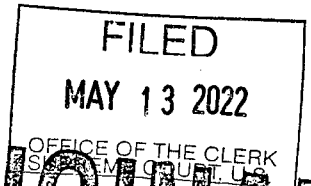


21-8073

No. \_\_\_\_\_



ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Leihinahina Sullivan — PETITIONER  
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For The Ninth Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Leihinahina Sullivan  
(Your Name)

c/o FDC Honolulu #09779122; P.O. Box 30080  
(Address)

Honolulu, Hawaii 96820  
(City, State, Zip Code)

n/a  
(Phone Number)

## QUESTION(S) PRESENTED

(1) Can a criminal defendant immediately appeal the revocation of her pro se status by a district court judge sua sponte during the sentencing phase of her case or is it a non-appealable order as the United States Court of Appeals for the Ninth Circuit has not found a case addressing this exact issue?

See 28 U.S.C. § 1291 ("The court of appeals... shall have jurisdiction of appeals from all final decisions of the district courts of the United States..."); Midland Asphalt Corp. v. United States, 489 U.S. 794, 798 (1989) (stating that, in criminal cases, the finality requirement generally "prohibits appellate review until after conviction and imposition of sentence"); Flanagan v. United States, 465 U.S. 259, 270 (1984) (stating, in a case in which a trial court entered an order disqualifying counsel from participation in an action, that "[s]uch an order fails to satisfy the stringent conditions for qualification as an immediately appealable collateral order, and the overriding policies against interlocutory review in criminal cases apply in full"); United States v. Romeo-Ochoa, 554 F.3d 833, 836 (9th Cir. 2009) (stating that, to be appealable under the collateral order doctrine, an order must "(1) conclusively determine the disputed question, (2) resolve an important issue completely separate from the merits of the action, and (3) be effectively unreviewable on appeal from a final judgment" (quoting Will v. Hallock, 546 U.S. 345, 349 (2006))).

(2) Is the United States Court of Appeals for the Ninth Circuit decision that revocation of a criminal defendant's pro se status during the sentencing phase not an immediately appealable order, as under the divestiture rule, the trial court's jurisdiction is not impacted and the action may proceed as if no notice of appeal has been filed by formerly pro se criminal defendant, correct?

(Under the divestiture rule, the filing of appeals and divests the district court of its control over those aspects of the case involved in the appeal." Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982). The divestiture rule "was created to prevent two courts from simultaneously considering the same issues in, or aspects of, a case." United States v. Powell, 24 F.3d 28, 31 (9th Cir. 1994). But a district court retains jurisdiction over a matter if a party appeals a non-appealable order. See Estate of Connors by Meredith v. O'Conner, 6 F.3d 656, 658 (9th Cir. 1993) ("[T]ransfer of jurisdiction from district court to the court of appeals is not effected... if a litigant files a notice of appeal from an unappealable order, the trial court's jurisdiction is not impacted and the action may proceed as if no notice of appeal has been filed).)

## LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- [ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## RELATED CASES

United States Court of Appeals for the Ninth Circuit ("USCA")  
USCA Nos. 22-10038, 22-10039

District Court Nos. 1:17-cr-00104-JMS-KJM-1  
1:21-cr-00096-JMS-1  
District of Hawaii, Honolulu

## TABLE OF AUTHORITIES CITED

### CASES

### PAGE NUMBER

1. Estate of Connors by Meredith v. O'Conner, \_\_\_\_\_ Question(s) Presented  
6 F.3d 656 (9th Cir. 1993)
2. Faretha v. California, 422 U.S. 806 (1976) \_\_\_\_\_ 5
3. Flanagan v. United States, 465 U.S. 259 (1984) \_\_\_\_\_ 4
4. Griggs v. Provident Consumer Discount Co., \_\_\_\_\_ 6  
459 U.S. 56 (1982)
5. Midland Asphalt Corp. v. United States, \_\_\_\_\_ 6  
489 U.S. 794 (1989)
6. United States v. Hickey, 580 F.3d 922 (9th Cir. 2009) \_\_\_\_\_ Question(s) Presented
7. United States v. Powell, 24 F.3d 28 (9th Cir. 1994) \_\_\_\_\_ Question(s) Presented
8. United States v. Romeo-Ochoa, 554 F.3d 833 \_\_\_\_\_ 4.  
(9th Cir. 2009)
9. Will v. Hallack, 546 U.S. 345 (2006) \_\_\_\_\_ 4
10. Firestone Tire Co v. Risjord, 449 U.S. 368 (1981) \_\_\_\_\_ 4
11. States v. Baxter, 19 F.3d 155 \_\_\_\_\_ 4
12. United States v. Moussaoui, 483 F.3d 220 (4th Cir. 2007) \_\_\_\_\_ 4
13. Chen v. Ben-Itzhak Loan Corp., 337 U.S. 541 (1949) \_\_\_\_\_ 4

### STATUTES AND RULES

1. 28 U.S.C. § 1253 \_\_\_\_\_
2. 28 U.S.C. § 1291 \_\_\_\_\_ 4

### OTHER

1. McKaskle v. Wiggins, 465 U.S. 168 (1984) \_\_\_\_\_ 5
2. Michigan v. Mosley, 423 U.S. 96 (1975) \_\_\_\_\_ 5
3. United States v. Baxter, 19 F.3d 155 (4th Cir. 1994) \_\_\_\_\_ 4

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IN THE  
SUPREME COURT OF THE UNITED STATES  
  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at \_\_\_\_\_; or,

☒ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

## JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was April 20, 2022.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No.   A  .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No.   A  .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. U.S. Const. amend. ~~VI~~
2. U.S. Const. amend ~~XIV~~



## STATEMENT OF THE CASE

Can a pro se criminal defendant immediately appeal the revocation of her pro se status by a district court judge sua sponte during the sentencing phase of her case?

The Ninth Circuit Court of Appeals has decided an important question of federal law that has not been, but should be settled by this Court and are firm bases for granting certiorari in this case.

(1) The Ninth Circuit lacks jurisdiction over district courts "Order Revoking Defendant's Pro Se Status, Denying Pending Motions, and Continuing Sentencing Hearing" is not appealable as a final judgment or an order that comes within the collateral order doctrine. See 28 U.S.C. § 1291. The Ninth Circuit has not found a case addressing this exact issue but cites to Flanagan v. United States, which is distinguishable which denied interlocutory review of disqualification order of a defense attorney in a criminal trial, in Petitioner's case it's revocation of her pro se status which she had since September 11, 2019. This Court should hold that revocation of pro se status of criminal defendant during a critical phase of her case is immediately reviewable (interlocutory appeal) as (1) it conclusively determined revocation of pro se status of a criminal defendant to defend herself (2) resolved an important issue completely separate from the merits of the action and (3) be effectively unreviewable on appeal from a final judgment" (quoting Will v. Hallack, 546 U.S. 345, 349 (2006)).

This Court should hold that the Order from which I am appealing is an appealable interlocutory order. 28 U.S.C. § 1291 limits appellate jurisdiction to appeals from "final decisions of the district court." This rule requires "that a party must ordinarily raise all claims of error in a single appeal following final judgment on the merits," which means a sentence in a criminal case. Firestone Tire Co. v. Risjord, 449 U.S. 368, 374 (1981); United States v. Baxter, 19 F.3d 155, 156 (4th Cir. 1994). In a criminal case, the final judgment rule should be applied strictly. United States v. Flanagan, 465 U.S. 259, 265 (1984) (involving a criminal case where trial court's disqualification of defendant's counsel of choice was not a final order); United States v. Moussaoui, 483 F.3d 220, 226 (4th Cir. 2007). There is a narrow exception to this rule, known as the collateral order doctrine. Three (3) conditions must be satisfied to confer appellate jurisdiction: (1) it conclusively determines the disputed question; (2) it resolves an important issue completely separate from the merits; and (3) it is effectively unreviewable on appeal from final judgment. Id.; United States v. Romeo-Ochoa, 554 F.3d 833, 836 (9th Cir. 2009) (citation omitted); see also Cohen v. Ben. Indus. Loan Corp., 337 U.S. 541 (1949).

## REASONS FOR GRANTING THE PETITION

The issue involving Petitioner's constitutional right to represent herself (6th & 14th Amendments to United States Constitution) focuses on the collateral order inquiry on whether such a determination is "effectively unreviewable." (The denial of the right to self-representation is subject to structural error. McKaskle v. Wiggins, 465 U.S. 168, 177, n. 8, 104 S. Ct. 944, 79 L. Ed. 2d 122 (1984)); see also Faretta v. California, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975)). The answer is "yes" as Faretta v. California, supra, 422 U.S. at 834 is highly relevant as it is the revocation of Petitioner's prose status to represent herself which is strategic and moral and any review after sentencing on appeal after sentencing is hindsight. Petitioner weighed her particular case advantages which outweighed its hazards in self-representation. The clear thrust of Faretta is the choice is Petitioner's to make, the judge, much less the prosecutor, is not to assume to paternalistic an attitude in protecting Petitioner from herself, hence the revocation of Petitioner's prose status. Cf. Michigan v. Mosley, 423 U.S. 96, 108-109, 46 L. Ed. 2d 313, 96 S. Ct. 321 (1975) (White, J., Concurring) ("Unless an individual is incompetent, we have past rejected any paternalistic rule protecting a defendant from his intelligent and voluntary decision about his own criminal case.") There are two reasons, 1st, a defendants, despite their lack of legal sophistication, are sometimes in a better position than the judge to evaluate the advantages and disadvantages to self-representation, after all, they alone know what type of defense they will put on in all critical phases of their case. 2nd, the defendants' choice is to be honored out of respect for them as free and rational beings, responsible for their own fates. It is the defendants, not the judge or the prosecutor, who "will bear the personal consequences of a conviction." Faretta, 422 U.S. at 834. The revoking of Petitioner's prose status is effectively unreviewable as she is in the sentencing phase of her case and as district court judge in this instant case stated there will be a "mini-trial" during this important phase of this case, and if Petitioner had to wait until sentencing everything will be hindsight on appeal.

### The Questions Raised Is Important and Unresolved

The 9<sup>th</sup> Circuit Court of Appeals has decided an important question of federal law that have not been, but should be settled by the United States Supreme Court and is a firm basis for granting certiorari in this case.

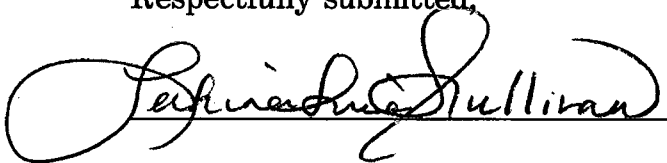
- (1) The 9<sup>th</sup> Circuit made a highly questionable ruling that revocation of a pro se criminal defendant's right to self-representation is not immediately appealable until after sentencing, the 9<sup>th</sup> Circuit has not found a case addressing this exact issue. See 28 U.S.C. § 1291 ("The court of appeals... shall have jurisdiction of appeals from all final decisions of the district courts of the United States..."); Midland Asphalt Corp. v. United States, 489 U.S. 794, 798 (1989) (stating that, in criminal cases the finality requirement generally "prohibits appellate review until after conviction and imposition of sentence").
- (2) The 9<sup>th</sup> Circuit decided that revocation of criminal pro se status is not an immediately appealable order, as under the divestiture rule (Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982)), the trial court's jurisdiction is not impacted and the action may proceed as if no notice of appeal has been filed by a formerly pro se criminal defendant.

### **CONCLUSION**

The judgment in Exhibit A by the Ninth Circuit Court of Appeals decided an important issue that the revocation of a pro se criminal defendant's right to self-representation is not immediately appealable and divest the Court of Appeals from jurisdiction, the trial court's jurisdiction is not impacted and the action may proceed as if no notice of appeal has been filed by formerly pro se criminal defendant.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

  
Stephen J. Sullivan

Date: May 26, 2022