No. _____
In the Supreme Court of the United States

ANGEL DE JESUS CASTILLO-GODOY,
PETITIONER,

v.

UNITED STATES,
RESPONDENT.

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

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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PETITION FOR WRIT OF CERTIORARI

Petitioner Angel De Jesus Castillo-Godoy (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 April 17th, 2024, in *U.S. v. Angel De Jesus Castillo-Godoy*, under docket number 18-1760.

JURISDICTION

After the judgment was entered, no petition for rehearing was filed in this case. 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 Sixth Amendment to the U.S. Constitution provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

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 October 19th, 2016, a Grand Jury rendered a 4 count indictment against the Appellant and 3 other individuals, charging violations of MDLEA 46 U.S.C. §§ 70502(c)(1)(A), 70503(a)(1), 70504(b)(1) and 70506(a), (b), and (d); and 18 U.S.C. § 2 (DE 2, 14 & 15).

On October 28th, 2016, the arraignment and bail hearings were held, in which Appellant pled not guilty to the pending charges and later was ordered detained (DE 17 & 22).

After several status conferences were held (DE 27, 34, 36, 49, 55, 56) and other pretrial proceedings, on September 15th, 2017, Appellant moved for change of plea (DE 84). After the passage of Hurricane Maria, on February 12th, 2018, Appellant pled guilty to count One pursuant to a plea agreement and plea supplement (DE 115, 116, & 321).

On February 13th, 2018, a Report and Recommendation was entered (DE 118) and on March 6th, 2018, the lower court granted and adopted same (DE 136).

On March 29th, 2018, the United States filed a motion titled "United States' Motion for Court Order Determining that Vessel is Subject to U.S. Jurisdiction," under the MDLEA(DE 151).

On April 10th, 2018, co-defendants Hector Piedrahita-Sinisterra, Jose Ciro Segura-Sanchez, and Nolberto Gonzalez-Ramirez filed an opposition against United States motion for the district court to declare that the vessel is subject to U.S. jurisdiction (DE 169). United States sought leave to reply to the defendant's response, along with a brief reply asserting the jurisdiction was subject to this Honorable Court's precedent (DE 170 & 171).

On April 18th, 2018, the District Court concluded that the vessel was subject to the jurisdiction of the United States under the MDLEA (DE 209) pursuant *U.S. v. Cardales-Luna*, 632 F. 3d 731, 737 (1st Cir. 2011)("Under the current statute, the Secretary of State (or her designee) need only certify that the 'foreign nation' where the vessel is registered 'has consented or waived objection to the enforcement of U.S. law by the U.S."); *U.S. v. Salazar-Realpe*, 2015 WL 3820757 (D.P.R. June 18, 2015)(rejecting challenge to MDLA in case where U.S. maritime patrol aircraft spotted target of opportunity traveling on international waters off the south of the Guatemala-El Salvador border, vessel crew member informed U.S. boarding team that vessel's homeport was in Ecuador, but Ecuador could neither confirm nor deny the vessel's nationality).

On April 18th, 2018, Appellant moved to withdraw his legal representation due to ineffective assistance of counsel (DE 214) and to withdraw his guilty plea

(DE 215). On April 19th, 2018, the government opposed defendant's motions (DE 217).

On April 20th, 2018, the district court entertained Appellant's request for new counsel and to withdraw his guilty pled (DE 219 & 323). At this time, Appellant's request to withdraw his guilty plea was denied. However, new counsel was appointed (DE 220).

On May 3rd, 2018, Appellant moved pro se for reconsideration to his request to withdraw his guilty plea (DE 237 & 248). On July 2nd, 2018, the district court entered Memorandum and Order denying Appellant's pro se motion to withdraw his guilty plea (DE 256).

On May 16th, 2018, the presentence investigation report (hereinafter PSR) was duly disclosed(DE 239).

On June 26th, 2018, the government filed its sentencing memorandum (DE 249) as well as the defense (DE 251). And on June 29th, 2018, the PSR and its addendum were duly filed (DE 255).

On July 19th, 2018, Appellant was sentenced to a 60 months imprisonment term, to be followed upon release by a 5 years term of supervised release (DE 267 & 324). On this same day, judgment was entered (DE 268 & 322).

On July 27th, 2018, Appellant filed the instant notice of appeal (DE 288) and on August 8th, 2018, the instant record was certified and transmitted to this Court (DE 294).

B. Appellate Proceedings:

On July 8th, 2020, Petitioner, through his defense counsel, submitted his brief and on March 17th, 2021, the government submitted its brief.

Subsequently, on April 17th, 2024, the Court of Appeals entered a Judgment, dismissing the appeal, concluding that the Petitioner executed an appeal waiver as part of his plea agreement and that the appeal waiver is valid and enforceable.

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." *U.S. v. Arroyo-Blas*, 783 F.3d 361, 367 (1st 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. U.S.*, 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." *U.S. 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 *U.S. 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*. 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.,*

U.S. v. Story, *supra*. 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)." *U.S. 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

unjustifiableexpense 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.

In addition, Petitioner does concede through his guilty plea that the MDLEA, by its terms, allows the government to prosecute him under U.S. law, however, he contends that Congress lacked authority to enact the applicable provisions.

The standard of review thrice presented by the Petitioner clearly addressed the enforceability/non enforceability of the guilty plea/waiver. The question of whether the government has authority to constitutionally prosecute the conduct admitted in the guilty plea is the core of this appeal. The standard that challenging said authority is not barred by a guilty plea has been set in *Class v. U.S.*, 138 S. Ct. 798 (2018). By directing this Honorable Court's attention to the standard of review in each of the issues presented, Petitioner has directly and properly notified

the legal ground for his appeal notwithstanding his guilty plea and waiver of appeal included in his plea agreement.

In compliance with *Arroyo-Blas* we informed that there is no jurisdiction due to the lack of nexus / the lack of notice and that the standard for said argument - against the government's authority to constitutionally prosecute the Petitioner's conduct - lies with *Class'* opinion which clearly allows such appeals.

Moreover, in *U.S. v. Davila-Reyes*, Docket No. 16-2089 & 16-2143, F.3d (1st Cir. 2022), the Court of Appeals for the First Circuit stated that MDLEA extension of criminal jurisdiction to "vessels without nationality" on the high seas exceeded Congress constitutional authority and held as well that Congress power to "define and punish . . . Felonies committed on the high Seas," is limited by international law principles that served as the backdrop to the Framers' drafting of the Define and Punish Clause, including those limiting nations' jurisdiction over foreign nationals on foreign vessels. Because MDEA definition of "vessels without nationality" included foreign ships that would not be considered stateless under international law, hence, Congress exceeded its constitutional authority. Petitioner stated that in his case, just like in *Davila-Reyes*, the master made a verbal claim of Colombian nationality for the vessel and the Colombian government could not confirm or deny the vessel registry. Although not properly

displaying a national flag, master claimed registry in a specific country, crew at least included nationals of that country, and no objective evidence that vessel was registered to a nation other than the one claimed, and nation claimed did not definitively reject the vessel as its own. Therefore, the ruling in *Davila-Reyes* does completely apply in this appeal.

The finding that Petitioner has failed to address the waiver of appeal constitutes a failure to view the direct attack on the guilty plea under the standard enunciated by *Class* and the direct relationship with the arguments against Congress' authority to constitutionally prosecute Petitioner.

Therefore, Petitioner is of the opinion that this Court should find the waiver clause unenforceable for this particular constitutional challenge and lack of jurisdiction to prosecute thereof.

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 22nd day of April, 2024.

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United States Court of Appeals
For the First Circuit

No. 18-1760

UNITED STATES

Appellee

v.

ANGEL DE JESUS CASTILLO-GODOY

Defendant - Appellant

Before

Barron, Chief Judge,
Gelpí and Montecalvo, Circuit Judges.

JUDGMENT

Entered: April 16, 2024

Defendant-Appellant Angel De Jesus Castillo-Godoy 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), 70506(b). Defendant-appellant executed an appeal waiver as part of his plea agreement, and we conclude that the appeal waiver is valid and enforceable. 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). Any remaining pending motions, to the extent not mooted by the foregoing, are denied.

By the Court:

Maria R. Hamilton, Clerk

cc:
Carlos R. Cardona Torres
Mariana E. Bauzá-Almonte

Hector E. Ramirez-Carbo
Laura G. Montes-Rodriguez
David Thomas Henek
David Christian Bornstein
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