee a future action. Instead, under this approach, a defendant must have actual knowledge of a currently

pending proceeding. An indictment is only proper if it "alleges a nexus," a "particular investigation," and "that the investigation was pending and that [the defendant] was aware of it at the relevant time." *Id.* at 406; *see also United States v. Miner*, 774 F.3d 336, 345–46 (6th Cir. 2014) (explaining the Sixth Circuit's approach requiring "some pending IRS action").

The second approach, adopted by the Fourth and Eighth Circuits, holds that *Marinello* "added two elements—a nexus and knowledge of a currently-pending or reasonably foreseeable proceeding—that this Court did not previously require." *Beckham*, 917 F.3d at 1064. In other words, these circuits have interpreted *Marinello*'s nexus requirement as demanding a particular *mens rea* component to federal obstruction: "'The government must prove that the defendant . . . intended or knew his actions would have the natural and probable effect of interfering with the grand jury.'" *United States v. Sutherland*, 921 F.3d 421, 427 (4th Cir. 2019) (quoting *Aguilar*, 515 U.S. at 599); *accord United States v. Young*, 916 F.3d 368, 387–89 (4th Cir. 2019).

In these circuits, then, the government must prove a defendant's subjective intent with respect to both the obstructive conduct and the "nexus"—that is, the effect his conduct would have on a particular proceeding. *Id.; see also* Brief for the United States in Opposition to Petition for Writ of Certiorari, *Sutherland v. United States*, No. 19-433 (2020) (describing the Fourth Circuit's approach to this effect).

The third approach, used by the Ninth Circuit in this case, is to omit a *mens rea* requirement altogether. Rather, in the Ninth Circuit, a defendant can

apparently face obstruction charges when the proceeding was only *objectively* foreseeable—the government need not prove that the defendant foresaw or knew of it. Pet. App. A at 4. Thus, as in this case, the government may simply allege that a defendant conspired to corruptly obstruct "a foreseeable Federal Grand Jury proceeding," without any additional allegation of knowledge or foresight of a particular defendant as to that grand jury proceeding. *Id.*

As these cases demonstrate, the courts of appeals have differently incorporated the elements identified in *Marinello* into their existing obstruction case law. Only two years after the Court decided that case, four courts of appeals have already split in three directions as to the elements of this basic federal crime. It is thus time to resolve the question of how, exactly, *Marinello*'s narrowed obstruction elements function in practice. And this case presents an opportunity to clean up yet another complicated split—between the Sixth, Fourth and Eight, and Ninth Circuits—on obstruction offenses.

B. This Case Presents an Important Issue that Involves Everything from Complicated Criminal Proceedings to Day-to-Day Corporate Compliance.

This case presents an issue that affects a broad swath of federal obstruction proceedings. Although *Marinello* focused only on federal tax obstruction, its implications are widespread. The Court has long made clear that the nexus requirement clarified in *Aguilar* sets the "metes and bounds," *Aguilar*, 515 U.S. at 599, for many federal obstruction statutes, *accord Marinello*, 138 S. Ct. 1101; *Arthur Andersen*, 544 U.S. 696.

The ongoing confusion between courts of appeal thus affects the entire body of federal obstruction law. That body of law is a large one. Hundreds of obstruction offenses are independently prosecuted in the federal system every year. *See* United States Courts, *Table D-2—U.S. District Courts–Criminal Judicial Business* 3 (2019), https://www.uscourts.gov/statistics/table/d-2/judicial-business/2019/09/30. Many hundreds more are prosecuted as additional charges in other criminal proceedings, *id.*, as occurred here.

Further, corporations and businesspeople across the country are careful to hew to the law of obstruction closely, as to ensure their day-to-day practices do not interfere with federal investigations of one sort or another. Ambiguity in obstruction law thus furthers significant confusion outside of the important context of Mr. Meza's case. Indeed, this confusion affects a broad swath of corporate practices—particularly as to small businesses, which already face challenges when adhering to complicated federal laws. *See, e.g.,* Christopher R. Chase, *To Shred or Not to Shred: Document Retention Policies and Federal Obstruction of Justice Statutes,* 8 Fordham J. Corp. & Fin. L. 721 (2003) (describing the challenges companies face in setting reasonable document retention policies); Julie R. O'Sullivan, *The Federal Criminal "Code" is a Disgrace: Obstruction Statutes as Case Study*, 96 J. Crim. L. & Criminology 643, 679–726 (2006) (strongly critiquing the ambiguity in federal obstruction statutes, particularly as applied to business practices).

The same concern applies to everyday people in the context of data storage, far beyond a corporate context. For example, courts of appeals' confusion as to whether and how to apply a nexus requirement for the related obstruction statute 18 U.S.C. § 1519, creates significant concerns for "the average person [who] creates and destroys massive amounts of data every single day." Juliana DeVries, *20 Years for Clearing Your Browser History?*, 22 Berk. L.J. 13, 43 (2017). Indeed, courts' confusion as to the role of the nexus requirement creates real problems in the digital age: Federal obstruction statutes are increasingly applied to young people who delete their online data, even absent knowledge of a pending or objectively foreseeable investigation affected by that data. *Id.* at 23–27. "The sheer volume of digital data that individuals accumulate and delete daily means we should all be concerned with a[n] [obstruction] statute such as § 1519, which applies to digital data and arguably lacks basic clarity." *Id.* at 15.

Because federal obstruction jurisprudence is a single body of law, the growing split affecting this murder case will affect much else—from witness tampering prosecutions to data deletion cases to white-collar corporate fraud investigations. This is a worthy case to address continued post-*Marinello* confusion across the wide variety of prosecutions grappling with the interplay of the elements of obstruction.

C. This Case is an Appropriate Vehicle.

This case squarely presents the question left unresolved in *Marinello* and *Aguilar*: What, exactly, is the interplay between the *mens rea*, nexus, and pending/foreseeable proceeding elements of federal obstruction?

The government's indictment against David Meza alleged the most expansive interpretation of federal obstruction available after *Marinello*. The government did not allege in that indictment that Mr. Meza was *aware* or *knew* that his obstructive conduct in Mexico would impede an American federal grand jury proceeding or criminal proceeding. Nor did the government allege that Mr. Meza knew of the American criminal or the grand jury proceedings, or that the proceedings were foreseeable *to him*. Instead, the government simply alleged that he "did conspire to corruptly obstruct, influence and impede an official proceeding, that is, a foreseeable Federal Grand Jury proceeding and a foreseeable criminal proceeding before a Court of the United States regarding the death of Jake Clyde Merendino."

Mr. Meza squarely presented his claim that these allegations were insufficient. And the Ninth Circuit squarely—and wrongly—decided the issue by holding that his argument was "foreclosed" by *Marinello*. Pet. App. A at 4.

D. The Court Should Adopt the Approach of the Fourth and Eighth Circuits.

Finally, resolution of this critical issue would not be time consuming. The Court's existing precedent, as well as basic statutory construction canons, demonstrate that the Court should adopt the middle-ground approach in the Fourth and Eighth Circuits.

As the Fourth and Eighth Circuits have explained, there is no reason to depart from the *Aguilar* and *Arthur Andersen* line of cases after *Marinello*. Indeed, reading these three cases together makes clear that the government must prove a defendant's subjective awareness that his obstructive actions will affect a particular proceeding—and thus a subjective awareness of that proceeding's foreseeable existence. *See Beckham*, 917 F.3d at 1064; *Sutherland*, 921 F.3d at 426.

Requiring this *mens rea*—in addition to requiring proof of a pending or foreseeable proceeding to which the *mens rea* is connected—is in line with the fundamental principles of lenity underlying the Court's obstruction jurisprudence. As *Arthur Andersen* explained, courts must "exercise[] restraint in assessing the reach of a federal criminal statute, both out of deference to the prerogatives of Congress, . . . and out of concern that a fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed." 544 U.S. at 703 (internal quotation marks and citations omitted).

In light of the Court's precedent, as well as Congress's intent to appropriately cabin obstruction offenses, the Court should resolve this inter-circuit conflict by adopting the interpretation of the Fourth and Eighth Circuits. This middle-ground approach would clarify that an obstruction offense requires certain conduct knowingly connected to a known or foreseen proceeding.

II. Reasons for Granting the Petition as to the Legal Test for the Voluntariness of a *Miranda* Waiver

A. The Ninth Circuit Has Strayed Far From the Totality-of-the-Circumstances Test the Court Established for *Miranda* Waivers.

This petition addresses another entrenched split that requires the Court's resolution: whether the factor-specific test that the Ninth Circuit applies to *Miranda* waiver questions conflicts with the Court's established totality-of-the-circumstances test.

Under the Court's longstanding *Miranda* jurisprudence, an "accused's statement during a custodial interrogation is inadmissible at trial unless the prosecution can establish that the accused 'in fact knowingly and voluntarily waived [*Miranda*] rights' when making the statement." *Berghuis v. Thompkins*, 560 U.S. 370, 382 (2010) (quoting *North Carolina v. Butler*, 441 U.S. 369, 373 (1979)). What proves that a waiver is knowing and voluntary is, as the Court has made very clear, flexible. "[W]aivers can be established even absent formal or express statements of waiver," *id.* at 383, so long as the prosecution demonstrates that "the accused understood [his] rights," *id.* at 384. When evaluating a waiver question, then, courts must ensure they consider the "totality of the circumstances." *Colorado v. Spring*, 479 U.S. 564, 573 (1987) (internal quotation marks and citation omitted).

The vast majority of courts of appeals are careful to evaluate the totality of the circumstances, on a case-by-case basis, when deciding the knowing and intelligent nature of a *Miranda* waiver. *See United States v. Carpentino*, 948 F.3d 10, 25–26 (1st Cir. 2020); *United States v. Murphy*, 703 F.3d 182, 192–94 (2d Cir.

2012); *United States v. Cristobal*, 293 F.3d 134, 140–42 (4th Cir. 2002); *United States v. Alvarado-Palacio*, 951 F.3d 337, 341 (5th Cir. 2020); *United States v. Ramamoorthy*, 949 F.3d 955, 964–65 (6th Cir. 2020); *United States v. Lee*, 618 F.3d 667, 676 (7th Cir. 2010); *United States v. Woods*, 829 F.3d 675, 680 (8th Cir. 2016); *United States v. Willis*, 826 F.3d 1265, 1277 (10th Cir. 2016); *Everett v. Sec'y , Dept. of Corr.*, 779 F.3d 1212, 1241 (11th Cir. 2015).

The Ninth Circuit, however, has narrowed this test to consider only a limited range of factors.

The Ninth Circuit applies a six-factor test in deciding whether a *Miranda* wavier is knowing and intelligent. These factors are:

> (i) the defendant's mental capacity; (ii) whether the defendant signed a written waiver; (iii) whether the defendant was advised in his native tongue or had a translator; (iv) whether the defendant appeared to understand his rights; (v) whether the defendant's rights were individually and repeatedly explained to him; and (vi) whether the defendant had prior experience with the criminal justice system.

United States v. Crews, 502 F.3d 1130, 1140 (9th Cir. 2007).

The *Crews* test nods to the idea of a "totality of the circumstances" approach. But, in practice, it is far from a case-by-case evaluation of the global circumstances present in each purported *Miranda* waiver. Instead, the test has two problems that take it away from the totality of the circumstances.

First, this factor-balancing test curtails focus to a limited set of circumstances, often without considering novel circumstances particular to an individual case. Second, this test requires weighing limited factors against one another equally, adding them up like simple addition, rather than taking the weight

of one important factor as worth consideration on its own. *See, e.g., Crews,* 502 F.3d at 1140; *United States v. Prince*, 921 F.3d 777, 791 (9th Cir. 2019); *United States v. Garibay*, 143 F.3d 534 (9th Cir. 1998). That is why the vast majority of courts of appeal have not adopted an approach like it.

B. This Case is a Good Vehicle to Address this Recurring Issue and Remind the Ninth Circuit that Factor Tests are Not Replacements for Totality-of-the-Circumstances Tests.

This case presents an opportunity to remind the Ninth Circuit to move away from a limited, multi-factor practice—and, instead, to consider *Miranda* waivers under a true totality of the circumstances approach.

This issue is important in and of itself. *Miranda* waivers are litigated in district courts every day, all across the country. Yet a circuit court of appeal has regularly strayed from the Court's mandate to consider the knowingness and voluntariness of a waiver based on the totality of the circumstances, *Colorado*, 479 U.S. at 574.

Aside from the *Miranda* issue, this case presents an important opportunity to reiterate that courts of appeal cannot create multi-factor balancing tests to supplant simple, flexible inquiries established by the Court. Indeed, members of the Court have admonished courts of appeal for creating complicated factor-balancing tests. As Chief Justice Roberts recently noted, there are problems with "invit[ing] a grand balancing test in which unweighted factors mysteriously are weighed." *June Med. Servs. L.L.C v. Russo*, 140 S. Ct. 2103, 2135 (2020) (Roberts, C.J., concurring in the judgment) (internal quotation marks omitted). "Under such tests, 'equality of

treatment is . . . impossible to achieve; predictability is destroyed; judicial arbitrariness is facilitated; judicial courage is impaired.'" *Id.* (quoting Scalia, *The Rule of Law as a Law of Rules*, 56 U. Chi. L. Rev. 1175, 1182 (1989)).

This case presents an example of the problems with the Ninth Circuit's factor-balancing approach, making it an excellent vehicle.

Here, Mr. Meza's appeal explained that his *Miranda* waiver was not knowing or intelligent in light of the totality of the circumstances. In support, Mr. Meza explained that his interrogation immediately followed a chaotic arrest, in which he was removed from his home, half-naked, at gunpoint, upon separation from his very pregnant girlfriend. Further, his interrogator gave a speedy, hard-to-understand explainer of his *Miranda* rights; the transcription of these rights even describes parts of that explainer as "[unintelligible]." Mr. Meza argued that these circumstances critically informed the waiver inquiry, even though they were not acknowledged in the Ninth Circuit's six-factor balancing test.

Yet the Ninth Circuit did not address these case-specific facts when determining whether Mr. Meza's *Miranda* waiver was knowing and intelligent. Instead, it nodded to the totality of the circumstances, but then balanced the six set factors in its case law—none of which took into account either the manner in which a detective delivers the Miranda advisal, or the coercive aspects of the arrest immediately before the interrogation. The Ninth Circuit balanced its six factors, one against the other, and determined Mr. Meza had not checked off enough for his implied waiver to be inappropriate. *See* Pet. App. A at 2–3.

One member of the panel did, in a concurrence, suggest that any *Miranda* error was harmless. Pet. App. A at 5. Of course, the majority of the panel did not. Pet. App. A at 2–3. Indeed, Mr. Meza had good arguments as to why any *Miranda* error did, in fact, adversely affect the trial. Regardless, this case is still an appropriate vehicle on the main legal issue. Should the Court decide this issue, the Court may always remand this case for the Ninth Circuit to consider harmlessness in the first instance.

At base, this case presents an excellent opportunity to remind courts of appeal that they may not stray from the Court's case law—and that narrowed, multi-factor tests can never substitute for flexible, straightforward totality of the circumstances tests.

CONCLUSION

To resolve these circuit splits and bring consistency and predictability in the resolution of obstruction offenses and *Miranda* questions across the federal criminal justice system, Mr. Meza respectfully requests that the Court grant his petition for a writ of certiorari.

Respectfully submitted,

Date: August 3, 2020

s/ Vincent Brunkow
Vincent Brunkow
Jessica Agatstein
Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, California 92101
Telephone: (619) 234-8467

Attorneys for Mr. Meza