No. 23-7436

IN THE
SUPREME COURT OF THE UNITED STATES

EAGLES DENASHU BEGAY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

REPLY BRIEF FOR PETITIONER

BRENT E. NEWTON
ATTORNEY AT LAW
19 Treworthy Road
Gaithersburg, MD 20878

LISA S. BLATT
Counsel of Record
CHARLES L. MCCLOUD
AARON Z. ROPER
BRETT V. RIES
WILLIAMS & CONNOLLY LLP
680 Maine Avenue SW
Washington, DC 20024
(202) 434-5000
lblatt@wc.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases:

Page

Cases—cont'd:

Statutes:

Page

Other Authorities:

Page

Other Authorities—cont'd:

INTRODUCTION

This case squarely presents an important, pervasively recurrent question of when federal defendants may bring ineffective-assistance-of-counsel claims. In *Massaro v. United States*, this Court held that defendants are not *required* to raise those claims on direct appeal. 538 U.S. 500, 504 (2003). The Court did not, however, *preclude* defendants from raising them on direct appeal. Yet in the wake of *Massaro*, all 12 regional circuits have deeply split over whether defendants may bring colorable ineffective-assistance claims on direct appeal. That circuit split is stark, widely recognized, and untenable. The Ninth Circuit below held that petitioner Eagles Begay's ineffective-assistance claim—based on counsel's inexplicable decision to withdraw a winning Guidelines objection—must await a collateral 28 U.S.C. § 2255 proceeding, where Begay will have no right to counsel. But had Begay's case proceeded in the D.C. or First Circuit, his undisputedly colorable claim would have resulted in remand for an evidentiary hearing with the assistance of counsel.

Until this case, the government repeatedly told the D.C. Circuit that its rule granting remand on colorable ineffective-assistance claims "is inconsistent with the majority of the federal courts of appeals," and twice (unsuccessfully) urged that court to use its en banc procedures to overrule circuit precedent.[1] Five circuits and leading treatises acknowledge

[1] U.S. Br. 24, *United States v. Thompson*, 721 F.3d 711 (D.C. Cir. 2013), 2013 WL 503273; *see id.* at 25-27, 30-32 (cataloging split); *id.* at 40 (requesting en banc procedure); U.S. Br. 3, *United States v. Anderson*, 632 F.3d 1264 (D.C. Cir. 2011) (No. 05-3100) (same); *id.* ("[T]he Court's practice is clearly inconsistent with … the procedures followed by the majority of other circuits."); *id.* at 4-6 (cataloging split); U.S. Br. 36, *United States v. James*, 719 F. App'x 17 (D.C. Cir. 2018), 2017 WL 4997712 ("Unlike other circuits, it is this Court's 'general practice' to remand for an evidentiary hearing ineffective assistance of counsel

the split too. This Court routinely grants certiorari to set uniform rules governing ineffective-assistance claims in federal court, just as it did in *Massaro*. Only this Court can restore nationwide uniformity to this important, outcome-determinative question of federal criminal procedure.

I. The Circuits Are Deeply Split in the Wake of *Massaro*

The government (at 6, 13) acknowledges that circuits have taken "various approaches" to "ineffective-assistance claims on direct appeal" and that some "circuits are more open to deciding cases on direct appeal through the use of remands." But, the government (at 6, 15) says, that variance reflects "circuit-specific tendencies" in exercising discretion, not a split on "the governing law."

1. That denial is not credible. The question presented here is no more discretionary than the one on which this Court granted certiorari in *Massaro*. The circuits' different approaches reflect different *legal* rules, not case-by-case discretionary choices. The D.C. and First Circuits systematically remand colorable ineffective-assistance claims raised on direct appeal. Pet. 16-17. The D.C. Circuit's rule is unambiguous: "Our circuit remands 'colorable and previously unexplored' claims of ineffective assistance rather than dismissing them in favor of collateral review." *United States v. Marshall*, 946 F.3d 591, 596 (D.C. Cir. 2020) (quoting *United States v. Rashad*, 331 F.3d 908, 908 (D.C. Cir. 2003)). When the record is insufficient to evaluate a colorable ineffective-assistance claim, the D.C. Circuit

---

claims raised for the first time on direct appeal."); U.S. Br. 39 n.10, *United States v. Bell*, 708 F.3d 223 (D.C. Cir. 2013), 2012 WL 4042230 ("Unlike all other federal courts of appeal, this Court currently allows ineffective-assistance claims to be raised on direct appeal.").

"do[es] not hesitate to remand." *United States v. Williams*, 784 F.3d 798, 804 (D.C. Cir. 2015) (Kavanaugh, J.) (citation omitted). The government (at 14) notes that the D.C. Circuit does not "reflexively" remand. *United States v. Sitzmann*, 893 F.3d 811, 831 (D.C. Cir. 2018). But that statement merely reflects that the D.C. Circuit does not remand when the claim clearly fails. *Id.* at 831-32. When, as here, the claim *is* colorable, as the government does not dispute, D.C. Circuit precedent requires a remand.

The First Circuit too remands "when the defendant affirmatively makes out a colorable claim of ineffectiveness." *United States v. Márquez-Pérez*, 835 F.3d 153, 165 n.6 (1st Cir. 2016). The government (at 13) notes that the First Circuit's rule is permissive—the court "may remand." *United States v. Messner*, 37 F.4th 736, 742 (1st Cir. 2022). The government cites no First Circuit case declining to remand a colorable claim, and we are aware of none. Regardless, there is a world of difference between a rule that a court *may* remand and a rule that a court *cannot* remand when defendants raise colorable claims on direct appeal. *Cf. Concepcion v. United States*, 597 U.S. 481 (2022) (resolving split over factors district courts must, may, or must not consider in resentencing).

In stark contrast, the government (at 13) agrees that at least eight circuits categorically refuse to address ineffective-assistance claims on direct appeal "absent unusual circumstances." *Accord* Pet. 13 & n.11.[2] A colorable claim requiring additional factual development is manifestly insufficient in these circuits. Here, for example, the Ninth Circuit

[2] The government (at 14) puts the Second Circuit in its own category because it occasionally remands in unusual cases. *See* Pet. 13-14 & n.12 (discussing Second Circuit practice). Given that at least eight circuits undisputedly fall in the no-remand camp, the Second Circuit's classification is ultimately irrelevant to the split.

refused to remand because circuit precedent foreclosed litigating colorable ineffective-assistance claims on direct appeal absent "extraordinary" circumstances: a factual record so clear that no remand would be necessary. Pet.App.A.2-3 n.1 (quoting *United States v. Daychild*, 357 F.3d 1082, 1095 (9th Cir. 2004)). The court below did not make a discretionary choice to deny remand; it held that it was "bound" to deny remand "by [circuit] precedent." Pet.App.A.3 n.1.

As for the Seventh Circuit, the government (at 14 n.5) acknowledges that that court takes a position even more "to the defendant's detriment," adjudicating and rejecting ineffective-assistance claims on direct appeal even when the record is insufficient. Pet. 15-16. In that circuit, "only the rarest and most patently egregious of ineffective assistance claims are appropriately brought on direct appeal." *United States v. Harris*, 394 F.3d 543, 558 (7th Cir. 2005).

That split was plainly outcome determinative here. Even though Begay's ineffective-assistance claim is undisputedly colorable, Ninth Circuit precedent foreclosed remand. By contrast, in the D.C. Circuit, Begay's colorable claim would have *guaranteed* remand. And in the First Circuit, the court *could have* remanded and, consistent with its usual practice, presumably would have. The government never argues otherwise. Different circuits applying circuit precedent to reach different outcomes on identical facts is the definition of a circuit split, not mere "circuit-specific tendencies." *Contra* BIO 15.

Only this Court can resolve the irreconcilable conflict over the question left open by *Massaro*. Circuits at opposite ends of the split cite *Massaro* in support of their preferred rules. The D.C. Circuit deems its remand practice "entirely consistent with [*Massaro*]."

Rashad, 331 F.3d at 911; *see Williams*, 784 F.3d at 803-04 (Kavanaugh, J.). By contrast, the Seventh Circuit says that *Massaro* mandates "aggressive[ly]" limiting ineffective-assistance claims on direct appeal to "only the rarest and most patently egregious." *Harris*, 394 F.3d at 558. And the Second Circuit reads *Massaro* "to support a choice to decline to remand for a hearing on an ineffectiveness claim." *United States v. Doe*, 365 F.3d 150, 152 (2d Cir. 2004). Until this Court steps in, identically situated defendants facing imprisonment are subject to different rules based on the arbitrary happenstance of where they were prosecuted.

2. The government's denial of the split is baffling given that it previously recognized this exact split. The government has spent over a decade telling the D.C. Circuit that its "longstanding practice" of remanding ineffective-assistance claims "is inconsistent with the majority of the federal courts of appeals." *Thompson* U.S. Br. 24; *see supra* p. 1 n.1. On at least two occasions, the government has asked the D.C. Circuit to "adopt the approach of the majority of the circuits" and "overrule" its precedent with the en banc court's endorsement. *Thompson* U.S. Br. 39-40; *Anderson* U.S. Br. 12-13. The D.C. Circuit has rebuffed that request and adhered to "existing precedent." *Thompson*, 721 F.3d at 713 n.2; *see Anderson*, 632 F.3d at 1269 (remanding without discussing the government's request to overrule precedent). If the D.C. Circuit followed the same "governing legal standards" as other circuits (BIO 12) or the issue was unimportant, the government would have had no reason to ask that court to overrule its precedent using en banc procedures.

Courts and commentators recognize the split, too. The D.C. Circuit has repeatedly described its approach as "different" and "unlike" other circuits', which "may place us in a

minority of one among the courts of appeals." *United States v. Geraldo*, 271 F.3d 1112, 1115-16 (D.C. Cir. 2001); *Rashad*, 331 F.3d at 910; *United States v. Weaver*, 281 F.3d 228, 234 (D.C. Cir. 2002). The Second Circuit has declared itself "unpersuaded" by the D.C. Circuit's "general rule" of remanding ineffective-assistance claims. *Doe*, 365 F.3d at 153 n.2. The Fourth Circuit has "decline[d]" "to adopt the holdings of the First and D.C. Circuits that, on direct appeal, 'colorable' claims of ineffective assistance may be remanded to the trial courts for an evidentiary hearing." *United States v. Nelson*, 850 F. App'x 865, 866 (4th Cir. 2021) (citation omitted). The Sixth Circuit has described the D.C. Circuit's "'general practice … to remand the claim for an evidentiary hearing'" as "unlike [that] in our court." *United States v. Zheng*, 27 F.4th 1239, 1244 n.3 (6th Cir. 2022) (quoting *Rashad*, 331 F.3d at 909). And the Seventh Circuit has recognized the D.C. and First Circuit's approach, yet declared itself "not persuaded" to remand. *United States v. Wilson*, 240 F. App'x 139, 144-45 (7th Cir. 2007). Leading treatises, including one the government (at 8-9) cites, likewise acknowledge the circuits' "differing views" on the question presented. Wayne R. LaFave, *Criminal Procedure* § 11.7(e) n.75 (4th ed. 2023 update); *see* 3 Charles Alan Wright et al., *Federal Practice & Procedure* § 627 n.3 (5th ed. Aug. 2024 update).

II. The Question Presented Is Critically Important and Cleanly Presented

1. Whether defendants may raise colorable ineffective-assistance claims on direct appeal is not a mere "case-specific preference" (BIO 12) among courts of appeals. It is a profoundly important legal rule that has divided the circuits after *Massaro* and affects real-world cases—as evidenced by the government's repeated attempts to change D.C. Circuit precedent. Ineffective-assistance claims are ubiquitous in the federal system. *See* Wright

et al., *supra*, § 627. While not every section 2255 petitioner has a colorable claim or opts for direct appeal, the number of cases potentially implicated by this issue is significant. In just the last five years, the D.C. Circuit alone has applied its rule at least seven times.[3]

That opportunity for remand matters. For defendants with colorable claims released on bond pending direct appeal, the Ninth Circuit's rule means that they must report to prison and wait behind bars—potentially for years—while their section 2255 petitions are adjudicated. In the D.C. and First Circuits, by contrast, a defendant who has been released pending appeal can remain at liberty while the remand proceedings occur.

Moreover, all defendants (whether incarcerated or not) have a right to appointed counsel on direct appeal but not on collateral review. Pet. 20. "Claims of ineffective assistance at trial often require investigative work and an understanding of trial strategy" and are unlikely to be properly raised "[w]ithout the help of an adequate attorney." *Martinez v. Ryan*, 566 U.S. 1, 11 (2012). Shunting criminal defendants into section 2255 proceedings deprives them of that assistance, increasing the risk of error and forcing district courts to slog through a deluge of uncounseled section 2255 petitions. The D.C. and First Circuit's approach, by contrast, allows defendants to pursue what is often their only meritorious challenge with the benefit of counsel. Remands in the D.C. Circuit routinely lead to relief.[4]

---

[3] *United States v. Johnson*, 4 F.4th 116, 124 (D.C. Cir. 2021); *United States v. Thomas*, 999 F.3d 723, 738-39 (D.C. Cir. 2021); *United States v. Browne*, 953 F.3d 794, 804 (D.C. Cir. 2020); *In re Sealed Case*, 2020 WL 13120193, at *3 (D.C. Cir. July 7, 2020); *United States v. Bernier*, 761 F. App'x 11, 13 (D.C. Cir. 2019); *United States v. Thompson*, 921 F.3d 263, 270 (D.C. Cir. 2019); *United States v. Norman*, 926 F.3d 804, 812-13 (D.C. Cir. 2019).

[4] *E.g.*, *United States v. Smith*, 678 F. Supp. 3d 172, 175 (D.D.C. 2023); *United States v. Mohammed*, 2021 WL 5865455, at *12 (D.D.C. Dec. 9, 2021); *United States v. Knight*, 981

Although some of those defendants might have eventually secured relief on collateral review, that does not negate the value to defendants—and to the legal system—of avoiding unnecessary collateral proceedings in the first place.

The government (at 10-12) notes that Begay and other defendants could request appointed counsel in a section 2255 proceeding under the Criminal Justice Act, which authorizes district courts to appoint counsel when the "interests of justice so require." 18 U.S.C. § 3006A(a)(2)(B). But as the government has previously observed, district courts appoint counsel only "in relatively few postconviction proceedings, and thus the bulk of federal prisoners pursue collateral relief *pro se*." U.S. Br. 32, *Martinez*, 566 U.S. 1, 2011 WL 4071911. In practice, 84% of section 2255 cases last year were filed pro se. *IDB Civil 1988-Present*, Fed. Judicial Ctr., https://tinyurl.com/453rstxy.

The Criminal Justice Act system is already straining under a burgeoning caseload and inadequate funding. *Report of the Ad Hoc Committee to Review the Criminal Justice Act*, at xvii, 17 (2018). The "interests of justice" standard is discretionary and requires a threshold showing that the claim has potential merit. *See Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983). Incarcerated, pro se defendants will often struggle to convince the court that closer attention is warranted, and district courts will struggle to determine whether a discretionary use of limited resources is appropriate.

The government (at 12) downplays this issue's importance by characterizing it as a mere matter of courts' internal procedures. That is incorrect. *Supra* pp. 2-5. Regardless,

---

F.3d 1095, 1099 (D.C. Cir. 2020); *United States v. Miller*, 953 F.3d 804, 814 (D.C. Cir. 2020); *United States v. Marquez*, 653 F. Supp. 2d 1, 18 (D.D.C. 2009).

whether criminal defendants can pursue the potentially decisive challenge to their conviction or sentence with a right to counsel is not a minor difference in local rules, like how to handle extension requests or overlength briefs. "The right to the effective assistance of counsel at trial is a bedrock principle in our justice system." *Martinez*, 566 U.S. at 12.

This Court thus frequently grants certiorari to resolve questions of when federal defendants can litigate ineffective-assistance claims. In *Massaro*, this Court granted certiorari to resolve a 10-2 split over whether defendants are *required* to raise ineffective-assistance claims on direct appeal, 548 U.S. at 503—"the converse of the issue" here. *Rashad*, 331 F.3d at 911. Likewise, in *Martinez*, this Court granted certiorari and reversed the Ninth Circuit for adopting a per se rule that state habeas petitioners procedurally default ineffective-assistance claims not raised on state collateral review. 566 U.S. at 8, 14. As those cases reflect, the proper forum for ineffective-assistance claims is a question worthy of this Court's attention.

Adding to the importance, this same issue frequently arises in state courts, which also take "diverse approaches to the issue of when and how ineffective assistance claims should be raised." LaFave, *supra*, § 11.7(e); *see* Brent E. Newton, *Incentivizing Ineffective-Assistance-of-Counsel Claims Raised on Direct Appeal: Why Appellate Courts Should Remand "Colorable" Claims for Evidentiary Hearings*, 22 J. App. Prac. & Process 107, 112-13 (2022); Eve Brensike Primus, *Structural Reform in Criminal Defense: Relocating Ineffective Assistance*, 92 Cornell L. Rev. 679, 710-11 (2007). Michigan, for example, has permitted remands in ineffective-assistance cases for decades, a practice which avoids "inefficiency and delay" and has led to meaningful real-world relief. *See* Bradley R. Hall,

Thinking Outside the Four Corners: How Michigan's Unique Criminal Appellate Process Promotes Justice Through Factual Development on Direct Appeal, Mich. Bar J., Sept. 2019, at 36, 38. While this Court's decision will not bind the States, Supreme Court guidance on a pervasively recurrent issue will naturally help state courts navigate the same choice.

2. The government (at 6 & n.2) asserts that this Court has denied ten petitions "raising similar issues." Critically, in none did the government file a response, making this case the first with the benefit of full briefing. Moreover, seven of the ten petitions cited by the government stretch the meaning of "similar." These petitions involved fact-bound challenges to particular lawyers' performance or distinct issues like how to manage post-trial ineffective-assistance motions in district court or whether substitution-of-counsel motions may be challenged on direct appeal.[5] Of the three petitions actually presenting the same question, one was a pro se petition where the question was not pressed or passed upon below.[6] In the other two, it was far from clear that the question presented was outcome determinative, making the cases inferior vehicles.[7]

---

[5] *See* Pet. i, *Pierce v. United States*, 142 S. Ct. 2660 (2022) (No. 21-7420); Pet. i, *Senke v. United States*, 142 S. Ct. 367 (2021) (No. 21-5453); Pet. i, *Garcia v. United States*, 141 S. Ct. 1436 (2021) (No. 20-6831); Pet. i, *Carrasco v. United States*, 141 S. Ct. 1279 (2021) (No. 20-6619); Pet. i, *Smiley v. United States*, 140 S. Ct. 505 (2019) (No. 19-6185); Pet., *Hicks v. United States*, 140 S. Ct. 306 (2019) (No. 19-5624); Pet. i, *Blanco-Rodriguez v. United States*, 139 S. Ct. 1363 (2018) (No. 18-7900).

[6] Pet. i, *Harmon v. United States*, 141 S. Ct. 435 (2020) (No. 20-5385); *see United States v. Harmon*, 798 F. App'x 836 (5th Cir. 2020); Appellant's Br., *Harmon*, 798 F. App'x 836, 2019 WL 4412562.

[7] *See* U.S. Br. 20-31, *United States v. Altman*, 849 F. App'x 496 (5th Cir. 2021), 2021 WL 346659 (arguing that claim that trial counsel was ineffective for failing to raise novel sentencing argument was not colorable); U.S. Br. 20-28, *United States v. Nelson*, 850 F. App'x

3. This case, by contrast, is a pristine vehicle to resolve this fundamentally important question. Begay's trial counsel inexplicably withdrew a winning Guidelines argument at sentencing. Pet. 26-27; *see* BIO 4. There is no dispute that Begay's ineffective-assistance claim is "preserved" (BIO 4 n.1) and colorable—the trigger for remand in the D.C. and First Circuits. Begay timely requested remand on appeal, which the Ninth Circuit rejected solely based on circuit precedent. Pet.App.A.3 n.1. Begay then sought rehearing en banc exclusively on this issue, which the Ninth Circuit denied. Pet.App.B.

The government identifies no vehicle problems nor suggests that this issue would benefit from further percolation. The government (at 12) belittles Begay's remand request as a "case-specific preference" and states that Begay has not identified any reason why he could not "adequately litigate his ineffective-assistance claim" on collateral review. Having a constitutional right to counsel and getting out of prison sooner are not mere "preference[s]." Regardless, the question presented will arise only when, with the benefit of counsel, a defendant identifies a colorable ineffective-assistance claim on direct appeal. In every case cleanly presenting this split, the government could make the same argument: The defendant has shown that he has a potentially meritorious claim, so he should have no trouble persuading the district court to appoint counsel on collateral review. That Begay's underlying ineffective-assistance claim should succeed is a reason to resolve it *now*, not a justification for years of further delay. This deeply entrenched, outcome-determinative split cries out for review, and this is the case to resolve it.

---

865 (4th Cir. 2021), 2021 WL 1327389 (arguing that claim that trial counsel was ineffective in explaining terms of plea agreement was not colorable).

III. The Decision Below Is Incorrect

1. The Ninth and other circuits' rule barring remand of colorable ineffective-assistance claims on direct appeal disserves judicial economy, disrespects finality, and undermines fundamental fairness.

In exercising its authority to set nationwide rules for ineffective-assistance claims, this Court seeks "to conserve judicial resources" and avoid "inefficiencies." *Massaro*, 538 U.S. at 504, 506. As the government has previously observed, routing ineffective-assistance claims to direct appeal "promote[s] efficiency in the administration of criminal proceedings by encouraging resolution of legal challenges at the earliest feasible opportunity." U.S. Br. 26, *Massaro*, 538 U.S. 500, 2002 WL 31868910. If a defendant has a colorable ineffective-assistance claim and is ready to raise it on direct appeal, there is no reason to wait. The defendant and the government benefit from resolving as soon as possible whether the conviction and sentence will stand. And the district court avoids a pro se section 2255 petition. As the States that already employ this rule to great success demonstrate, the remand rule is efficient in practice. *Supra* p. 10.

Conversely, delay has costs. Ineffective-assistance claims frequently require witness testimony and turn on the district court's recollection of counsel's performance. *Massaro*, 538 U.S. at 505-06. But memories fade and judges retire. Defendants attempting to bring ineffective-assistance claims on collateral review "face serious practical problems" corralling evidence and witnesses. Primus, *supra*, at 695. If the defendant ultimately prevails on collateral review, the defendant will have spent needless time incarcerated while the process plays out. Pet. 23. And the government could be forced to retry a case years

later, when it could have had a speedy resolution on direct appeal. Pet. 23 n.19. At the same time, section 2255 petitioners who raise "colorable" claims are entitled to evidentiary hearings, so there is no increased burden by having hearings now rather than later. Pet. 24-25.

As the government has further observed, "channeling the resolution of ineffective assistance claims to direct appeal … advances the basic societal interest in the finality of criminal judgments." *Massaro* U.S. Br. 23. "Finality is essential" to criminal law. *Calderon v. Thompson*, 523 U.S. 538, 555 (1998). In the government's words, "collateral review undermines the finality of criminal judgments," frustrating the goals of the criminal-justice system and "consum[ing] scarce federal judicial resources." U.S. Br. 10-11, *Dretke v. Haley*, 541 U.S. 386 (2004), 2003 WL 22970602. Yet under the decision below, collateral review becomes the rule, not the exception. Even when the defendant is ready and willing to litigate his ineffective-assistance claim on direct appeal, the defendant has to wait for his conviction to become final and then file a collateral attack. Something is wrong when the federal government is telling criminal defendants to file more section 2255 petitions.

Additionally, the decision below fails "[t]o protect prisoners with a potentially legitimate claim of ineffective assistance of trial counsel" by forcing them to litigate claims without a right to counsel. *See Martinez*, 566 U.S. at 9; Pet. 20-23. The right to counsel affects the defendant's "ability to assert any other rights he may have." *Penson v. Ohio*, 488 U.S. 75, 84 (1988). As discussed, *supra* pp. 7-9, 13, ineffective-assistance claims are difficult for generally pro se prisoners to litigate on collateral review. Mandating that approach, even when the claim is ripe for resolution in the initial proceedings, is a recipe for error.

2. The government (at 6-9) repeatedly invokes *Massaro*'s statement that collateral review is often the "preferable" place to resolve ineffective-assistance claims. 538 U.S. at 504. Petitioner agrees that some defendants may have good reasons to prefer collateral review—they may need time to develop their claim, the current record may be insufficient to show that their claim is colorable, etc. Pet. 25-26. But *Massaro* expressly does "not hold that ineffective assistance claims *must* be reserved for collateral review." 538 U.S. at 508 (emphasis added). And *Massaro* self-consciously did not resolve the consequences of bringing ineffective-assistance claims on direct appeal. *Id.* Otherwise, the government (at 15) could not characterize the D.C. and First Circuit's practice as "permissible" readings of *Massaro*.

The government (at 10) derides petitioner's position as a "policy" preference. But this Court has long understood "the duty of establishing and maintaining civilized standards of procedure" as a fundamentally *legal* task—one that the Constitution assigns to *this Court*, not the circuits. *McNabb v. United States*, 318 U.S. 332, 340 (1943); *see United States v. Tsarnaev*, 595 U.S. 302, 326 (2022) (Barrett, J., concurring). *Massaro* itself reflects this Court's view of what will best "promote the[] objectives" of "conserv[ing] judicial resources and … respect[ing] the law's important interest in the finality of judgments." 538 U.S. at 504. And *Martinez* likewise crafted an "equitable ruling" "[t]o protect prisoners with a potentially legitimate claim of ineffective assistance of trial counsel." 566 U.S. at 9, 16. Here too, this is a paradigmatic, recurring issue that only this Court can resolve. This Court should grant certiorari, answer the question left open by *Massaro*, and restore uniformity to the federal criminal-justice system.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

BRENT E. NEWTON
ATTORNEY AT LAW
19 Treworthy Road
Gaithersburg, MD 20878

LISA S. BLATT
Counsel of Record
CHARLES L. MCCLOUD
AARON Z. ROPER
BRETT V. RIES
WILLIAMS & CONNOLLY LLP
680 Maine Avenue SW
Washington, DC 20024
(202) 434-5000
lblatt@wc.com

SEPTEMBER 18, 2024