

No. 22-_____

IN THE
SUPREME COURT OF THE UNITED STATES

Henry Mauriss,

Applicant,

v.

United States of America,

Respondent.

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

APPLICATION FOR EXTENSION OF TIME TO FILE A

PETITION FOR A WRIT OF CERTIORARI

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HENRY MAURISS

**APPLICATION FOR EXTENSION OF TIME TO FILE
A PETITION FOR A WRIT OF CERTIORARI**

TO: Hon. Elena Kagan, Circuit Justice for the Ninth Circuit:

Under this Court's rules 13.5 and 22, Applicant Henry Mauriss ("Mr. Mauriss") respectfully requests a 60-day extension to file his Petition for Writ of Certiorari. In support of this application, Applicant states:

1. Applicant intends to seek review of the decision of the Ninth Circuit Court of Appeals in *United States of America v. Henry Mauriss*, No. 21-50063, a copy of which is annexed hereto. The Ninth Circuit issued its initial decision granting the government's motion to dismiss on February 22, 2022. A copy of the order of dismissal is annexed hereto. Applicant timely filed a petition for rehearing or in the alternative a motion for reconsideration, which the Ninth Circuit denied on May 26, 2022. A copy of the order denying rehearing or reconsideration is also annexed hereto. Absent the requested extension of time, a petition for writ of certiorari would be due on August 24, 2022. Applicant requests that the time for filing be extended by 60 days, to and including October 23, 2022.

2. The crux of Mr. Mauriss's appeal is the contention that his plea agreement, and therefore the appellate waiver contained therein, is unenforceable because it was not knowing and voluntary, and in any event the government breached the agreement. Specifically, he contends that the government induced his guilty plea through certain false representations and his guilty plea was therefore involuntary. Mr. Mauriss appealed his conviction and the denial of his motion to withdraw his

guilty plea. The government moved to dismiss before briefing was completed based on an appellate waiver clause in his plea agreement, notwithstanding that the waiver itself excluded claims challenging the voluntariness of his guilty plea. A Ninth Circuit motions panel summarily granted the motion to dismiss and refused Mr. Mauriss's requests for reconsideration or rehearing.

3. That decision – as a petition for writ of certiorari will develop more fully – is a serious candidate for this Court's review because:

- a. Over 50 years ago, in *Santobello v. New York*, this Court held that, “when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.” *Santobello v. New York*, 404 U.S. 257, 262 (1971). However, whether and under what circumstances a prosecutor's lack of good faith in plea negotiations can render a subsequent plea agreement not knowing and voluntary is an unsettled question, as is the related issue of whether such conduct by a prosecutor amounts to a breach of the agreement.
- b. Other federal circuits have expressly recognized a prosecutorial duty of good faith and fair dealing that extends to enforcement of promises like those made to Mr. Mauriss. Some circuits have created a mechanism for judicial review of alleged bad-faith conduct that would otherwise fall within the realm of prosecutorial discretion. *See United States v. Doe*, 865 F.3d 1295, 1300 (10th Cir. 2017) (“even when a plea agreement gives the

- government complete discretion,” “a court may nevertheless review” whether the prosecution has made its determination “in good faith”; declining to enforce appellate waiver based on defendant’s allegation of prosecutorial bad faith) (internal quotations omitted); *United States v. Rexach*, 896 F.2d 710, 714 (2d Cir. 1990) (“A prosecutor's determination of dissatisfaction [with the defendant’s proffered assistance], just as with other areas of prosecutorial discretion, cannot be made invidiously or in bad faith.”)
- c. The Ninth Circuit has thus far declined to recognize such a duty as to plea negotiations, or to provide a mechanism for judicial review, creating disparities among defendants located in different circuits.
- d. The Ninth Circuit is also out of step with other circuit courts of appeal on the issue of whether an appellate waiver in a plea agreement bars an appeal based on the defendant’s contention that his plea was not knowing and voluntary. Other circuits expressly carve out as non-waivable all colorable claims that a plea was not knowing and voluntary. *See United States v. Cohen*, 888 F.3d 667, 683 (4th Cir. 2018) (“An appeal waiver will not bar appellate review where a plea-withdrawal motion incorporates a colorable claim that the plea agreement itself — and hence the waiver of appeal rights that it contains — is tainted by constitutional error.”); *In re Acosta*, 480 F.3d 421, 422 n.2 (6th Cir. 2007) (“claims that a guilty plea was not knowing and voluntary . . . are those that first come to mind as

claims that generally cannot be waived.”). The Ninth Circuit appears to demand more, and has held defendants to the plain terms of their appellate waivers even in cases where the defendant argues that the underlying plea agreement was not knowing and voluntary. *See United States v. Chavez-Diaz*, 949 F.3d 1202, 1210 (9th Cir. 2020) (finding appeal waived where defendant entered an unconditional guilty plea, but asserted that his plea was not knowing and voluntary because he did not intend to waive right to appeal due process and equal protection claims); *United States v. Jeronimo*, 398 F.3d 1149, 1154 (9th Cir. 2005) (appellate waiver applied on direct review of denial of motion to withdraw guilty plea based on ineffective assistance of counsel). This Court has not spoken definitively on the standard for a valid waiver of the right to appeal based on claims of an unknowing and involuntary plea, nor what threshold showing of involuntariness must be made to allow an appeal to go forward despite an appellate waiver.

- e. Finally, this Court should step in to give guidance as to when a motion to dismiss is so inextricably intertwined with the merits of the case that referral to the motions panel is improper. Mr. Mauriss’s case was decided by a summary motions panel, before full merits briefing had been completed and without oral argument. But, as noted above in (a) through (d), the enforceability of the appellate waiver hinged on the merits of Mr. Mauriss’s arguments regarding bad faith and fraud on the part of the

government, and thus the involuntary nature of his plea. The motions panel could not properly determine that the appellate waiver applied without *de facto* making a ruling on the merits. This procedural snarl is another unsettled issue in the law, and is one that has tremendous due process implications for criminal defendants like Mr. Mauriss, for whom a motions panel disposition effectively circumvented his right to have his appeal heard on the merits.

4. Mr. Mauriss is incarcerated and is not able to consult with counsel as efficiently as an individual who is at liberty. Counsel therefore requires additional time to consult with Mr. Mauriss regarding his petition.

5. Applicant's counsel of record, has, among other urgent professional commitments, an opening brief due in the California Court of Appeal on or about August 25, a reply brief due in the Los Angeles County Superior Court on August 24, and a hearing on a petition for writ of mandate on September 8, 2022. Additionally, Applicant's counsel has had to make frequent trips from Texas to California during the last two months for medical appointments as well as business and family commitments.

For these reasons, Applicant requests that the date for filing a petition for a writ of certiorari be extended to and including October 23, 2022.

Respectfully submitted,



Becky S. James

Counsel for Applicant Henry Mauriss

CERTIFICATE OF SERVICE
Mauriss v. United States of America

I hereby certify that on this 10th day of August, 2022, I caused one copy of this Application for Extension of Time to File a Petition for Writ of Certiorari to be served on each of the following by first-class mail:

Scott S. Harris
U.S. Supreme Court
1 First St. NE
Washington DC, 20543

Elizabeth Prelogar
Solicitor General of the United States,
Room 5616
Department of Justice
950 Pennsylvania Ave. NW
Washington, DC 20530-0001.

I hereby certify that all parties required to be served have been served. I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 10, 2022 at San Antonio, Texas



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EXHIBIT “A”

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAY 26 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

HENRY MAURISS, AKA Henry Mauriss
III, AKA Henry Morriss III,

Defendant-Appellant.

No. 21-50063

D.C. No. 8:19-cr-00060-DOC-1
Central District of California,
Santa Ana

ORDER

Before: FERNANDEZ, TASHIMA, and FRIEDLAND, Circuit Judges.

Appellant's motion to seal (Docket Entry No. 49-1) is granted. The Clerk will file under seal the documents at Docket Entry Nos. 49-1 and 49-2, and will publicly file the document at Docket Entry No. 49-3.

Appellant's motion (Docket Entry No. 49-2) for reconsideration is denied and the motion for reconsideration en banc is denied on behalf of the court. *See* 9th Cir. R. 27-10; 9th Cir. Gen. Ord. 6.11.

EXHIBIT “B”

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

FEB 22 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

HENRY MAURISS, AKA Henry Mauriss
III, AKA Henry Morriss III,

Defendant-Appellant.

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D.C. No. 8:19-cr-00060-DOC-1
Central District of California,
Santa Ana

ORDER

Before: FERNANDEZ, TASHIMA, and FRIEDLAND, Circuit Judges.

Appellant's motions to seal (Docket Entry Nos. 16, 17, 21, 25, 35, 37, 40, 41, and 43) are granted. The Clerk will file under seal the documents at Docket Entry Nos. 2-5, 9, 12, 16, 18, 20-21, 25, 28-29, 33-38, 40-2, 41, 42 and 43. The Clerk will publicly file the documents at Docket Entry No. 17 and 40-1.

Appellee's motion to dismiss this appeal in light of the valid appeal waiver (Docket Entry No. 33) is granted. *See United States v. Harris*, 628 F.3d 1203, 1205 (9th Cir. 2011) (knowing and voluntary appeal waiver whose language encompasses the right to appeal on the grounds raised is enforceable). As appellant acknowledges, his challenge to the denial of his motion to withdraw his guilty plea is covered by the appeal waiver. *See United States v. Rahman*, 642 F.3d 1257, 1259 (9th Cir. 2011). Appellant's argument that the waiver is

nevertheless unenforceable because his plea was involuntary and the government breached the plea agreement is not supported by the record.

DISMISSED.