

No. 24-_____

IN THE SUPREME COURT OF THE UNITED STATES

MARIO GONZALEZ-GODINEZ,

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Is a person's Fifth Amendment right to remain silent violated when they are subjected to custodial interrogation and advised that the interrogation may be the only opportunity to seek asylum, but also under *Miranda* that any statement could be used against them in a subsequent criminal prosecution, and then the government uses the obtained statement against the person in a subsequent criminal prosecution?

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IN THE SUPREME COURT OF THE UNITED STATES

MARIO GONZALEZ-GODINEZ,

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-v-

UNITED STATES OF AMERICA,

Respondent.

Petitioner Mario Gonzalez-Godinez respectfully prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Ninth Circuit entered on January 3, 2024.

JURISDICTION

The District Court for the Southern District of California had original jurisdiction over the criminal offense against the United States under 18 U.S.C. § 3231. Reviewing the judgment under 28 U.S.C. § 1291, the Ninth Circuit affirmed Petitioner’s conviction in a published decision on January 3, 2024. *See United States v. Gonzalez-Godinez*, 89 F.4th 1205 (9th Cir. 2024) (Appendix A). Petitioner timely sought rehearing and rehearing *en banc*, and the Ninth Circuit denied both requests on March 15, 2024. (Appendix B). This Court has jurisdiction to review the Ninth Circuit’s decision under 28 U.S.C. § 1254(1).

RELEVANT PROVISIONS

U.S. Const. amend. V: 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.

DIRECTLY RELATED PROCEEDINGS

There are no directly related proceedings under Rule 14(b)(iii).

STATEMENT OF THE CASE

A. Background.

Border Patrol Agents arrested Petitioner about thirty yards north of the international border fence between Mexico and the United States. The agents suspected that Petitioner had illegally entered the United States and took him into custody. After taking Petitioner into custody, the agents took him to a border patrol station and conducted a custodial interrogation.

At the beginning of the custodial interrogation, an agent advised Petitioner of his *Miranda* rights, and his administrative rights, which pertained to his rights in immigration-related proceedings. Importantly, the agent advised Petitioner under *Miranda* that he had the right to remain silent and anything he said could be used

against him in his criminal case, but the agent contemporaneously advised Petitioner that the custodial interrogation “might be his only chance to seek asylum.” Thus, Petitioner was forced to choose whether to make a statement and imperil his criminal case, or to remain silent and potentially waive his sole opportunity to seek asylum. Petitioner elected to make a statement to the agent and he confessed that he sought asylum by illegally entering the United States.

After the custodial interrogation, Petitioner was criminally charged with illegally entry in violation of 8 U.S.C. § 1325(a). At trial, the government introduced Petitioner’s custodial statement against him and he was convicted.

B. District Court Proceedings.

The government charged Petitioner with one count of illegal entry in violation of 8 U.S.C. § 1325(a). He was tried before a magistrate judge pursuant to 18 U.S.C. § 3401(a).

Petitioner moved to suppress his post-arrest statement, arguing that the conflicting advisals of rights violated *Miranda* and also that his subsequent statement was involuntary. The magistrate judge denied Petitioner’s motions to suppress and permitted the government to admit the statement against him at trial. At trial, the government admitted the statement and the magistrate judge found Petitioner guilty.

Petitioner timely appealed to the district court under 18 U.S.C. § 3402. The court affirmed Petitioner’s conviction, finding any error in admitting his custodial

statement to be harmless. Petitioner timely appealed this ruling to the Ninth Circuit.

C. Appeal to the Ninth Circuit.

On appeal, Petitioner argued that the district court erred in denying his motion to suppress. Reviewing the judgment under 28 U.S.C. § 1291, the Ninth Circuit affirmed the conviction in a published memorandum. *See United States v. Gonzalez-Godinez*, 89 F.4th 1205 (9th Cir. 2024) The Ninth Circuit held that Petitioner’s statement was properly admitted against him at trial despite reasoning that there was “tension” between the two sets of rights read to him before questioning. 89 F.4th at 1209. In the Ninth Circuit’s view, the contrary warnings were acceptable because “[t]he record suggests that Gonzalez understood his rights, and Gonzalez’s gambit was to talk in hopes of seeking asylum, despite the risks.” 89 F.4th at 1207. Specifically, in the panel’s view:

While there may be some tension between those rights, it merely reflects the difficult trade-off that immigration defendants must sometimes make. An undocumented person may try to shield himself from criminal prosecution by remaining silent, but that may undermine his effort to seek asylum.

Id. The Ninth Circuit denied Petitioner’s timely request for rehearing and rehearing *en banc* on March 15, 2024. (App. B).

D. Reasons for Granting the Petition

This Court should grant certiorari to correct the Ninth Circuit’s error in concluding that the government did not violate Petitioner’s Fifth Amendment rights when presenting him with a Hobson’s choice between remaining silent to help his

criminal case or confessing to help his immigration case. The Ninth Circuit’s holding conflicts with *Lefkowitz v. Turley*, where this Court held that the Fifth Amendment right to remain silent “not only protects the individual against being involuntarily called as a witness against himself in a criminal prosecution but also privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings.” 414 U.S. 70, 77 (1973).¹

The Ninth Circuit’s holding is incorrect because forcing Petitioner to decide whether to remain silent at the cost of potentially forfeiting his opportunity to seek asylum presents an impermissible penalty for remaining silent in violation of the Fifth Amendment.

E. The Fifth Amendment Protects an Individual in Custody From Being Punished With the Loss of Access to Asylum if He Invokes His Right to Remain Silent in a Criminal Proceeding.

The Fifth Amendment protects a person from being forced to be a witness against himself in a criminal prosecution, “but also privileges him not to answer official questions” in other proceedings. *Turley*, 414 U.S. at 77. The government forced Petitioner to be a witness against himself by telling him that remaining silent could foreclose his ability to seek asylum, which he ultimately did seek. And the government introduced Petitioner’s statement against him in a subsequent criminal prosecution.

¹ Immigration proceedings are treated as civil proceedings. *See I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1039 (1974) (holding that deportation proceedings are “purely” civil).

In *Turley*, this Court held that the Fifth Amendment prevents the government from obtaining a custodial statement by threatening the loss of a government contract. *Turley*, 414 U.S. at 77. Specifically, the Fifth Amendment right to remain silent “not only protects the individual against being involuntarily called as a witness against himself in a criminal prosecution but also privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings.” *Id.*

This Court has applied the rule set forth in *Turley* to a number of circumstances when a witness is forced to choose between significant rights. Under this rule police officers are protected from the choice “between self-incrimination or job forfeiture,” *Garrity v. New Jersey*, 385 U.S. 493, 496 (1967), professionals from the loss of a professional license, *Spevack v. Klein*, 385 U.S. 511, 516 (1967), public employees are protected from adverse employment sanctions, *Uniformed Sanitation Men Ass’n v. Comm’r of Sanitation of City of N.Y.*, 392 U.S. 280, 283–84 (1968), and members of the public from the right to participate in political associations and to hold public office. *Lefkowitz v. Cunningham*, 431 U.S. 801, 807 (1977).

Immigrants in deportation proceedings, which are civil, are no different. Immigrants, like Petitioner, face serious consequences if deported and people seeking asylum are seeking safety from physical harm. When confronted with criminal prosecution, it is impermissible under the Fifth Amendment for the government to put official questions to an in-custody immigrant and cajole the

immigrant into making a criminally inculpatory statement by threatening to withhold immigration relief.

The safety that an asylum applicant seeks is a more significant right than an adverse employment decision, loss of a government contract, or even the right to hold political office given the significant safety concerns that drive people like Petitioner to seek asylum. Consequently, the Fifth Amendment right against compelled self-incrimination protects an asylum applicant from being forced to choose between seeking asylum or making a statement against their interest in a criminal proceeding.

F. The Ninth Circuit's Holding Conflicts With the Fifth Amendment Because It Would Force an Immigrant Seeking Asylum to Expose Himself to Criminal Liability in Order to Seek Immigration Relief.

The Ninth Circuit's decision in affirming the denial of Petitioner's motion to suppress cannot be squared with the Fifth Amendment and this Court's precedent. No precedent of any circuit permits the government to cajole an immigration detainee into making a custodial statement by threatening to withhold their ability to apply for asylum, and to then introduce that statement against them in a subsequent criminal prosecution. The lone citation in the Ninth Circuit's decision to support its holding on this point is *Baxter v. Palmingiano*, 425 U.S. 308, 318 (1976). But *Palmigiano* directly contradicts the Ninth Circuit's holding.

Palmigiano involved a prisoner facing disciplinary proceedings and he was advised that if he remained silent his silence could be used against him in his disciplinary proceeding. *Id.* at 316. This Court emphasized that “[n]o criminal

proceedings are or were pending against Palmigiano” and the government has not “sought to make evidentiary use [Palmigiano’s] silence at the disciplinary hearing or in any criminal proceeding.” *Id.* at 317. The Court distinguished “the *Garritty-Turley* decisions, where refusal to submit to interrogation” resulted in loss of employment or a state contract because the state prison policy at issue in *Palmigiano* required substantial evidence of a violation, and Palmigiano’s silence was not determinative. *Id.* at 318. This Court reasoned that the advice he received was “merely a realistic reflection of the evidentiary significance of the choice to remain silent.” *Id.*

The Ninth Circuit decision cites *Palmigiano* for the proposition that “[c]riminal defendants who face overlapping civil lawsuits face similarly difficult choices: They can assert their Fifth Amendment right against self-incrimination in civil suits, but that silence may be damning to their cases.” 89 F.4th at 1209 n.1. The Ninth Circuit reasons that *Palmigiano* permits “courts and juries to draw adverse inferences about *civil* defendants who refuse to testify.” *Id.* (emphasis added). Critically, the Ninth Circuit misapplies *Palmigiano* because Petitioner’s case is criminal, and his statement was introduced by the government against him in his criminal case. *Palmigiano* expressly emphasized that the case was different from when the government seeks to introduce a statement in a criminal proceeding, which is exactly what happened in Petitioner’s case. 425 U.S. at 318.

The Ninth Circuit’s decision directly conflicts with *Palmigiano* as well as the *Turley* line of cases because these precedents prohibit the government from forcing

asylum applicants to make a “difficult trade-off” between seeking relief from deportation and “shield[ing] himself from criminal prosecution by remaining silent.” *Turley*, 414 U.S. at 77. This “difficult trade-off” is expressly prohibited by the Fifth Amendment, *Turley*, *Garrity*, *Palmigiano*, and the other cited cases in this line of decisions from the Court.

The Ninth Circuit decision must be corrected to not force immigrants like Petitioner to choose between their Fifth Amendment right to remain silent and their desire to seek immigration relief like asylum. This Court should grant certiorari because the Ninth Circuit’s decision “decided an important question of federal law” that conflicts with the decisions of this Court. S. Ct. R. 10(c). Moreover, asylum applicants are arriving at our border in record numbers, and this case raises an important and timely constitutional issue that the Court should resolve. The Fifth Amendment right against compelled self-incrimination is a fundamental constitutional right, and the government should not be permitted to cajole immigrants in custody into making statements against their criminal interest by threatening to withhold immigration benefits if they do not make a statement.

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CONCLUSION

The Ninth Circuit erred in affirming the denial of Petitioner's motion to suppress. This Court should grant this Petition for a Writ of Certiorari and correct the Ninth Circuit's error.

Respectfully submitted,

Dated: June 13, 2024

s/ Ryan W. Stitt

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