No.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2024

NICHOLAS CRAIG WOOZENCROFT,
***Petitioner*,**

v.

UNITED STATES OF AMERICA,
***Respondent*.**

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Title 18 U.S.C. § 1291 provides that "[f]ederal courts of appeals ordinarily have jurisdiction over appeals from 'final decisions of the district courts.'" *Cunningham v. Hamilton Cnty., Ohio*, 527 U.S. 198, 200 (1999). "'[F]inal judgments' are at the core of matters appealable under § 1291." *Sullivan v. Finkelstein*, 496 U.S. 617, 628 (1990). And in criminal cases where a judgment was entered "on less than all counts of [the] indictment," *United States v. Abrams*, 137 F.3d 704, 707 (2d Cir. 1998) (per curiam), four Circuits have acknowledged the defendant's right to appeal the judgment if he has already begun serving the sentence imposed by the judgment. In the Eleventh Circuit, however, a judgment on one count of a multi-count indictment is not appealable while any other count is pending. And the fact that the defendant already is incarcerated when he institutes the appeal is irrelevant.

Therefore, the petitioner presents the following question:

Whether a judgment which convicts and sentences a defendant on a count of a multi-count indictment is appealable under § 1291 where, although others counts remain pending, the defendant has already begun serving the sentence?

PARTIES TO THE PROCEEDINGS

The case caption contains the names of all parties to the proceedings.

RELATED PROCEEDINGS

The following proceedings are directly related to this petition:

- *United States v. Woozencroft*, No. 23-cr-60094 (S.D. Fla.) (judgment entered Oct. 27, 2023).
- *United States v. Woozencroft*, No. 23-13617 (11th Cir.) (judgment entered March 12, 2025).

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Petitioner, Mr. Nicholas Craig Woozencroft, respectfully petitions for a writ of certiorari to review a judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINION BELOW

The Eleventh Circuit judgment to be reviewed was rendered on March 12, 2025. The supporting opinion is reproduced herein as Appendix ("App.") A-1.

STATEMENT OF JURISDICTION

Mr. Woozencroft brings this petition following the Eleventh Circuit's rendition of a final judgment. This Court therefore has jurisdiction under 28 U.S.C. § 1254(1). This petition is timely. The Eleventh Circuit issued its opinion below on March 12, 2025, which made any petition for a writ of certiorari due by June 10, 2025.

STATUTORY PROVISION INVOLVED

> *The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States*, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

28 U.S.C. § 1291 (emphasis added).

STATEMENT OF THE CASE

I. Proceedings in the district court.

In May of 2023, Mr. Woozencroft was indicted in the Southern District of Florida on two counts of purchasing firearms by means of false statements about the actual buyer, in violation of 18 U.S.C. § 922(a)(6). *United States v. Woozencroft*, No. 23-cr-60094 (S.D. Fla.) (hereinafter, "S.D. Fla.") ECF No. 3. He posted bond shortly thereafter. S.D. Fla. ECF No. 8.

At trial in August of 2023, a jury found Mr. Woozencroft guilty of the second count. S.D. Fla. ECF No. 58. With respect to the first count, however, the jury inquired six times about the relationship between two conflicting firearms transaction records, one of which the government relied upon to prove the alleged statement. S.D. Fla. ECF No. 56. Following instruction from the district court and still unable to reach a unanimous verdict, the jury hung the first count. S.D. Fla. ECF No. 56; ECF No. 58; ECF No. 59. Mr. Woozencroft has been incarcerated ever since.

In October of 2023, the district court sentenced Mr. Woozencroft to forty-one months' imprisonment, to be followed by twelve months' supervised release. S.D. Fla. ECF No. 80.

II. Proceedings in the court of appeals.

Mr. Woozencroft timely appealed the judgment to the Eleventh Circuit. S.D. Fla. ECF No. 81. Before any merits briefing, however, the Eleventh Circuit directed the parties to address whether the district court had entered a final, appealable order given that it declared a mistrial as to Count 1 of the Indictment. *United States v.*

Woozencroft, No. 23-13617 (11th Cir.) (hereinafter "11th Cir.") ECF No. 13. Jointly responding, the parties submitted that the court of appeals had jurisdiction over the appeal because the district court had entered a final judgment under 28 U.S.C. § 1291 as to Count 2—a conclusion supported by 18 U.S.C. § 3582's plain meaning, case law, and treatises. 11th Cir. ECF No. 17. The Eleventh Circuit decided to carry the jurisdictional issue with the case. 11th Cir. ECF No. 23.

Mr. Woozencroft, in his merits briefs, argued that the district court's judgment must be reversed because the court prevented the jury from considering evidence that was relevant and necessary for him to establish a valid defense to both § 922(a)(6) charges. 11th Cir. ECF No. 26, ECF No. 42. Mr. Woozencroft further argued that the district court erred in enhancing his sentence under the Sentencing Guideline for obliterated serial numbers of firearms. *Id.*

Ultimately, the Eleventh Circuit declined to address the merits. Returning to the jurisdictional question, it determined that it was "bound by [its] own precedent" "to hold that [it] lack[ed] jurisdiction at this point in Woozencroft's proceedings." *Woozencroft*, No. 23-13617, 2025 WL 784328, at **1-2 & n.5. The Eleventh Circuit rendered its judgment on March 12, 2025—nearly twenty months since he was convicted and remanded to the Bureau of Prisons's custody.

REASONS FOR GRANTING THE PETITION

I. The decision below conflicts with decisions of four other Circuits on the same important matter.

A. The Circuits are divided, four to one, on the question presented.

The Second and Ninth Circuits have held that a defendant may "appeal a count on which he has been convicted and sentenced" while other counts "remain unresolved," particularly where the defendant had already begun serving the sentence. *See United States v. Abrams*, 137 F.3d 704, 707 (2d Cir. 1998) (per curiam).

The Second Circuit did so in *Abrams*. Abrams was charged with multiple counts of violating the Internal Revenue Code. *Id.* at 705. Following a jury trial, the district court declared a mistrial as to some of the counts. *Id.* at 705-06. It otherwise entered a judgment convicting Abrams of the remaining counts and sentencing him to a term of imprisonment. *Id.* at 705-06. The Second Circuit considered whether it had jurisdiction over Abrams's "appeal from th[at] judgment when other counts of the indictment (as to which the district court declared a mistrial) [we]re unresolved and await[ed] retrial." *Id.* at 707. Noting that Abrams was serving his sentence at the time, the Second Circuit expressed concern that dismissal would have forced him to serve the sentence "without acquiring the right to appeal it." *Id.* at 706-07. It therefore exercised jurisdiction and proceeded to the merits. *Id.* at 707.

In *United States v. King*, 257 F.3d 1013 (9th Cir. 2001), a factually comparable case, the Ninth Circuit followed *Abrams* in determining that appellate jurisdiction existed. After King pled guilty to nearly half of the indictment's counts, the district

court sentenced him to a term of imprisonment and ordered that he pay over $300,000 in restitution. *Id.* at 1017-19. King filed an appeal challenging the plea's validity and the restitution amount, among other things. *Id.* at 1017. The government contended that the court of appeals lacked jurisdiction because multiple counts of the indictment had "yet to be adjudicated." *Id.* at 1017, 1019. But the Ninth Circuit disagreed. *Id.* at 1020-21. Citing *Abrams*, 137 F.3d at 707, it concluding that the government's position violated "fundamental notions of due process" since King, too, would have been forced to "begin serving his sentence before obtaining the right to appeal it." *King*, 257 F.3d at 1020. And that concern, it added, "outweigh[ed] the government's concerns about piecemeal appellate review." *Id.* at 1021.

First and Seventh Circuits cases also are instructive. While those Circuits might conclude that the judgments against Abrams and King were not "final" in the technical sense, it is likely they still would conclude that Abrams's and King's incarcerations justified the First and Seventh Circuits' exercise of jurisdiction. *United States v. Leichter*, 160 F.3d 33 (1st Cir. 1998), and *United States v. Kaufmann*, 951 F.2d 1992 (7th Cir. 1992), illustrate these points.

The First Circuit "prefer[s] to view a final judgment as one disposing of all counts or claims with respect to all parties." *Leichter*, 160 F.3d at 35. That is why, in *Leichter*, it held that the indictment's "untried counts" against the appellants rendered the district court's judgment on the indictment's conspiracy count "non-final." *Id.* at 34-35.

But tellingly, the First Circuit found it necessary to "note" the district court's decision to stay execution of the appellants' sentences on the conspiracy conviction. *Id.* at 37. That decision was "important" to the jurisdictional inquiry because "'[i]mmediate appeal must be allowed before a partial sentence can be executed.'" *Id.* (alteration in original) (quoting 15B Wright, Miller, Cooper, *Federal Practice and Procedure* § 3918.7, at 537 (2d ed. 1992)). So the First Circuit's "'insistence on final disposition of all counts'" would have been unreasonable had "'an attempt [been] made to enforce the sentence on the counts that ha[d] been finally resolved.'" *Id.* Presumably, then, the First Circuit would have immediately reviewed the appellants' appeal had they been "languishing in jail awaiting trial on the remaining counts" (as in *Abrams* and *King*). *Id.* But they were not. Because of the stay, none of the appellants were in prison during the appellate proceedings. *Id.* at 35. The First Circuit therefore saw no need to change its holding. *Id.* at 37.

The Seventh Circuit has espoused the same view on similar facts. In *Kaufmann*, the Seventh Circuit held that it lacked jurisdiction over an appeal from a judgment on one count of the indictment because a mistrial had left the indictment's other counts "unresolved." 951 F.2d at 795. In making that determination, however, the Seventh Circuit acknowledged that while the district court had stayed the execution of Kaufmann's sentence, it would have been "particularly unfair to subject [him] to imprisonment or other punishment without any right to appeal." *Id.* Accordingly, the Seventh Circuit approved the stay "to mitigate that unacceptable

ramification of its analysis." *Abrams*, 137 F.3d at 707 (citing *Kaufmann*, 951 F.2d at 795).

By contrast, as the decision below shows, the fact that a defendant already is incarcerated when he appeals a judgment is irrelevant to a § 1291 analysis in the Eleventh Circuit. As in *Abrams* (and *Kaufmann*), Mr. Woozencroft was indicted on two counts: the first of which resulted in a mistrial while the second one resulted in a conviction and a sentence. *United States v. Woozencroft*, No. 23-13617, 2025 WL 784328, at *1 (11th Cir. Mar. 12, 2025) (per curiam). The first count has yet to be set for retrial—let alone actually retried. *Id.* Meanwhile, the district court had not stayed execution of Mr. Woozencroft's imprisonment term. *See id.* at *2 n.5. So like *Abrams* and *King*, he "is currently 'languishing in jail' on one count and 'awaiting trial' on the other count without the right to immediate appeal because of the unresolved status of the other count." *Id.* (first quoting *Leichter*, 160 F.3d at 37; then citing *Kaufmann*, 951 F.3d at 795).

With these facts, the First, Second, Seventh, and Ninth Circuits likely would have exercised jurisdiction, reasoning that it would be "particularly unfair" and "violate fundamental notions of due process" to continue imprisoning Mr. Woozencroft "without any right to appeal." *See King*, 257 F.3d at 1020; *Abrams*, 137 F.3d at 707; *Kaufmann*, 951 F.2d at 795. *See also Leichter*, 160 F.3d at 37. The Eleventh Circuit, in fact, referenced those very Circuits' decisions in "acknowledg[ing] th[is] important fairness concern." *Woozencroft*, No. 23-13617, 2025 WL 784328, at *2 n.5 (first citing *Abrams*, 137 F.3d at 706-07; then citing *Kaufmann*, 951 F.2d at 795;

and then citing *Leichter*, 160 F.3d at 36). It nonetheless felt "bound by [its] own precedent" "to hold that [it] lack[ed] jurisdiction at this point in Woozencroft's proceedings." *Id.* at **1-2 & n.5.

B. The question presented is important.

This is so for at least four reasons:

First, this Court's jurisdictional precedent evidences the importance of legal questions like that presented in this petition. In *Sears, Roebuck & Co. v. Mackey*, the Court expressly acknowledged "the importance of the issue in determining appellate jurisdiction." 351 U.S. 427, 429 (1956). Since then, it "frequently has considered the appealability of pretrial orders in criminal cases," *United States v. MacDonald*, 435 U.S. 850, 853 (1978), as well as the appealability of judgments entered in such cases after trial—including where, like here, the lower courts would have forced the defendant "to defer his appeal until after he had submitted to . . . months of incarceration," *Corey v. United States*, 375 U.S. 169, 173 (1963).

Second, the question presented implicates criminal defendants' constitutional interests. As Justice Barrett noted last Term, "where trial itself threatens certain constitutional interests, [the Court] ha[s] treated the trial court's resolution of [an] issue as a 'final decision' for purposes of appellate jurisdiction." *Trump v. United States*, 603 U.S. 593, 654 (2024) (Barrett, J., concurring in part) (first citing *MacDonald*, 435 U.S. at 854-56; then citing 28 U.S.C. §§ 1257, 1291). In *Corey*, for instance, the Court rejected the interpretation of a statute that would have required a defendant to "defer his appeal until after he had submitted to the three or

six months of incarceration and diagnostic study prescribed by the statute." 375 U.S. at 173. Among other reasons for this decision, the Court determined that such a requirement "might raise constitutional problems of significant proportions." *Id.* At least one Circuit has squarely opined that mandating a criminal defendant to "begin serving his sentence before obtaining the right to appeal it[] would violate fundamental notions of due process." *King*, 257 F.3d at 1020.

These are precisely the interests that are at stake here. The approach followed by the Eleventh Circuit in the decision below would, as the Second Circuit concluded in *Abrams*, force criminal defendants to serve a sentence—which routinely includes imprisonment—"without acquiring the right to appeal it." *Abrams*, 137 F.3d at 706-07.

Third, the question presented in recurring. Barely two months after dismissing Mr. Woozencroft's appeal, the Eleventh Circuit dismissed another appeal from a judgment that "disposed of the count of conviction but not the other counts charged in the indictment." *United States v. Landrum*, No. 24-13964, 2025 WL 1452471, at *1 (11th Cir. May 21, 2025) (per curiam). Because the district court had declared a mistrial as to those other counts, the Eleventh Circuit held that the judgment was not "final or otherwise appealable." *Id.*

And fourth, in light of four-Circuit conflict, geography alone now determines whether someone charged with multiple offenses would immediately "obtain[] the right to appeal," or would be forced to "defer" the appeal and "languish[] in jail" for

months—if not years. *See Corey*, 375 U.S. at 173; *King*, 257 F.3d at 1020; *Leichter*, 160 F.3d at 37.

II. This case presents an excellent vehicle for review.

This case cleanly implicates the Circuit split. This case, as well as *Leichter*, *Abrams*, *Kaufmann*, and *King* present the same core facts. Namely:

- the defendant was indicted on multiple counts;
- at least one count resulted in a conviction and sentence;
- at least one other count was never adjudicated, for one reason or another;
- and that count remained pending when the defendant appealed the conviction and sentence.

For these same reasons, each case presented the same core issue: Whether the judgment was appealable under § 1291? Furthermore, Mr. Woozencroft would be entitled to relief in any other Circuit that has addressed the issue. The Eleventh Circuit itself acknowledged that Mr. Woozencroft is serving his imprisonment term because the district court did not stay the execution of his sentence. *Woozencroft*, No. 23-13617, 2025 WL 784328, at *2 n.5. So Mr. Woozencroft would been entitled to an "immediate appeal" of the district court's judgment. *See Leichter*, 160 F.3d at 37.

III. This decision below is wrong.

The Eleventh Circuit's decision is not, in the Second Circuit's words, "faithful to the articulation by Congress and [this] Court as to the nature of a final judgment in criminal proceedings." *See Abrams*, 137 F.3d at 707.

With respect to Congress, "[t]he appellate jurisdiction in the Federal system of procedure is purely statutory." *Heike v. United States*, 217 U.S. 423, 428 (1910). And 18 U.S.C. § 3582(b) already provides some guidance as to which judgments could serve as a basis for appellate jurisdiction under statutes like § 1291. It states that, "[n]otwithstanding the fact that a sentence to imprisonment can subsequently be" "modified," "corrected," or "appealed and modified" pursuant to other statutes irrelevant to this petition, "a judgment of conviction that includes such a sentence constitutes a final judgment for all other purposes." 28 U.S.C. § 3582(b). Logically, such "other purposes" would include appealing from "final decisions of the district courts of the United States." 28 U.S.C. § 1291.

The judgment from which Mr. Woozencroft has appealed satisfies the plain meaning of § 3582(b). Because the judgment includes a sentence of imprisonment, *see Woozencroft*, No. 23-13617, 2025 WL 784328, at *1, it "constitutes a final judgment" for appellate purposes under § 1291. *See* 28 U.S.C. § 3582(b).

With respect to this Court, it "has previously said that a judgment that imposes 'discipline' may still be 'freighted with sufficiently substantial indicia of finality to support an appeal.'" *Dolan v. United States*, 560 U.S. 605, 617 (2010) (quoting *Corey v. United States,* 375 U.S. at 174). And when such discipline "has been imposed, the defendant is entitled to review." *Corey*, 375 U.S. at 174. The judgment here has subjected Mr. Woozencroft to such discipline. Having been convicted, he has been "deprived of his liberty" and "the State [has] confine[d] him and subject[ed] him to the rules of its prison system." *Meachum v. Fano*, 427 U.S. 215, 224 (1976).

Finally, as Justice Barrett acknowledged in *Trump*, "where trial itself threatens certain constitutional interests, [this Court] ha[s] treated the trial court's resolution of [an] issue as a 'final decision' for purposes of appellate jurisdiction." 603 U.S. at 654 (Barrett, J., concurring in part) (first citing *MacDonald*, 435 U.S. at 854-56; then citing 28 U.S.C. §§ 1257, 1291). In this regard, the Court has held that compelling a defendant "to defer his appeal until after he had submitted to . . . months of incarceration" "might raise constitutional problems of significant proportions." *Corey*, 375 U.S. at 173. And as other Circuits have cautioned: The Eleventh Circuit's decision below, "under which [Mr. Woozencroft] would begin serving his sentence before obtaining the right to appeal it, would violate fundamental notions of due process." *See King*, 257 F.3d at 1020 (citing *Abrams,* 137 F.3d at 707). Thus, the trial here, which resulted in a conviction and imprisonment sentence, has threatened Mr. Woozencroft's constitutional interests. *See Trump*, 603 U.S. at 654 (Barrett, J., concurring in part).

CONCLUSION

For the foregoing reasons, the Court should grant this petition for a writ of certiorari.

Respectfully submitted,

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