

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

THADDEUS J. CULPEPPER,

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT**

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QUESTION PRESENTED

Does an appellate waiver in a plea agreement, that specifically excepts challenges to the voluntariness of a guilty plea, bar the appellate argument that the guilty plea was involuntary because of an unconstitutionally coercive pretrial detention?

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Petitioner, Thaddeus J. Culpepper, respectfully asks that a writ of certiorari issue to review the judgment and decision of the Ninth Circuit Court of Appeals in consolidated Case Nos. 22-50309 and 23-50001.

OPINION BELOW

The August 21, 2024, Order of the Ninth Circuit Court of Appeals dismissing Petitioner's consolidated appeals is attached in the Appendix.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The matter seeks redress from the Ninth Circuit Court of Appeals' August 21, 2024, Order dismissing Petitioner's consolidated appeals (Appendix at 2). Petitioner's motion for panel reconsideration and rehearing en banc was denied October 30, 2024 (Appendix at 4).

CONSTITUTIONAL PROVISION INVOLVED

This case involves the Fifth Amendment right to Due Process, and its violation by punitive pretrial detention. It also involves the constitutional rights implicated by an involuntary guilty plea: the privilege against compelled self-incrimination; the right to trial by jury; and, the right to confront one's accusers. *Boykin v. Alabama*, 395 U.S. 238, 243 (1969).

LIST OF PROCEEDINGS

Petitioner was originally indicted in October 2018 (CDCA No. CR 18-685-CJC, Dkt. 16), and again on related charges in January 2020. CDCA No. CR 20-9-DOC, Dkt. 1. He was detained pending trial in both cases. *See* 20-9-DOC, Dkt. 11 and 18-685-CJC, Dkt. 14.

Years into the litigation, in February 2022, the district court in the 2018 case ordered a competency evaluation pursuant to 18 U.S.C. § 4241(a). *See* 18-685-CJC, Dkt. 156. This resulted in an additional 6-month delay of proceedings. *See* 18-685-CJC, Dkts. 156-200. Shortly after the competency proceedings were

concluded, Petitioner pled guilty in both cases and was promptly admitted to bail. 18-685-CJC, Dkts. 230-231; 20-9-DOC, Dkts. 81-83.

On appeal, Petitioner argued that his extended pretrial detention rendered his guilty pleas involuntary. His plea agreements had identical waiver language, providing in part, “with the exception of an appeal based on a claim that defendant’s guilty pleas were involuntary,” Petitioner waived his right to appeal his conviction. 18-685-CJC, Dkt. 228 at 10; 20-9-DOC, Dkt. 80 at 9.

The Panel’s brief Order provides:

Appellee’s motion (Docket Entry No. 46) to dismiss these consolidated appeals in light of the valid appeal waivers, and/or for summary affirmance, is granted. *See United States v. Harris*, 628 F.3d 1203, 1205 (9th Cir. 2011) (knowing and voluntary appeal waiver whose language encompasses the right to appeal on the grounds raised is enforceable). Contrary to appellant’s contentions, the record shows that appellant knowingly and voluntarily pled guilty and waived his right to appeal in each case.

9th Cir. No. 22-50309, Dkt. 50.

Harris is distinguishable. Harris appealed his with-in guideline sentence, but his plea agreement waived appeal of a with-in guideline sentence, so his appeal was dismissed. 628 F.3d at 1206. Petitioner’s plea agreements provide “that, with the exception of an appeal based on a claim that defendant’s guilty pleas were involuntary, by pleading defendant is waiving and giving up any right to appeal defendant’s convictions . . .” 18-685-CJC, Dkt. 228 at 10; 20-9-DOC, Dkt. 80 at 9. Petitioner challenges the voluntariness of his guilty pleas, a claim expressly exempted from the appellate waivers, so his appeal should be decided on the merits.

STATEMENT OF THE CASE¹

This Court has “intimate[d] no view as to the point at which [pretrial] detention in a particular case might become excessively prolonged, therefore punitive, in relation to Congress’ regulatory goal.” *United States v. Salerno*, 481 U.S. 739, 747 (1987). But appellate courts have held that pretrial detention may become excessive in violation of the Due Process Clause. *See, e.g., United States v. Gelfuso*, 838 F.2d 358, 359 (9th Cir. 1988) and *United States v. Orena*, 986 F.2d 628, 630 (2d Cir. 1993).

Pretrial detention violates the Due Process Clause of the Fifth Amendment when it becomes “punitive rather regulatory, meaning there is no regulatory purpose that can rationally be assigned to the detention or the detention becomes excessive compared to the regulatory purpose.” *United States v. Torres*, 995 F.3d 695, 708 (9th Cir. 2021). *See also Nunez-Dosangos v. Superior Court*, 2024 WL 5064324, at *8 (Cal. App. 2024) (excessive pretrial confinement violated petitioner’s right to due process). By the time Petitioner pled guilty, he had already served substantially more time than his actual sentence in either case. That would appear to be an unconstitutional pretrial detention on its face. *Nunez-Dosangos*, at *6 (pretrial detention in excess of maximum punishment violates due process). *Cf. Torres*, 995 F.3d at 709-10 (“Torres’s detention is approaching the limits of what due process can tolerate. The length of Torres’s pretrial detention is significant under any metric and is deeply troubling. . . . [A]ll parties agree that at some point . . . due process will require that he be released if not tried.”). If so, guilty pleas

¹ The district court had jurisdiction under 18 U.S.C. § 3231, and the appellate court had jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742.

made while subject to a punitive pretrial detention should not be described as “voluntary.”

The question of whether Petitioner’s pretrial detention turned into a punitive and unconstitutional pretrial detention turns on whether it served a valid regulatory purpose. On appeal, Petitioner argued that at least 6 months of the delay served no valid regulatory purpose, either because a competency evaluation was not warranted, or because the district court erred by waiting years to order it. These arguments were not barred by Petitioner’s appellate waiver because they are inextricably intertwined with his challenge to the voluntariness of his guilty pleas. Because Petitioner pled guilty while subject to punitive and unconstitutional pretrial detention, his pleas were not voluntary. This claim should be heard on the merits.

REASONS FOR GRANTING THE PETITION

A guilty plea is either voluntary or it is not. A plea agreement that permits an appeal of voluntariness, necessarily preserves the right to appeal the matters that make up the claim. In other words, if a due process violation rendered a criminal defendant’s guilty plea involuntary, then appeal of that guilty plea cannot be barred by an appellate waiver that excepts voluntariness claims. The Ninth Circuit’s contrary conclusion calls for use of this Court’s supervisory power.

CONLUSION

For the foregoing reasons, Petitioner requests that this Court grant the petition for writ of certiorari.

Dated: December 29, 2024

Respectfully submitted,

s/Kenneth M. Miller
Kenneth M. Miller
Counsel for Petitioner

APPENDIX

FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

AUG 21 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

THADDEUS J. CULPEPPER,

Defendant-Appellant.

No. 22-50309

D.C. No. 2:18-cr-00685-CJC-1
Central District of California,
Los Angeles

ORDER

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

THADDEUS J. CULPEPPER,

Defendant-Appellant.

No. 23-50001

D.C. No. 2:20-cr-00009-DOC-1
Central District of California,
Los Angeles

Before: S.R. THOMAS, RAWLINSON, and COLLINS, Circuit Judges.

Appellee's motion (Docket Entry No. 46) to dismiss these consolidated appeals in light of the valid appeal waivers, and/or for summary affirmance, is granted. *See United States v. Harris*, 628 F.3d 1203, 1205 (9th Cir. 2011) (knowing and voluntary appeal waiver whose language encompasses the right to appeal on the grounds raised is enforceable). Contrary to appellant's contentions, the record shows that appellant knowingly and voluntarily pled guilty and waived

his right to appeal in each case.

DISMISSED.

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

OCT 30 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

THADDEUS J. CULPEPPER,

Defendant-Appellant.

No. 22-50309

D.C. No. 2:18-cr-00685-CJC-1
Central District of California,
Los Angeles

ORDER

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

THADDEUS J. CULPEPPER,

Defendant-Appellant.

No. 23-50001

D.C. No. 2:20-cr-00009-DOC-1
Central District of California,
Los Angeles

Before: S.R. THOMAS, RAWLINSON, and COLLINS, Circuit Judges.

In these consolidated appeals, the motion (Docket Entry No. 52) for panel reconsideration is denied, and the motion for reconsideration en banc is denied on behalf of the court. *See* 9th Cir. R. 27-10; 9th Cir. Gen. Ord. 6.11.

The motion (Docket Entry No. 51) for an extension of time to file a motion for reconsideration is denied as moot.