No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DEMETRIUS VERARDI RAMOS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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Date Sent by Federal Express Overnight Delivery: September 18, 2023

QUESTION PRESENTED

In *United States v. Raddatz*, 447 U.S. 667 (1980), this Court made clear that the designation of authority to a magistrate judge to conduct evidentiary hearings and submit reports and recommendations on motions to suppress, which is codified in 28 U.S.C. § 636(b)(1), satisfies due process requirements because the statute requires a district judge to conduct do novo review of the proceedings when a party files objections to the report and recommendation, thus ensuring that the district court is "the ultimate decisionmaker." 447 U.S. at 680-81. Does the court of appeals' opinion conflict with *Raddatz* and principles of due process because it permits a district court to adopt, in its entirety, a magistrate judge's report and recommendation containing a clear and material factual error and inapplicable language regarding waiver—errors to which the defendant objected—with no explanation except a bare assertion that it had conducted de novo review?

RULE 14.1(b) STATEMENT

(i) All parties to the proceeding are listed in the caption.

(ii) The petitioner is not a corporation.

(iii) The following are directly related proceedings:

- *United States v. Ramos*, No. 4:20-cr-000510-JAS-DTF-2 (D. Ariz.). Judgment and sentence entered June 22, 2021;

- *United States v. Ramos*, No. 21-10184 (9th Cir.). Opinion and memorandum disposition filed on Apr. 10, 2023; Petition for Rehearing and Rehearing En Banc denied on June 20, 2023.

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Petitioner Demetrius Verardi Ramos respectfully requests that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals for the Ninth Circuit entered on April 10, 2023. App. A.

OPINIONS BELOW

The court of appeals' opinion is published at 65 F.4th 427. The published opinion and unpublished memorandum are included in the Appendix, as Appendix A and B, respectively. The magistrate judge's report and recommendation, the district court's order adopting that report and recommendation and denying Mr. Ramos's objections thereto, and the district court's order denying Mr. Ramos's motion to reconsider the denial of his objections are unpublished. These rulings are attached as Appendices D (Magistrate Judge's Report and Recommendation), E (District Court Order Adopting the Report and Recommendation), and F (District Court Order Denying Motion to Reconsider).

JURISDICTION

The United States District Court for the District of Arizona had jurisdiction over the government's federal charges against Mr. Ramos pursuant to 18 U.S.C. § 3231. The United States Court of Appeal for the Ninth Circuit had jurisdiction under 28 U.S.C. § 1291, and the judgment of that court was entered on April 10, 2023. App. A at 1. The court of appeals denied Mr. Ramos's timely petition for rehearing en banc on June 20, 2023. App. G. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fifth Amendment to the United States Constitution reads as follows:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

18 U.S.C. § 636. Jurisdiction, powers, and temporary assignment, relevant excerpts read as follows:

* * *

(b)(1) Notwithstanding any provision of law to the contrary—

> (A) a judge may designate a magistrate judge to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law.
>
> (B) a judge may also designate a magistrate judge to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A), of applications for posttrial relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.

> (C) the magistrate judge shall file his proposed findings and recommendations under subparagraph (B) with the court and a copy shall forthwith be mailed to all parties.

Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

STATEMENT OF THE CASE

District Court Proceedings

The government charged Mr. Ramos with one count of conspiracy to transport illegal aliens for profit, four counts of harboring aliens for profit, and three counts of transportation of illegal aliens for profit, all in violation of provisions of 8 U.S.C. § 1324. All of the charges were based on Mr. Ramos's December 3, 2019, arrest in Douglas, Arizona, by Border Patrol Agents, who believed Mr. Ramos to be involved in picking up and transporting undocumented individuals. App. A at 6.

Prior to trial, Mr. Ramos filed a motion to suppress his statements as involuntary. The district court referred the matter to a magistrate judge, who conducted an evidentiary hearing on the motion. *Id*. at 9.

At the hearing, Mr. Ramos, as well as several Border Patrol agents, testified about his arrest and interrogation. *Id*. at 9-10. After the arrest, Mr. Ramos was taken to a Border Patrol Station and held in a detention cell for several hours. *Id*. at 6. At some point during his detention, he was fingerprinted. *Id*. at 6. At that

time, he asked for medication that had been in his car. *Id*. Border Patrol Agent Regan located the medication and gave it to Mr. Ramos. *Id*.

Another agent, Mr. Marrufo, came to Mr. Ramos's cell twice during his detention. *Id*. at 6-7. The first time, at around 3:40 a.m., Mr. Marrufo told Mr. Ramos that he knew that Mr. Ramos was a Brazilian citizen who had overstayed his visa and was thus in the United States without permission. *Id*. at 6, 10. Mr. Ramos testified that Mr. Marrufo told him that, if he cooperated, he could be released. *Id*. at 10.

About a half an hour later, Mr. Marrufo returned to the cell, holding a plastic baggie with a substance at the bottom. *Id*. at 6, 10; App. A at 24 (Collins, J. dissenting). Mr. Ramos explained that Mr. Marrufo told him that there were drugs in the baggie and that, if Mr. Ramos did not cooperate, he would be charged with a drug offense. App. A at 10; App. A. at 25-26 (Collins, J., dissenting). Mr. Marrufo denied these allegations, but a video (without audio) of him entering the cell and showing Mr. Ramos the plastic baggie was entered into evidence.[1] App. A at 6-7; App. A at 24-25 (Collins, J., dissenting). After this incident, Mr. Ramos was taken to an interrogation room, where he admitted that he had agreed to transport undocumented individuals in this instance, as well as in the past. App. A. at 7.

[1] At trial, Mr. Marrufo speculated that the plastic baggie was an evidence bag and claimed that he "didn't show [Mr. Ramos] a baggie. If I had one in my hand, then I had it in my hand because I was doing something else with it, but it wasn't to show him a baggie." App. A at 26 (Collins, J., dissenting) (quoting trial testimony). None of the government's witnesses was able to explain what was in the baggie or why Mr. Marrufo was carrying it.

After the evidentiary hearing, the magistrate judge issued a report and recommendation, recommending that the district court deny Mr. Ramos's motion to suppress. App. A. at 11; App. D (Report and Recommendation). The magistrate judge concluded that Mr. Ramos was not credible, noting that he contradicted himself during his testimony and provided an implausible story that he was taking the undocumented individuals Christmas shopping. App. A at 11. The magistrate judge acknowledged that neither the government nor its witnesses had provided an explanation for the plastic baggie, but opined that this was of no import as there were "alternative explanations," "most likely" that the "bag contained medicine Defendant had requested." *Id.*

Mr. Ramos, as required by 28 U.S.C. § 636(b)(1), filed timely objections to the report and recommendation, noting, among other things, that the magistrate judge's statement about the contents of the plastic baggie was pure speculation. App. A at 12. The district court denied those objections and adopted the report and recommendation in its entirety in a 4 ½ page order that cursorily asserted that the court had conducted a de novo review but contained no individualized analysis of the objections or the evidence in the record. App. E. Instead, the order consisted almost entirely of string citations of caselaw supporting the district court's claim that its assertion of de novo review was sufficient to satisfy its duties. *Id.* The order also stated that the court considered waived any "new evidence, arguments, and issues that were not timely and properly raised," but failed to articulate what evidence and issues it meant. *Id.*

Mr. Ramos then filed a motion to reconsider, pointing out that the district court had not addressed his objections in the order and that its statements about waiver were inapplicable. App. A at 12. Again, the district court issued an order with a conclusory assertion that it had conducted de novo review and string citations in support of its assertion that no additional analysis was required. App. A at 12; App. F (Order Denying Reconsideration).

Mr. Ramos proceeded to trial and was convicted on all counts. App. A at 13; App. C. (district court judgment).

Ninth Circuit Court of Appeals Proceedings

On appeal, Mr. Ramos argued, in relevant part, that the district court abused its discretion when it summarily adopted the magistrate judge's report and recommendation without addressing any of Mr. Ramos's objections to that report, specifically his objections to the magistrate judge's unfounded and erroneous speculation regarding the contents of the plastic baggie and inclusion of irrelevant language about waiver. Relatedly, he also argued that the district court erred in denying his motion to suppress his statement on voluntariness grounds, in large part because the court had ignored the importance of the facts surrounding the plastic baggie that had served as the basis for his objections to the report and recommendation.

In a 2-1 published opinion authored by Judge Owens, the United States Court of Appeals for the Ninth Circuit (Senior Circuit Judge Bybee, Judge Owens,

and Judge Collins), rejected Mr. Ramos's arguments and affirmed his convictions.[2] App. A. The majority stated that, under circuit precedent, the court "presumed that district courts conduct proper de novo review where they state they have done so, even if the order fails to specifically address a party's objections." App. A at 15. Only in "limited circumstances," the majority continued, would the court question a district court's claim that it had conducted de novo review of a magistrate judge's report and recommendation. *Id.* at 17. Such circumstances were not present here, the majority concluded, because the district court asserted that it conducted de novo review and the district court had "no obligation" to address Mr. Ramos's specific arguments "absent newly raised objections." *Id.* 17-19. The majority also held that Mr. Ramos's confession was voluntary because the magistrate judge was "not required to propose a factual finding about the contents of the [plastic] bag" and that the "totality of the circumstances" supported the conclusion that Mr. Ramos's confession was voluntary. *Id.* at 22-23.

Judge Collins dissented as to the holdings in the published opinion.[3] In so doing, he explained that "the district judge's failure to discuss *any* of the issues raised by Ramos's motion to suppress or by Ramos's objections to the magistrate

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[2] The court of appeals also rejected additional claims not raised in this petition in an unpublished memorandum, issued simultaneously with the published opinion and attached as Appendix B.

[3] Judge Collins concurred in the accompanying memorandum, which addressed additional issues raised on appeal. App. A. at 24; App. B.

judge's report is unacceptable and warrants remand." *Id.* at 28 (Collins, J., dissenting). This is the case, he explained, for multiple reasons.

First, the report contained a clear factual error that was critical to the issues raised in Mr. Ramos's motion and was raised by Mr. Ramos in his objections to the report, and the district court erred in adopting that identified error as its own. *Id.* at 30. The majority's failure to recognize this "fundamentally misconceives the role of a district judge in reviewing a magistrate judge's report and recommendation under § 636(b)(1)(B)." *Id.* at 33.

Second, under the circumstances, there was reason to suspect that the district court's order was "for all practical purposes, a 4 ½-page rubberstamp," consisting largely of non-case specific citations explaining the legal framework for district court review of magistrate judges' reports. *Id.* at 34. The same district judge had "on at least 30 other occasions since March 2021" entered virtually identical orders adopting reports without addressing any specific objections thereto. *Id.* "I am unaware of any circuit precedent," Judge Collins stated, "that has ever upheld this sort of near-uniform use of unexplained orders that summarily adopt magistrate judges' reports wholesale." *Id.* at 35.

Third, the circuit had previously admonished the same district court judge about summary adoption of magistrate reports to no avail. *Id.* at 35-37. And, especially considering that the majority concluded that not even inapplicable, boilerplate language about waiver in the district court's order called into question whether the district court had properly conducted de novo review, the majority had

"underscore[ed] its wholesale abdication of any meaningful review in this area," thus incentivizing all district courts to "develop a similar, one-size-fits-all rubberstamp order." *Id.* at 37.

Fourth, the issue "is one of constitutional dimension." *Id.* The statutory requirement that a district court conduct de novo review when objections are filed to a magistrate judge's report exists to ensure that district court judges, who are appointed under Article III of the Constitution, remain firmly in control of the handling of, among other matters, motions to suppress. *Id*.

Finally, Judge Collins explained, an appellate court cannot conclude that any error was harmless, as it is the district courts that must function as the finder of fact. *Id.* at 38.

For all of these reasons, Judge Collins concluded that the case should be remanded with instructions to reconsider the motion to suppress and, if warranted, order a new trial. *Id.*

Mr. Ramos filed a petition for en banc review, which the court denied. App. G. This timely petition for certiorari follows.

REASONS FOR GRANTING THE WRIT

Introduction

In *United States v. Raddatz*, 447 U.S. 667 (1980), this Court made clear that the ability of a district judge to designate to a magistrate judge the authority to conduct evidentiary hearings and submit reports and recommendations on motions to suppress, codified in 28 U.S.C. § 636(b)(1), satisfies due process requirements

only because the statute requires a district judge to conduct do novo review of the proceedings when a party files objections to the report and recommendation. 447 U.S. at 680-681. This ensures that the district court is "the ultimate decisionmaker." *Id.* at 680. Accordingly, it is critical that district courts comply with this process and refrain from over-delegating responsibility to magistrate judges, and that appellate courts exercise meaningful review when questions arise as to whether a district court has satisfied its obligation of de novo review.

The Ninth Circuit's opinion departs from these guiding principles and, therefore, misconstrues this Court's precedent and raises an important issue of federal law that requires clarification. *See* Supreme Court Rule 10(a). As the dissent notes, the opinion "fundamentally misconceives the role of a district judge in reviewing a magistrate judge's report and recommendation under § 636(b)(1)(B)" and represents a "wholesale abdication of any meaningful review in this area" on the part of the court of appeals. App. A at 33, 37 (Collins, J. dissenting).

Argument

The Federal Magistrates Act, 28 U.S.C. § 636, permits a district judge to "designate a magistrate judge to conduct . . . evidentiary hearings, and to submit … proposed findings of fact and recommendations for the [matter's] disposition" to the district judge. 28 U.S.C. § 636(b)(1)(B). When a party objects to the magistrate judge's proposed findings and recommendations, the statute requires the district judge to "make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.* at

§ 636(b)(1)(C). This procedure applies to multiple kinds of motions in both civil and criminal cases, including motions to suppress. *Id.* §§ 636(b)(1)(A), (B) (authorizing district courts to designate magistrate judges to conduct hearings and submit reports and recommendations on motions for injunctive relief, judgment on the pleadings, summary judgment, to dismiss an indictment, to suppress evidence, to dismiss or permit maintenance of a class action, to dismiss for failure to state a claim, to involuntarily dismiss an action, applications for posttrial relief by criminal defendants, and prisoner petitions concerning conditions of confinement).

In *United States v. Raddatz*, this Court addressed the due process implications of permitting a magistrate judge to conduct an evidentiary hearing and submit a report and recommendation on a motion to suppress to a district judge. 447 U.S. 667 (1980). The Court began by noting that the "guarantees of due process call for a 'hearing appropriate to the nature of the case.'" *Id.* at 677 (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)). It concluded that the requirements of due process were met because the procedures set forth in § 636(b)(1)—namely, the requirement that the district court conduct de novo review when a party filed objections to the magistrate judge's report—ensured that the district court remained in control of the process and outcome:

> In passing the 1976 amendments to the Federal Magistrates Act, Congress was alert to Art. III values concerning the vesting of decisionmaking power in magistrates. Accordingly, Congress made clear that the district court has plenary discretion whether to authorize a magistrate to hold an evidentiary hearing and that the magistrate acts subsidiary to and only in aid of the district court. Thereafter, the entire process takes place under the district court's total control and jurisdiction.

Raddatz, 447 U.S. at 681. In short, the objections of the parties alert the district court to key areas of dispute, and the district court's de novo review of the record and subsequent resolution of those objections ensures that "the district court judge alone acts as the ultimate decisionmaker." *Id.* at 680.

When questions arise as to whether the district court has conducted a proper de novo review, the appellate courts are tasked with ensuring this obligation has been met. The Ninth Circuit, like other circuits, operates under the presumption that a district court has conducted the required de novo review when that court asserts that it has done so and there is no record evidence calling that assertion into question. *E.g.*, *Wang v. Masaitis*, 416 F.3d 992, 1000 (9th Cir. 2005); *see also, e.g.*, *Brunig v. Clark*, 560 F.3d 292, 295 (5th Cir. 2009); *United States v. Jones*, 22 F.4th 667, 679 (7th Cir. 2022); *Grinder v. Gammon*, 73 F.3d 793, 795 (8th Cir. 1996); *In re Griego*, 64 F.3d 580, 583-84 (10th Cir. 1995).

While this presumption promotes efficiency, that efficiency must be balanced with the need to ensure that district courts are fulfilling their constitutional and statutory obligations to maintain control of the decisions impacting litigants, particularly criminal defendants. In other words, "Because there is a concern that a district court judge may nevertheless be tempted on occasion to rubber stamp the recommendation of a magistrate, the courts of appeal have responsibility to ensure that the district judge has taken the task of de novo review seriously." 12 Wright & Miller, Federal Practice and Procedure, § 3070.2 (3d ed. Apr. 2023 Update).

In this case, the Ninth Circuit interpreted its presumption of de novo review too broadly, which results in both an unconstitutional over-delegation of authority to magistrate judges and an abdication of a court of appeals' duty to conduct meaningful appellate review. As Judge Collins recognized in his dissent, the majority opinion "fundamentally misconceives the role of a district judge in reviewing a magistrate judge's report and recommendation under § 636(b)(1)(B)," as well as this Court's review of the district judge's actions. App. A at 33 (Collins, J., dissenting). This contradicts this Court's precedent in *Raddatz* and is contrary to the statutory directives of § 636(b)(1). This Court should, therefore, grant certiorari to address this important federal question and correct the court of appeals' misinterpretations.

With respect to over-delegation of authority, the opinion broadens the general presumption that a district court has properly conducted the requisite de novo review so far that it effectively authorizes district courts to serve as rubber stamps of magistrate reports, as long as they use the magic words "de novo" review. This does not comport with this Court's decision in *Raddatz*, which makes clear that district courts must be "the ultimate decisionmaker." *Raddatz*, 447 U.S. at 680. Here, Mr. Ramos's objection to the magistrate judge's report was based on the magistrate judge's speculation that the plastic baggie an agent showed Mr. Ramos contained medicine that Mr. Ramos had requested earlier. The plastic baggie *could not* have contained Mr. Ramos's medicine, however, because witness testimony established that another agent had given Mr. Ramos his medicine when Mr. Ramos

was not in his cell. Mr. Ramos contended that the agent showed him the plastic baggie and told him that it contained drugs found in Mr. Ramos's car and that Mr. Ramos would face drug charges if he refused to cooperate in the alien smuggling investigation. Video evidence corroborated Mr. Ramos's assertion that the agent showed him the plastic baggie while Mr. Ramos was in his detention cell and right before he was interrogated.

A critical factor in determining whether Mr. Ramos's confession was voluntary was whether an agent confronted him with the plastic baggie and threatened him with a drug prosecution. The video bolstered Mr. Ramos's credibility on that issue. The magistrate judge's wholly unsupported and erroneous assertion that the bag most likely contained Mr. Ramos's medication, however, provided an innocent explanation for the agent's conduct and allowed the magistrate judge to discount Mr. Ramos's claim of threats as not credible.

The district court, while purporting to have conducted a de novo review of the record, ignored all of this and summarily adopted the magistrate judge's report in its entirety with no explanation whatsoever, save a bare assertion that it had conducted de novo review. In affirming this action, the Ninth Circuit issued published precedent allowing a district court to adopt in its entirety a report and recommendation that contains clear and material factual errors (to which the defendant lodged timely objections) with no explanation whatsoever. The practical effect of such an opinion is an over-delegation of authority to magistrate judges to

essentially *resolve* motions to suppress—in contravention of this Court's precedent in *Raddatz* and clear statutory guidance in § 636(b)(1).

Moreover, the Ninth Circuit's decision is, as Judge Collins notes in his dissent, a "wholesale abdication of any meaningful review in this area." App. A at 37 (Collins, J., dissenting). Given that delegation of authority to magistrate judges to conduct hearings and draft reports and recommendations on certain motions under § 636(b)(1) passes constitutional muster only because the statute (and this Court) requires that district courts remain fully in control of the ultimate decisionmaking process, it is critical that appellate courts take seriously any claims that a district court has failed to fulfill its duties. The opinion here does no such thing. To the contrary, as Judge Collins explains in his dissent, the opinion creates perverse incentives that seriously undermine faith in the criminal justice system: "[E]very district judge in the circuit," Judge Collins predicts, "will now be incentivized to develop a similar, one-size-fits-all rubberstamp order." App. A at 37 (Collins, J., dissenting). That the district judge in this case has, as Judge Collins detailed in his dissent, "on at least 30 other occasions since March 2021" entered "largely verbatim identical boilerplate orders—complete with the exact same pages of string cites—rejecting objections to, and adopting magistrate judges' reports" only serves to illustrate that Judge Collins's concerns are well-founded. App. A at 34 (Collins, J., dissenting).

Given the large number of matters dealt with in the Ninth Circuit via magistrate judge reports and recommendations, the implications of the court of

appeals' abdication of meaningful review are significant and should be addressed by this Court. In fiscal year 2021 (the last fiscal year for which numbers are currently available), magistrate judges in the Ninth Circuit issued 237 reports and recommendations on criminal dispositive motions, such as the motion at issue here. United States Courts for the Ninth Circuit, *2021 Annual Report*, at 61, *available at* https://cdn.ca9.uscourts.gov/datastore/judicial-council/publications/AnnualReport2021.pdf. But the use of reports and recommendations under § 636(b)(1)(B) extends beyond criminal cases. Ninth Circuit magistrate judges issued 6,182 reports and recommendations on prisoner petitions and 2,736 reports and recommendations on "other civil dispositive motions" in fiscal year 2021. *Id.* The rationale of the opinion here can be applied generally to any review of a report and recommendation issued under § 636(b)(1)(B), thus creating a situation in which a large number of case-critical or case-dispositive motions could effectively be resolved by magistrate judges without the oversight of the district court or meaningful review by the court of appeals. Such a decision violates due process and cannot stand.

In sum, this Court should grant certiorari to correct the court of appeals' misconstruction of due process requirements, this Court's precedent, and the Federal Magistrates Act.

CONCLUSION

For the reasons set forth above, Mr. Ramos respectfully requests that the Court grant a writ of certiorari.

Respectfully submitted on September 18, 2023.

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