

Supreme Court, U.S.  
FILED  
OCT 11, 2022  
OFFICE OF THE CLERK

ADAN GODINEZ  
Petitioner

vs.

UNITED STATES OF AMERICA  
Respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Application To Justice Sitting For The  
Seventh Circuit To Extend Time To  
File Petition For Writ Of Certiorari

Relief Sought

Adan Godinez, pro se, requests that the Justice sitting on behalf of the United States Court of Appeals for the Seventh Circuit extend the time for filing a Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit in the matter of United States v. Adan Godinez, No. 21-2178, for a period of 60-days or from October 10, 2022 through and including December 8, 2022.

Grounds For Relief

1. On February 20, 2018, Judge Jorge Alonso of the United States District Court for the Northern District of Illinois accepted Petitioner Godinez's plea of guilty in Case No. 16 CR 00554 to Counts One and Two of a superseding information. (DE#128): 21 U.S.C. §846, conspiracy to deliver a controlled substance, and 18 U.S.C. §924(c), use of a firearm in furtherance

All further counts were dismissed at sentencing which occurred on June 23, 2021. A true and correct copy of this conviction, Judgment In A Criminal Case is attached to this Motion as Exhibit "A".

2. On June 28, 2021, Petitioner duly appealed this conviction to the United States Court of Appeals for the Seventh Circuit. That Court affirmed the conviction by its order entered on July 11, 2022. A true and correct copy of the opinion of the Court is reported at 2022 U.S. App. LEXIS 18982, No. 21-2178 and attached to this Motion as Exhibit "B".

3. The Supreme Court of the United States will have jurisdiction over this matter because 28 U.S.C. §1254(1) gives the Court jurisdiction over an appeal of a final judgment of a United States Court of Appeals.

Reason Why Relief From Time Limit Is Needed

4. Under Supreme Court Rule 13.1, time for filing of a Petition For Writ of Certiorari in this matter expires on October 10, 2022.

5. Petitioner, a layperson, was uncertain whether Robert Palmer, his attorney of record before the United States Court of Appeals for the Seventh Circuit was to file a timely petition for Writ of Certiorari to this Court. The attorney has not done so, thus it has come to Petitioner's attention that the Petition is due on October 10, 2022.

6. Petitioner did not select or personally retain the attorney who represented him before the Court of Appeals, and whom he expected to file the Petition for Writ of Certiorari before the Supreme Court. The attorney was chosen for Petitioner pursuant to the Criminal Justice Act as Mr. Godinez had been accorded In Forma Pauperis designation by Hon. Jorge Alonso, District Court Judge.

7. Presuming Petitioner was responsible for filing a pro se Petition for Writ of Certiorari, such was not possible in a time manner due to consistent lockdowns both at his facility and at MCC Chicago where much of his documentation is housed. Petitioner was never apprised of the method of proceedings on Motions and Writs pro se and was, in fact, ignorant of these matters until October 5, 2022 when an inmate helped him prepare this request to extend time to file the Petition for Writ of Certiorari.

#### Need For Length Of Extension Sought

8. The transcript of the change of plea hearing, requests for withdrawal of plea, evidentiary hearing along with discovery documentation and ancillary paperwork was sent to Petitioner's prior attorney.

9. These records, prerequisites to the filing of a Petition for Writ of Certiorari have either not been made available to Petitioner or are housed at the Metropolitan Correctional Center, 71 W. Van Buren St., Chicago, IL. 60605.

11. The issue that will be presented implicates the Fifth Amendment Due Process Clause. The United States Court of Appeals for the Seventh Circuit erred in affirming the District Court's denial of Petitioner's renewed motion to withdraw his plea of guilty on the basis it was invalid under Rule 11 of the Federal Rules of Criminal Procedure. The Seventh Circuit dismissed the appeal based on an appeal waiver within Mr. Godinez's plea agreement.

#### Statement Of The Case

When Adan Godinez began working for Superior Mechanics ("Superior") an Exxon Mobile subcontractor, he was a 30-year-old father who was hoping to get a "good paying job" to support his family. (App.20 at §17). Mr. Godinez learned about the job opportunity at Superior from his cousin's husband, Ivan Serra, who claimed he was a close friend of one of the supervisors, Nate Hasset. (Id. at 18). In December 2015, Nate Hasset interviewed Mr. Godinez for a job at Superior. During the interview, Hasset expressed familiarity with Mr. Godinez's family background, noting that he knew about his brothers who had served prison-time, one of whom had been shot and killed. (Id. at §21). Nevertheless, Mr. Hasset offered Mr. Godinez a job as a scaffold builder. On December 10, 2015, after completing certification and passing a drug test, Mr. Godinez started his job at Superior. (Id. at §25).

At the start of his employment, Mr. Godinez and Hasset had a congenial relationship. Hasset helped Mr. Godinez find a new apartment. (Id. at §23) and they exchanged friendly text on the performance of the White Sox. (DE# 227-2y at 3, comment #3)

apartment, (Id. at §23), and they exchanged friendly text messages, wishing one another a happy Father's Day and commenting on the performance of the White Sox. (DE#227-2 at 3,7). Mr. Godinez was satisfied with his work. He was working 70 hours per week and earning overtime at \$30 per hour. (App.21 at §27,31). But in late April, Mr. Godinez's work hours were reduced, and when he asked Hasset what was going on, Hasset told him that "complaining would only get him fired." (Id at §32). As Mr. Godinez's supervisor, Hasset had hiring and firing power which, according to Mr. Godinez, he "used aggressively." (Id. at §30).

After reducing Mr. Godinez's hours, Hasset began suggesting that Mr. Godinez might help him procure drugs. (Id. at §33-34). He started pressuring Mr. Godinez to get him cocaine, claiming it would be a "one-time thing." (Id. at §35). Frequently, Hasset would call Mr. Godinez into his office to talk about selling drugs. (Id. at §36). Hasset said he knew Mr. Godinez "had a background" and that because Mr. Godinez was "Mexican" he could "get drugs from Mexico." (Id. at §33). In response, Mr. Godinez became nervous that he could lose his job if he did not help Hasset get what he wanted. (Id. at §33). Eventually, Hasset told Mr. Godinez that he "wasn't going to see a raise for a year" unless he procured cocaine for a drug deal. (Id. at §40). He also threatened to fire Mr. Godinez because he had caught him looking at his phone on a job site. (App.22 at §40). Mr. Godinez kept hesitating. (Id. at §41). And as a result, his work hours were "steadily reduced," ultimately to the point where it made it

impossible for him to pay his bills on time. (Id. at §41).

On August 1, 2016, Mr. Godinez finally agreed to procure cocaine for Hasset, and, immediately thereafter, Hasset increased his work hours to 70-80 hours per week. (Id. at §46). Hasset also offered Mr. Godinez the opportunity to complete extra training. (Id. at §47). Without telling him, Hasset then provided Mr. Godinez's phone number to "Mario" (an undercover agent) and told him to expect a phone call. (Id. at §50). On August 17, 2016, Hasset initiated a text conversation with Mr. Godinez, telling him that his "buddy is back" and that "we are on my friend I will talk to u tomorrow \$\$\$\$." (DE #227-2 at 5).

On August 23, 2016, Mr. Godinez returned a call to the undercover agent, having missed a call from his number earlier. (DE#227-3 at 1). The agent introduced himself as "Nate's friend" and says that Hasset told him that Mr. Godinez "might have a small job." (Id. at 2). Ultimately, on August 30, 2016, after repeated pressures from Nate Hasset, Mr. Godinez and his brother, Fernando, met with the undercover agent and sold him the requested amount of cocaine. Mr. Godinez, along with his brother, were taken into custody. (DE#128 at 22).

#### The Rule 11 Colloquy

On February 20, 2018, Mr. Godinez pleaded guilty to Count One (21 U.S.C. §846) and Count Two (18 U.S.C. §924(c)(1)(A)(iii) of the superseding information, having waived his right to an

indictment. (DE#94 at 1; DE#128 at 6). The facts included in the Plea Agreement, with respect to Count One, surround the drug transaction that occurred on August 30, 2016. (DE#94 at 4-6). The factual narrative begins on August 23, 2016, when Mr. Godinez and the undercover agent came into contact with one another. (Id. at 6). Similarly, for Count Two, the facts are limited strictly to the events that took place at the Louis Joliet Mall parking lot on August 30, 2016. (DE#94 at 6; DE#128 at 28-30). Neither the facts in the Plea Agreement nor those recited on the record during the Rule 11 colloquy include any details describing the nature of the relationship between Mr. Godinez and Nate Hasset, nor do they explain how Mr. Godinez was put in contact with the undercover agent.

As part of the colloquy, the judge asked Mr. Godinez a series of approximately sixty-three yes-or-no questions to determine whether he entered into his plea knowingly and voluntarily. (DE#128 at 9-33). Rather than ask for narrative responses, the district court judge asked a continuous series of affirmative or negative questions, at one point asking thirty-four uninterrupted yes-or-no questions. (Id. at 9-18). When the court asked Mr. Godinez if he agreed with the Government's factual rendition, he displayed hesitancy, asking if he could take a moment to speak with his attorney. (Id. at 30)("In those exact words--can I talk to my lawyers?"). Only after speaking with his attorneys, does he agree with the statement. (Id. at 31).

### Legal Advice And Decision To Enter Into A Plea Agreement

On June 22, 2018, Mr. Godinez wrote to Judge Alonso that he had "irreconcilable differences with [his] attorney Geoffrey Meyer" and asked for new legal representation. (App.9);. In his letter, Mr. Godinez claims that he was initially unwilling to enter into his guilty plea and that it was coerced by Mr. Meyer. (Id.). He further states that the plea did "not accurately represent what occurred between August 23, 2016 and August 30, 2016."(Id.). The emails that Mr. Godinez provided between himself and Mr. Meyer further illustrate this disagreement. (App.11-12)("the plea agreement you advised me to sign against my interest").

On May 1, 2020, Mr. Godinez again wrote to Judge Alonso expressing differences with his new counsel, Ms. Heather Winslow. (App.14). After describing an initially productive relationship, Mr. Godinez wrote that he was "again...faced with a lawyer who was just anxious to get [him] to plea and get it over with." (App.15). Describing the events between himself and his attorney, Mr. Godinez stated that he felt "coerced into revoking [his] prior plea rejection," claiming that his attorney did so without reviewing the relevant evidence with him. (Id.).

### Summary Of The Argument To Be Presented In The Petition

This Court should reverse the Court of Appeals judgment that the district court did not abuse its discretion in denying Mr. Godinez's renewed motion to withdraw his guilty plea on the



grounds that the guilty plea was voluntary and the appellate waiver must be enforced. Mr. Godinez alleges that he did not enter into his plea either knowingly or voluntarily, thereby rendering the plea invalid under Rule 11 of the Federal Rules of Criminal Procedure.

A plea agreement, along with the contained appellate waiver, is only valid "so long as the record clearly demonstrates that it was made knowingly and voluntarily." Brady v. United States, 397 U.S. 742 (1970); Class v. United States, 138 S.Ct. 798 (2018)(this holding flows directly from this Court's prior decisions, see Haynes v. United States, 390 U.S. 85, 87, n.2 "plea of guilty did not, of course, waive his previous [constitutional] claim."). Also see Boykin v. Alabama, 395 U.S. 242 (1969).

The Seventh Circuit had said in United States v. Whitlow, 287 F.3d 638, 640 (7th Cir. 2002) that "[W]e have held time and time again that a waiver of appeal stands or falls with the rest of the bargain." In the District Court, Mr. Godinez's guilty plea was not made knowingly or voluntarily because (1) he was pressured into accepting the plea by his then-attorneys, and (2) the Rule 11 colloquy was defective.

First, Mr. Godinez's guilty plea was involuntary because he was put in a position of having no other option than to enter into a plea agreement that was against his interest. Twice, Mr. Godinez wrote directly to the court expressing that he felt like he did not have an attorney who was willing to explore his potential defenses. Regarding his "plea agreement was coerced by Mr. Meyer and therefore does not accurately represent what

potential defenses. Regarding his first attorney, Mr. Godinez stated that his "plea agreement was coerced by Mr. Meyer and therefore does not accurately represent what occurred between August 23, 2016 and August 30, 2016." (App.9). Regarding his second attorney, Mr. Godinez claimed that "[s]he coerced [him] into revoking [his] prior plea rejection." (App.15). Ultimately, these events, and others, demonstrates that Mr. Godinez tried to tell his former attorneys about the threats and pressures from the government's informant, but they failed to explore his defense and, instead, pressured him into the guilty plea. Mr. Godinez's lack of understanding regarding other available alternatives renders his plea involuntary.

Second, Mr. Godinez's guilty plea was not knowing because his Rule 11 colloquy did not adequately establish that Mr. Godinez understood the factual basis for the plea and the availability of possible defenses. In order for a Rule 11 colloquy to elucidate the defendant's state of mind, the court must not merely recite a litany of ye-or-no questions. Rather, it must determine the defendant's own understanding of the charges and factual allegations by asking questions that produce "narrative" responses. The record of Mr. Godinez's Rule 11 colloquy shows that the court only went through the motions. At no point did it solicit Mr. Godinez's understanding of the factual basis for the plea, nor did it determine whether he was aware of any defenses. When confronted with the government's version of the facts, Mr. Godinez hesitated and asked to speak with his attorneys. The

court made no attempt to determine the source of his confusion and left it to the attorneys---whom Godinez alleges had been pressuring him into pleading guilty---to address his concerns. Such a perfunctory Rule 11 colloquy, where neither the court nor the attorneys appear interested in Mr. Godinez's state of mind, should undermine any presumption that the plea was knowing and thus valid.

### The Appellate Waiver

In the appeal, the Government in its Appellee brief devoted several pages to discussing the effect of an expressed waiver of the right of appeal contained in a guilty plea. The Government, however, conceded that there is an exception for plea agreements that were not knowing and voluntary. The Government's appellee brief presumably attempted to create a "law of the case" bar to any future claim of ineffective assistance of counsel under 28 U.S.C. §2255. However, Mr. Godinez did not argue that his attorneys were constitutionally ineffective. His Appellant brief did not contain the words "ineffective," "assistance," "sixth," or "amendment." The Appellant brief did not cite ineffective assistance of counsel cases, including the landmark and often cited Strickland v. Washington, 466 U.S. 668 (1984). Mr. Godinez argued to the voluntariness of his guilty plea and was not dependent on his counsel being constitutionally ineffective. His attorneys' acts or omissions are simply a part of the totality of the circumstances, together with the Rule 11 colloquy, which establishes that his plea was not knowing and voluntary.

An order issued in May 2020 by United States District Judge Charles Breyer rejecting a plea agreement in United States v. Funez-Osorto, No. 19-CR-00381-CRB-4 (N.D.Cal. May 12, 2020) is instructive concerning the disservice of plea waivers. Although Funez-Osorto concerned a waiver of compassionate release within a plea agreement, it is relevant to Mr. Godinez's issue.

As Judge Breyer writes in Funez-Osorto, the plea agreement there [as in Godinez] leaves open a path to relief that "is hardly wider than the eye of a needle." Judge Breyer continues "It is no answer to say that [defendant] is striking a deal with the Government and could reject this term if he wanted to, because that statement does not reflect the reality of the bargaining table. See Erik Luna and Marianne Wade, Prosecutors as Judges, 67 Wash. & Lee L.Rev. 1413, 1414,15 (2010). As to terms such as this one, plea agreements are contracts of adhesion. The Government offers the defendant a deal, and the defendant can take it or leave it. ("American prosecutors...choose whether to engage in plea negotiations and the terms of an acceptable agreement."). If he [defendant] leaves it, he does so at his peril. And the peril is real, because on the other side of the offer is the enormous power of the United States Attorney to investigate, to order arrests, to bring a case, or to dismiss it, to recommend a sentence or the conditions of supervised release, and so on. See Robert Jackson, The Federal Prosecutor, 24 J.Am. Judicature Soc'y 18, 18 (1940)...That Faustian choice is not really a choice at all for a man in the defendant's shoes. But, the Court has a choice,

and it will not approve the bargain." (Funez-Osorto, (Breyer, J.)). Had Mr. Godinez's district court been as circumspect at the plea colloquy, it would have investigated defendant's confusion and realized that his plea was not knowing or voluntary.

#### CONCLUSION

For the foregoing reasons, Petitioner Adan Godinez respectfully requests this Court extend his time to file a Petition for Writ of Certiorari.

Respectfully submitted,

/s/ Adan Godinez

Adan Godinez  
#51500-424  
FCI Edgefield  
P.O. Box 725  
Edgefield, S.C. 29824