

No. \_\_\_\_\_

In the Supreme Court of the United States

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**JESUS DEL VALLE GONZALEZ-RODRIGUEZ,  
PETITIONER**

**v.**

**UNITED STATES,  
RESPONDENT**

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ON PETITION FOR A WRIT OF CERTIORARI  
FROM THE UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT

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**PETITION FOR WRIT OF CERTIORARI**

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## **QUESTIONS PRESENTED**

Whether a criminal defendant must raise the issue of an appeal waiver in his opening brief or whether it falls upon the government to raise the waiver as a defense in its reply.

## **PARTIES TO THE PROCEEDINGS**

The Parties to the Instant Proceedings Are Contained in the Caption of the Case.

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Petitioner Jesus Del Valle Gonzalez-Rodriguez, (hereinafter Petitioner)  
respectfully petitions for a writ of certiorari to review and vacate the judgment of  
the U.S. Court of Appeals for the First Circuit.

## **OPINION BELOW**

The Judgment (App., *infra*, 1a) was entered on September 18<sup>th</sup>, 2023, in *U.S. v. Jesus Del Valle Gonzalez-Rodriguez*, under docket number 21-1430.

## **JURISDICTION**

The jurisdiction of this Court rests on 28 U.S.C. § 1254(1). The district court had jurisdiction pursuant to 18 U.S.C. § 3231 and the court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291.

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

**The Fifth Amendment to the U.S. Constitution** provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, . . .nor be deprived of life, liberty, or property, without due process of law . . .

.

**The Eighth Amendment to the U.S. Constitution** provides:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

## **STATEMENT OF THE CASE**

### **A. District Court Proceedings:**

On February 2nd, 2019, a Grand Jury rendered a three (3) counts indictment against Appellant and nine (9) other individuals (DE 8).

On March 8th, 2019, the arraignment and bail hearings were held, in which Appellant pled not guilty to the pending charges and later was ordered detained (DE 97).

On February 12th, 2020, Appellant filed a motion for change of plea (DE 97), but on February 17th, 2020, Appellant filed a motion to withdraw the motion for change of plea and to stay the instant proceedings for meritorious grounds (DE 101).

On May 21st, 2020, an Opinion and Order (DE 123), where the motion to dismiss the indictment (DE 87) and the motion to stay were denied, was entered.

On August 17th, 2020, a motion for change of plea (137) was filed by Appellant, and on August 19th, 2020, Appellant pled guilty to count One (1) pursuant to a plea agreement and plea supplement (DE 141, 142, & 143).

On October 13th, 2020, the presentence investigation report was duly disclosed (DE164).



On February 20th, 2021, the sentencing memorandum (DE 258) was filed, and on May 6th, 2021, the addendum to the PSR was duly filed (DE 289).

On May 13th, 2021, Appellant was sentenced to a 120 months imprisonment term, to be followed upon release by a 5 years term of supervised release (DE 297). On this same day, judgment was entered (DE 298).

On May 15th, 2021, Appellant filed the instant notice of appeal (DE 300) and on May 27th, 2021, the instant record was certified and transmitted to this Court (DE 306).

**B. Appellate Proceedings:**

On August 23<sup>rd</sup>, 2021, Petitioner, through his defense counsel, submitted his brief and appendixes.

On May 23<sup>rd</sup>, 2022, the government submitted its brief and on May 25<sup>th</sup>, 2022, the Petitioner submitted his Reply Brief.

On June 13<sup>th</sup>, 2023, Petitioner filed a Joint Motion to Waive Oral Argument and Submit Case and on June 23<sup>rd</sup>, 2023 the case was submitted.

On September 18<sup>th</sup>, 2023, the Court of Appeals filed entered Judgment, dismissing the appeal as “Defendant-appellant executed an appeal waiver as part of his plea agreement and has not demonstrated that the waiver is invalid or that it should not be applied on this record.”

On September 18<sup>th</sup>, 2023 the Petitioner filed a Petition for Panel Rehearing which was denied on November 3<sup>rd</sup>, 2023.

On November 14<sup>th</sup>, 2023, the Madate was issued.

### **REASONS FOR GRANTING THE PETITION**

Appeal waivers are not a “monolithic end to all appellate rights.” *Garza v. Idaho*, 139 S. Ct. 738, 744 (2019). In our adversary system it is usually the parties who raise whatever controversies they deem proper, they do so amongst themselves, and are not usually forced into controversies that they may deem not pertinent. There are sufficient “heightened standards and related hurdles that attend many postconviction proceedings” *Garza*, 139 S. Ct. at 749; we do not need additional ones. The adversarial system promotes efficiency, simplicity and decreases unnecessary expenses and delays. If the government does not claim nor suggest that a waiver of appeal applies, the matter should be deemed settled.

The circuits are split as to whether waivers of appeals must be argued as a threshold matter. The First Circuit requires a criminal appellant to include an argument in its opening brief while the Third Circuit and the D.C. Circuit do not.

In 2015, the First Circuit clearly enunciated its standard as follows: “We expect and require counsel to address a waiver of appeal head-on and explain why we should entertain the appeal. An appellant who fails to do this buries his head in

the sand and expects that harm will pass him by.” *United States v. Arroyo-Blas*, 783 F.3d 361, 367 (1<sup>st</sup> Cir. 2015). The Petitioner understands that while it is true that “the very purpose of an appeal waiver is to bar an appeal ” *Arroyo-Blas*, supra; it is also true - as the Petitioner presented to the court of appeals - that “[a] guilty plea does not bar a direct appeal in [his] circumstances.” *Class v. United States*, 138 S. Ct. 798, 805 (2018).

The opposite is taken by the Third and D.C. Circuits. The Third Circuit has held that “judicial efficiency is the only basis that weighs in favor of requiring a defendant to affirmatively address the applicability of an appellate waiver in his opening brief, and then only slightly.” *United States v. Goodson*, 544 F.3d 529, 534 (3d Cir. 2008).

*Goodson* scrutinized the “judicial efficiency argument” and held that said argument “is outweighed by several reasons that favor permitting a defendant to wait until the government first chooses to invoke the waiver.” *Id.* It went on to place the burden on the first instance upon the government: “if the government seeks to preserve the benefit of its bargain for an appellate waiver, we believe it is incumbent upon the government to invoke the waiver's applicability in the first instance.” *Id.* Making reference to *United States v. Story*, 439 F.3d 226 (5th Cir. 2006), it noted that “an appellate waiver may have no bearing on an appeal if the

government does not invoke its terms.” Id.<sup>2</sup> This was recognized by this Honorable Court in *Garza v. Idaho*, 139 S. Ct. 738, 744-45 (2019)(“even a waived appellate claim can still go forward if the prosecution forfeits or waives the waiver. E.g., *United States v. Story*, 439 F.3d 226, 231 (CA5 2006).”) The Third Circuit noted that another reason “for allowing a defendant to address the inapplicability of an appellate waiver in his reply brief is because a defendant may file his opening brief with a reasonable belief that the appellate waiver in his plea agreement does not extend to the issue or issues raised in his appeal.” Id., at 535. The D.C. Circuit has similarly expressed its position that appellants do not need to address waivers of appeals in their opening briefs and that, if needed, they could do so in reply briefs. Note: “It is true that appellants ordinarily must raise any issues ripe for our consideration in their opening briefs. ... But an appellant generally may, in a reply brief, “respond to arguments raised for the first time in the appellee’s brief.” 16AA Charles Alan Wright et al., *Federal Practice and Procedure: Jurisdiction* § 3974.3 (4th ed. 2017) ; see *MBI Grp., Inc. v. Credit Foncier Du Cameroun*, 616 F.3d 568, 575 (D.C. Cir. 2010).” *United States v. Powers*, 885 F.3d 728, 732 (D.C. Cir. 2018). The D.C. Circuit specifically cited *Goodson*, and noted *Arroyo-Blas*. Id.

Petitioner sides with the Third and D.C. Circuits rationale. Said circuits are in compliance with the basic rules for efficient administration of justice. See: Rule 2 of the Federal Rules of Criminal Procedure (“These rules are to be interpreted to provide for the just determination of every criminal proceeding, to secure simplicity in procedure and fairness in administration, and to eliminate unjustifiable expense and delay.”) The position of the First Circuit is contrary to these basic tenets: it requires the review of the language of Plea Agreements; requires the request of transcripts of change of plea hearings; requires the detailed analysis of plea colloquies; and, requires legal research to support the non-applicability of the waiver. Indirectly, it abridges the appellant’s right to appeal by making it more difficult to prepare a brief; sometimes requiring briefing of a matter that may not be pertinent.

## **CONCLUSION**

For the reasons set forth above, it is hereby hence very respectfully requested for this Honorable Court to grant this petition for a writ of certiorari.

**RESPECTFULLY SUBMITTED.**

At San Juan, Puerto Rico, this 27<sup>th</sup> day of November, 2023.

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# United States Court of Appeals For the First Circuit

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No. 21-1430

UNITED STATES,

Appellee,

v.

JESUS DEL VALLE GONZÁLEZ-RODRÍGUEZ,

Defendant - Appellant.

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Before

Kayatta, Montecalvo and Rikelman,  
Circuit Judges.

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## JUDGMENT

Entered: September 18, 2023

Defendant-Appellant Jesus Del Valle González-Rodríguez appeals from his conviction for conspiracy to possess with intent to distribute a controlled substance on board a vessel subject to the jurisdiction of the United States under the Maritime Drug Law Enforcement Act, 46 U.S.C. § 70503(a)(1). Defendant-appellant executed an appeal waiver as part of his plea agreement and has not demonstrated that the waiver is invalid or that it should not be applied on this record. See United States v. Edelen, 539 F.3d 83, 85 (1st Cir. 2008) (citing, inter alia, United States v. Teeter, 257 F.3d 14, 25 (1st Cir. 2001) (general principles)).

In accordance with the foregoing, the appeal is dismissed. See 1st Cir. Loc. R. 27.0(c). All pending motions, to the extent not mooted by the foregoing, are denied.

By the Court:

Maria R. Hamilton, Clerk

cc:

Max J. Pérez-Bouret, José Capó-Iriarte, Mariana E. Bauzá Almonte, David Christian Bornstein, Johnny Rivera-González, Sr., Jesus Del Valle González-Rodríguez

# United States Court of Appeals For the First Circuit

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Defendant - Appellant.

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Before

Kayatta, Montecalvo and Rikelman,  
Circuit Judges.

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## ORDER OF COURT

Entered: November 3, 2023

The "motion for reconsideration" is construed as a petition for panel rehearing, and that petition is denied.

By the Court:

Maria R. Hamilton, Clerk

cc:

Max J. Pérez-Bouret

José Capó-Iriarte

Mariana E. Bauzá Almonte

David Christian Bornstein

Johnny Rivera-González, Sr.

Jesus Del Valle González-Rodríguez