No. 23-5633

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

REPLY BRIEF FOR PETITIONER

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

Constitution, Statutes, & Rules

REPLY BRIEF FOR PETITIONER

Respondent presents two arguments in support of its opposition to Mr. Ramos's petition for writ of certiorari. First, it asserts that the issue presented by the Ninth Circuit's opinion in this case is "factbound" to Mr. Ramos's particular case and thus inappropriate for certiorari review by this Court. Br. in Opp. at 15-20. Second, it argues alternatively that the purported "interlocutory" status of the case renders it a poor vehicle for review by this Court. Br. in Opp. at 20-21. Both arguments misapprehend the Ninth Circuit's ruling in this case.

Rather than being applicable solely to the particular facts of this case, the published opinion below establishes binding Ninth Circuit precedent requiring appellate courts to defer to a district court's *assertion* that it has conducted its mandatory de novo review of a magistrate judge's report and recommendation, *see* 28 U.S.C. § 636(b)(1), even in the face of record evidence refuting that assertion. The import of that ruling extends far beyond the particular facts of Mr. Ramos's case and implicates the scope and quality of appellate review in all cases, criminal and civil, involving a district court's adoption of a magistrate judge's report and recommendation.

Further, contrary to Respondent's argument, the Ninth Circuit's remand of this case merely for the district court to conform the written judgment to the oral pronouncement of sentence does not make this case "interlocutory," such that it renders it an inappropriate vehicle for certiorari review.

A. The decision below establishes a new standard of appellate deference to a district court's assertion that it has conducted de novo review of a magistrate judge's report and recommendation, even in the face of contradictory record evidence. This deferential standard will result in both an unconstitutional over-delegation of authority to magistrate judges and an abdication of the federal appellate courts' duty to conduct meaningful review in such cases.

In upholding the constitutionality of 28 U.S.C. § 636(b)(1), this Court observed that "in providing for a 'de novo determination' rather than de novo hearing, Congress intended to permit whatever reliance a district judge, in the exercise of sound judicial discretion, chose to place on a magistrate's proposed findings and recommendations." *United States v. Raddatz*, 447 U.S. 667, 676 (1980). Relying on this language, Respondent argues that, in Mr. Ramos's case, "nothing required the court of appeals to reject the district court's repeated assurances, both in its initial order and its order denying reconsideration, that it had in fact performed the requisite de novo review." Br. in Opp. at 16. But Respondent's reliance on this Court's observation in *Raddatz* overlooks the crucial proviso that the district court's acceptance of the magistrate judge's findings and recommendations requires "*the exercise of sound judicial discretion*." *Raddatz*, 447 U.S. at 676 (emphasis added).

An appellate court must be permitted to determine independently whether the district court in fact exercised sound judicial discretion in adopting a magistrate judge's report and recommendation. The Ninth Circuit's opinion in this case, however, will now require an appellate court to accept the district court's bare assertion that it conducted the mandatory de novo review, even in the face of record

evidence that undermines that assertion. *See* App. A at 17 (describing "limited circumstances" that would permit an appellate finding that district court failed to conduct de novo review). In the panel majority's view, rejecting a district court's assertion that it conducted a de novo review is now possible only if the record reveals that (1) it would have been actually impossible for the district court to have conducted its de novo review (due, for example, to an incomplete record before the district court), or (2) the district court affirmatively states that it applied an erroneous standard of review to the magistrate judge's findings and recommendation. *See id.* In all other circumstances, the appellate court will be required to defer to the district court's assertion that it conducted a de novo, even when that assertion is belied by other evidence in the record.

As Judge Collins noted in his dissent below, the panel majority's ruling has the perverse effect of encouraging district courts to develop "one-size-fits-all rubberstamp order[s]" that will insulate them from meaningful appellate review. *See* App. A at 37 (Collins, J., dissenting). With the appellate court's review of the district court's actions now limited to the rare circumstance where an incomplete record before the district court contradicts its claim that it conducted a de novo review, or where the district court affirmatively states that it applied the wrong standard of review, rubberstamp orders like the one used by the district court in Mr. Ramos's case will improperly insulate the district courts from meaningful review by the courts of appeal. *See, e.g.*, App. A at 35-37 (Collins, J., dissenting)

(discussing this particular district court judge's repeated use of a "4½-page standard order overruling objections to, and adopting, magistrate judges' reports").

Respondent erroneously asserts that Mr. Ramos's argument "boils down to a disagreement with the court of appeals' determination that his case did not fit" within the "paradigm" of existing Ninth Circuit precedent on the issue of appellate review of a district court's de novo consideration of a magistrate judge's report and recommendation. Br. in Opp. at 19. According to Respondent, such a "factbound" dispute does not warrant this Court's certiorari review. *Id.* But the government misapprehends the question presented by Mr. Ramo's certiorari petition. The question is not whether Mr. Ramos's case fits within an existing paradigm for appellate review of district court de novo consideration of magistrate judges' reports and recommendations, but rather whether the panel majority's opinion in this case unconstitutionally alters the existing paradigm into one affording the district courts such unwarranted deference that meaningful appellate review will become impossible.

In his dissent below, Judge Collins predicted, "Under today's opinion, every district judge in the circuit will now be incentivized to develop a similar, one-size-fits-all rubberstamp order." App. A at 37. And, in orders issued in the ten months since the panel majority rendered its opinion in this case, district courts in Arizona, Alaska, California, and Washington have cited Mr. Ramos's case for the proposition that "district court's conduct proper de novo review when they state they have done so" and that they "have no obligation to provide individualized analysis of each

objection." *See, e.g.*, *Dixon v. Thornell*, 2023 WL 5622189 at *2 (D. Ariz., Aug. 31, 2023) ("[D]istrict 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."); *Kanaway Seafoods, Inc. v. Pacific Predator*, 2024 WL 523667 at *1 n.4 (D. Alaska, Feb. 9, 2024) (citing *Ramos* for proposition that "the district court ha[s] no obligation to provide individualized analysis of each objection"); *Kohut v. Godwin*, 2023 WL 7388886 at *1 (C.D. Cal., Nov. 7, 2023) (same); *Singh v. United States Immigration and Customs Enforcement*, 2023 WL 4624478 at *2 (W.D. Wash., Jul. 19, 2023) (citing *Ramos* for proposition that "when a district court adopts a magistrate judge's recommendation, the district court is required to merely 'indicate[ ] that it reviewed the record de novo, found no merit to . . . [the] objections, and summarily adopt[ ] the magistrate judge's analysis in [the] report and recommendation.'").

Respondent is thus wrong in arguing that the panel majority's opinion in this case is "factbound" to Mr. Ramos's particular circumstances. In the short time since the Ninth Circuit rendered its opinion in this case, it has been repeatedly invoked in criminal, civil, Social Security, and immigration cases as a limitation on meaningful appellate review. The Ninth Circuit's opinion in this case misconstrued this Court's holding in *Raddatz* and raises an important issue of constitutional law concerning the role of magistrate judges in the federal judicial system. Mr. Ramos therefore respectfully requests that this Court grant a writ of certiorari to review that decision.

B. The Ninth Circuit's remand to the district court to conduct the ministerial act of confirming the written judgment in Mr. Ramos's case to the oral pronouncement of his sentence does not render this case "interlocutory."

Respondent argues in the alternative that this case is an inappropriate vehicle for a grant of certiorari because "it in an interlocutory posture." Br. in Opp. at 20. Respondent is incorrect. The Ninth Circuit remanded Mr. Ramos's case to the district court solely so it could "make the written judgment consistent with the oral pronouncement" at sentencing. App. B at 3-4. A remand for the performance of a purely ministerial act—like conforming the written judgment to the oral pronouncement of sentence—does not render the case "interlocutory" or prevent this Court from exercising its jurisdiction. *See Abood v. Detroit Bd. Of Ed.*, 431 U.S. 209, 216 n. 8 (1977) ("The remand 'as to the retroactive application given to (the 1973 amend-ment)' must, therefore, have been only for a ministerial purpose, such as the correction of language in the trial court's judgment for the defendants. In these circumstances, the judgment of the Court of Appeals is final[.]"), *overruled on other grounds by Janus v. American Federation of State, County, and Mun. Employees, Council 31*, 138 S. Ct. 2448, 2479-2481 (2018). *Accord Burrell v. United States*, 467 F.3d 160, 164 (2d Cir. 2006) ("Where a remand is 'only for a ministerial purpose, such as the correction of language in the trial court's judgment for the defendants . . ., the judgment . . . is final[.]'") (quoting *Abood*, 431 U.S. at 216 n.8). Accordingly, Respondent is in error in arguing that the Ninth Circuit's ministerial remand of this case so that the

district court could conform the written judgment to the oral pronouncement renders this case an inappropriate vehicle for certiorari.

CONCLUSION

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

Respectfully submitted on February 27, 2024.

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