No. _____

IN THE SUPREME COURT OF THE UNITED STATES

CARLOS MEJIA-QUINTANILLA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. The first question for this Court's review is whether courts can summarily enforce an appellate waiver to bar motions to vacate convictions that are unconstitutional.

II. The second, related, question presented for this Court's review is whether a court can summarily enforce an appellate waiver to bar motions to vacate convictions for which the district court lacked jurisdiction to enter a judgment of conviction.

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PETITION FOR WRIT OF CERTIORARI

Carlos Mejia-Quintanilla respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the Ninth Circuit Court of Appeals is not published in the Federal Reporter, but the opinion, *United States v. Carlos Mejia-Quintanilla*, No. 17-15899, No. 71 (9th Cir. Aug. 11, 2022), is attached as Appendix A. The Ninth Circuit Court of Appeals' order denying Mr. Mejia-Quintanilla's petition for rehearing, *United States v. Mejia-Quintanilla,* No. 17-15899, No. 82 (9th Cir. Oct. 3, 2022), is attached as Appendix B. The district court's order denying Mr. Mejia-Quintanilla's motion under 28 U.S.C. § 2255, *United States v. Carlos Mejia-Quintanilla,* 3:CR-11-00293-CRB, CR 162 (N.D. Cal. Apr. 24, 2017), is attached as Exhibit C. The Ninth Circuit's decision in *United States v. Goodall,* upon which it exclusively relied in Mr. Mejia-Quintanilla's case, is reported at 21 F.4th 555 (9th Cir. 2021) and is attached as Appendix E.

JURISDICTION

The Ninth Circuit entered its final order affirming the denial of Petitioner's motion to vacate on August 11, 2022, *see* App. A, and denied Petitioner's petition for rehearing on October 3, 2022, *see* App. B. On December 19, 2022, Petitioner's request for a 60-day extension of time in which to file the instant petition for a writ of certiorari was granted. *See* Application 22A537. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1). This petition is timely per Sup. Ct. R. 13.1.

CONSTITUTIONAL AND STATUTORY PROVISIONS

1. U.S. Const. amend. V: "No person shall … be deprived of life, liberty, or property, without due process of law."

2. Title 18, Section 924(c), of the United States Code states, in relevant part:

   (3) For purposes of this subsection the term "crime of violence" means an offense that is a felony and –

   (A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

   (B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

3. Title 18, Section 924(j)(1), of the United States Code states:

   (j) A person who, in the course of a violation of subsection (c), causes the death of a person through the use of a firearm, shall –

   (1) If the killing is a murder (as defined in section 1111), be punished by death or by imprisonment for any terms of years or for life.

STATEMENT OF THE CASE

I. Petitioner enters a plea and is sentenced to a mandatory minimum consecutive sentence under 18 U.S.C. §§ 924(c), (j)(1).

Petitioner is serving a mandatory minimum sentence for a § 924(j)(1) conviction, as follows: In 2014, Mr. Mejia-Quintanilla pled guilty with a written plea agreement to a racketeering conspiracy under 18 U.S.C. § 1962(d) (Count One) and to carrying and using a firearm during and in relation to a crime of violence

resulting in murder under 18 U.S.C. § 924(j) (Count Five); Counts Two, Three, and Four were dismissed. App. D at 1.[1]

Petitioner's plea agreement contained several appellate waivers. First, Petitioner agreed as follows:

> I agree to give up my right to appeal my conviction, the judgment, and orders of the court. I also agree to waive any right I have to appeal any aspect of my sentence, including any orders relating to forfeiture and or restitution. I also agree to give up any right I may have to appeal my sentence, except that I reserve my right to appeal an upward departure from the Guideline imprisonment range determined by the Court.

App. D at 5.

In addition, Petitioner's plea agreement included the following provision:

> I agree not to file any collateral attack on my conviction or sentence, including a petition under 28 U.S.C. § 2255 or 28 U.S.C. § 2241, except that I reserve my right to claim that my counsel was ineffective in connection with the negotiation of this Agreement or the entry of my guilty plea. I also agree not to seek relief under 18 U.S.C. § 3582.

Id.

The district court sentenced Mr. Mejia-Quintanilla to 324 months in the Bureau of Prisons: 204 months for Count One, and a mandatory consecutive 120 month-sentence for Count Five. CR 129[2]. According to the Bureau of Prisons, Petitioner's current projected release date is April 7, 2035. *See*

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[1] Although the Plea Agreement bears a stamp reading "Sealed by Court Order," the document was ordered unsealed by the Ninth Circuit. *See* Ninth Circuit Case No. 17-15899, Dkt. Nos. 23, 26.

[2] CR" refers to the lower federal district court record, specifically to the document's ECF number on the district court's docket record for *United States v. Mejia-Quintanilla*, 3:11-cr-00293-CRB (N.D. Cal.).

https://www.bop.gov.inmateloc/ (Reg. No. 14926-111) (last visited February 23, 2023).

II. Petitioner seeks to vacate his § 924(j) conviction and sentence under this Court's *Johnson* and *Davis* decisions. Said request is denied by the district court.

In 2015, this Court held that imposing an increased sentence under the residual clause of the Armed Career Criminal Act's ("ACCA") violent felony definition violates the Constitution's guarantee of due process. *Johnson v. United States,* 576 U.S. 591 (2015). This Court later issued *Welch v. United States,* 578 U.S. 120, 135 (2016), holding *Johnson* announced a new substantive rule applying retroactively to cases on collateral review.

On June 24, 2016, Petitioner filed a motion in the district court under 28 U.S.C. § 2255, which was later amended on August 29, 2016. CR 141, 145. Petitioner alleged a claim based on this Court's decision in *Johnson, infra*. Specifically, Petitioner challenged his conviction under 18 U.S.C. §§ 924(c), (j)(1), arguing that the predicate offense, namely murder in aid of racketeering under 18 U.S.C. § 1959(a)(1), did not meet the definition of a crime of violence after *Johnson*. CR 145. Petitioner challenged his § 924(j) conviction and attendant mandatory ten-year sentence under *Johnson* on due process and jurisdictional grounds. *Id.*

The government opposed the motion, arguing that Petitioner waived his right to file a motion under 28 U.S.C. § 2255; his claim is time-barred; his claim is incorrect; and that he is procedurally defaulted. CR 156.

Concluding that murder in aid of racketeering, specifically murder in aid of racketeering involving a firearm, is a crime of violence under 18 U.S.C. § 924(c), the district court denied relief to Petitioner. App. C. The district court denied Petitioner a certificate of appealability. CR 163.

III. Petitioner appeals the denial of his motion to the Ninth Circuit and the Circuit ultimately affirms based on summary application of the collateral challenge waiver.

Petitioner timely appealed. *United States v. Carlos Mejia-Quintanilla*, 17-15998 (9th Cir.). The Ninth Circuit granted Petitioner a Certificate of Appealability ("COA") on whether murder in aid of racketeering under 18 U.S.C. §1959(a)(1) qualifies as a crime of violence under 18 U.S.C. §§ 924(c),(j). On appeal before the Ninth Circuit, Petitioner argued that his § 924(j) conviction is unconstitutional because the predicate offense is not a "crime of violence" under the force clause of § 924(c)(3)(A). ACR 13.[3]

After Petitioner's appeal was briefed, and after the Ninth Circuit had issued its initial opinion in Petitioner's favor, *see* ACR 58, the Ninth Circuit issued *United States v. Goodall*, 21 F.4th 555, 558 (9th Cir. 2021)[4]. App. E. In *Goodall,* the Ninth Circuit held that the defendant's appeal was barred by the plea agreement's appellate waiver of "the right to appeal any other aspect of the conviction or sentence and any order of restitution or forfeiture." *Goodall,* 21 F.4th at 559-62. The

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[3] "ACR" refers to the lower federal appellate court record, specifically to the document's docket number on the Ninth Circuit's docket record for *United States v. Mejia-Quintanilla*, Case No. 17-15899.

[4] This opinion amends the Ninth Circuit's earlier opinion reported at 15 4th 987 (9th Cir. 2021).

Goodall panel reasoned the "illegal" sentence exception to enforcing appellate waivers did not apply because the panel viewed the defendant as challenging only his § 924(c) conviction. *Id.* at 562-65. *Goodall* declined to consider whether the miscarriage of justice exception to enforcing a waiver would apply in this context. *Id.* at 565, n.6.

The mandate had not yet issued in Petitioner's case when *Goodall* was decided, and the government, which had already sought a petition for rehearing and stay of the mandate on other grounds, *see* ACR 62, filed a citation of supplemental authorities pursuant to Fed. App. R. 28(j) with the Ninth Circuit, alerting the panel to *Goodall* and arguing that, pursuant to its holding, Petitioner's appeal must be denied. ACR 66. Following briefing on the government's petition for panel rehearing, and without seeking input about the miscarriage of justice exception, the Ninth Circuit dismissed the appeal as barred by his appellate waiver, citing *Goodall* and the collateral attack waivers in the plea agreement. App. A. The summary affirmance stated, in pertinent part:

> [W]e dismiss the appeal because it is barred by the appellate waiver in Mejia-Quintanilla's plea agreement.
>
> Mejia-Quintanilla's written plea agreement expressly waived his right to appeal or collaterally challenge his conviction or sentence. Mejia-Quintanilla was convicted of a violation of 18 U.S.C. § 924(j)(1) and (2), which has the element of violating 18 U.S.C. § 924(c). The violation of § 924(c), in turn, has the element of carrying and using a firearm during and in relation to a crime of violence, in this case, murder in violation of California Penal Code § 187. Mejia-Quintanilla seeks to challenge this conviction on the ground that he is actually innocent of violating § 924(j)(1), because he could not have violated § 924(c) (an element of § 924(j)(1)). Specifically, he argues that pursuant to recent Supreme Court cases, § 187 murder is not a crime of violence under § 924(c). We

> reject his challenge. Because the language of Mejia-Quintanilla's appellate waiver encompasses his right to appeal his conviction for violating § 924(j), the appellate waiver bars Mejia-Quintanilla's challenge to his conviction. *See United States v. Goodall*, 21 F.4th 555, 561 (9th Cir. 2021), *cert. denied*, No. 21-7486 (U.S. Apr. 25, 2022).

Id. at pp. 2-3.

REASONS FOR GRANTING THE WRIT

I. The Ninth Circuit's opinion cannot be reconciled with Supreme Court precedent that holds constitutional challenges such as the one presented by Petitioner are not subject to waiver.

> The plea of guilty is, of course, a confession of all the facts charged in the indictment, and also of the evil intent imputed to the defendant. It is a waiver also of all merely technical and formal objections of which the defendant could have availed himself by any other plea or motion. *But if the facts alleged and admitted do not constitute a crime against the laws of the Commonwealth, the defendant is entitled to be discharged.*

Commonwealth v. Hinds, 101 Mass. 209, 210 (1869) (*emphasis added*).

This basic tenet has been repeatedly reaffirmed by this Court. In *Blackledge v. Perry,* 417 U.S. 21 (1974) the Court wrote that the right asserted by the defendant – and accepted by the Court – was "the right not to be haled into court at all upon the felony charge [since] the very initiation of the proceedings [] operated to deprive him due process of law." *Blackledge,* 417 U.S. at 30-31 (habeas relief sought on the grounds that defendant's reindictment, and attendant conviction, resulted from an unconstitutional vindictive prosecution). Just a short while later, in *Menna v. New York,* 423 U.S. 61 (1975) (*per curiam*) the Court held that "a plea of guilty to a charge does not waive a claim that – judged on its face – the charge is one which the State may not constitutionally prosecute." *Menna,* 423 U.S. at 63 (subsequent

prosecution, and resultant guilty plea, challenged on Double Jeopardy grounds). In *United States v. Broce,* 488 U.S. 563 (1989), this Court repeated that a guilty plea does not bar an appellate claim "where on the face of the record the court had no power to enter the conviction or impose the sentence." *Broce,* 488 U.S. at 569.

This Court affirmed these historical, and consistent, holdings in *Class v. United States,* 138 S. Ct. 798 (2018). In *Class,* the Court parsed out those constitutional claims rendered precluded by a guilty plea – *e.g.* the constitutionality of case-related government conduct that takes place before a plea is entered, and the constitutional right to a fair trial and accompanying constitutional guarantees – from those constitutional claims that remain even following a guilty plea: those which, judged on their face, would "extinguish the government's power to constitutionally prosecute the defendant if the claim were successful." *Class,* 138 S. Ct. at 805-06.

The Ninth Circuit's opinion in *United States v. Goodall,* 21 F.4th 555 (9th Cir. 2021) conflicts with this Court's precedent. In *Goodall,* the defendant moved to vacate his conviction for a violation of 18 U.S.C. § 924(c) on the grounds that, post-*Davis*[5], his conviction must be vacated because a Hobbs Act conspiracy is not a "crime of violence" under the "elements clause" of § 924(c). *Goodall,* 21 F.4th at 560-61. The Ninth Circuit found that the defendant's appellate waiver barred his challenge; and found the "illegal sentence" exception to an appellate waiver discussed in *United States v. Torres,* 828 F.3d 1113, 1125 (9th Cir. 2016)

[5] *United States v. Davis,* 139 S. Ct. 2319 (2019).

inapplicable as said term does not encompass illegal convictions. *Id.* at 562-65. The Ninth Circuit reasoned that to construe the "illegal sentence" exception to include illegal convictions "might undo nearly all appellate waivers, past and present, yielding perverse consequences." *Id.* at 564.

The "perverse consequences" the Ninth Circuit fears should appellate waivers not bar challenges to illegal convictions are nothing compared to the perverse consequences that would result from enforcing an unconstitutional conviction and forcing an individual to remain incarcerated from the resultant sentence. Contrary to the Ninth Circuit's attempt to distinguish the two, illegal sentences are often inextricably intertwined with illegal convictions. *See, e.g., Broce, infra* (a guilty plea does not bar an appellate claim "where on the face of the record *the court had no power to enter the conviction or impose the sentence*") (*emphasis added*).

As in *Class,* Petitioner's constitutional claim for prosecution of a non-federal offense is *not* expressly waived in the general collateral attack waiver contained in his plea agreement, *see* App. D: his challenge does not, in any way, deny that he engaged in the conduct to which he admitted; rather, he seeks to raise a claim which, "judged on its face" would extinguish the government's power to constitutionally prosecute him if successful. *See Class,* 138 S. Ct. at 805; *see also Blackledge, infra; Menna, infra*. Further, as in *Class,*

> [T]he claims at issue here do not fall within any of the categories of claims that [the appellate waiver in] Class' plea agreement forbids him to raise on direct appeal. They challenge the Government's power to criminalize Class' (admitted) conduct. They thereby call into question the Government's power to constitutionally prosecute him. A guilty plea does not bar a direct appeal in these circumstances.

Id. The question involved in Petitioner's motion to vacate involves conduct that does not constitute a § 924(c) offense and, subsequently, upon which a § 924(j) conviction cannot be based; it involves conduct that was unconstitutionally prosecuted as it was without subject matter jurisdiction.

Simply put, for a conviction to stand, it must not violate the constitution: "the Constitution imposes a floor below which a defendant's plea, conviction , and sentencing may not fall." *Torres,* 828 F.3d at 1125-26. In holding that challenges to illegal convictions do not fall within the "illegal sentence" exception to appellate waivers, the Ninth Circuit errantly made a distinction without difference. When a defendant files a § 2255 motion, he asserts "that the *sentence* was imposed in violation of the Constitution or laws of the United States." 28 U.S.C. § 2255. A defendant's challenge to his *sentence* necessarily encompasses all "challenges to the legality of holding the petitioner in custody at all" – which necessarily encompasses "the legality of the underlying *conviction.*" Hertz & Liebman, *Federal Habeas Corpus Prac. & Proced.* § 9.1, n.31 (2020) (*emphasis added*). And in cases such as Petitioner's, where the offense of conviction carries a mandatory consecutive sentence, the illegal conviction and the illegal sentence are as one.

The Ninth Circuit's erroneous holding in *Goodall* conflicts with this Court's precedent and, if not remedied by this Court, will lead to unjust consequences. But for his unconstitutional § 924(j)(1) conviction, Petitioner would not be forced to serve a mandatory consecutive term of 10 years' imprisonment. Mandating the enforcement of appellate waivers to preclude relief from illegal, unconstitutional

convictions is contrary to this Court's precedent. Indeed, it is contrary to justice itself. This Court should grant review of this important federal question.

II. The Ninth Circuit's opinion cannot be reconciled with Supreme Court precedent that holds jurisdictional claims are not subject to waiver.

In addition to constitutional considerations, there are jurisdictional limits to which courts must adhere. Congress limits federal judicial subject matter jurisdiction by clearly stating that the "district courts of the United States shall have original jurisdiction … of all offenses against the laws of the United States." 18 U.S.C. § 3231. Subject matter jurisdiction involves the very power of a court to hear a case and, as such, "can never be forfeited or waived." *United States v. Cotton,* 535 U.S. 625, 630 (2002). As a result, defects in subject-matter jurisdiction "require correction regardless of whether the error was raised in district court." *Id.*

As discussed *infra,* a guilty plea including an appellate waiver does not bar a claim on appeal when the court had no power to enter the conviction or impose the sentence. *Class v. United States,* 138 S. Ct. 798 (2018). Numerous circuits agree that an appeal waiver does not waive a jurisdictional defect. *See, e.g., McCoy v. United States,* 266 F.2d 1245, 1249 (11th Cir. 2001) ("Because parties cannot by acquiescence or agreement confer jurisdiction on a federal court, a jurisdictional defect cannot be waived or procedurally defaulted … a judgment tainted by a jurisdictional defect must be reversed"). Indeed, the Ninth Circuit itself has held that "[c]laims that 'the applicable statute is unconstitutional or that the indictment fails to state an offense' are jurisdictional claims," *United States v. Montilla,* 870 F.2d 549, 552 (9th Cir. 1989), *amended at* 907 F.2d 115 (9th Cir. 1990); and, as

such, an appeal waiver will not apply if the sentence violates the law, *United States v. Bibler,* 495 F.3d 621, 624 (9th Cir. 2007).

Petitioner raised jurisdictional challenges under 28 U.S.C. § 2255 by arguing that his § 924(j)(1) conviction and resulting sentence is illegal and unconstitutional because the predicate offense charged is not a crime of violence under 18 U.S.C. § 924(c)(3)(A)'s elements clause, and, subsequently, the government failed to charge a federal offense. CR 145. The Ninth Circuit, in its initial memorandum disposition in Petitioner's case, agreed, finding that the predicate offense charged is not a crime of violence. ACR 58-1.[6]

As in *Blackledge, infra,* the right the Petitioner asserts is the right "not to be haled into court at all upon the felony charge." *Blackledge,* 417 U.S. at 30. This reflects an understanding of the very nature of guilty pleas: a plea is a confession of all facts charged in the indictment, "[b]ut if the facts alleged and admitted do not constitute a crime against the laws of the Commonwealth, the defendant is entitled to be discharged." *Hinds*, 101 Mass. at 210 (1869). Here, without a lawful "crime of violence" predicate upon which a violation of § 924(c) could be based, Petitioner could not be prosecuted, convicted, or sentenced for the § 924(j)(1) count. This claim, on its face and based on the existing record, would extinguish the government's

[6] Upon granting the government's petition for panel rehearing following the issuance of the initial memorandum disposition in Petitioner's case, said memorandum disposition was withdrawn and was replaced with the memorandum disposition dismissing Petitioner's appeal upon its finding that it is barred by the appellate waiver in his plea agreement. ACR 71-1

power to "constitutionally prosecute" the defendant if the claim were successful. *Class,* 138 S. Ct. at 806.

Goodall failed to acknowledge this Court's precedent, along with its own precedent and that of other Circuits, holding that jurisdictional claims cannot be waived. *Goodall,* 21 F.4th at 557-64. This Court should grant this petition to correct this error and to affirm this Court's precedent that jurisdictional claims cannot be waived.

CONCLUSION

For the foregoing reasons, this Court should grant this petition for a writ of certiorari. Alternatively, this Court should grant, vacate, and remand for consideration of the miscarriage of justice exception to enforcing the waiver in Petitioner's case. *See Goodall,* 21 F.4th at 565 n.6 ("Defendant did not raise, and we do not consider, the applicability, if any, of an exception for a miscarriage of justice. We express no view on the viability of that exception in other circumstances.")

Dated: February 28, 2023.

Respectfully submitted,

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