

NO. 24-7461

IN THE SUPREME COURT OF THE UNITED STATES

PEDRO A. MARTÍNEZ-MERCADO, PETITIONER,

v.

UNITED STATES OF AMERICA, RESPONDENT,

ORIGINAL

FILED

JUN 16 2025

OFFICE OF THE CLERK
SUPREME COURT, U.S.

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


PEDRO A. MARTÍNEZ MERCADO
1457 52nd Street
North Bergen, NJ 07047
Pro-se Petitioner
(Phone): (551) 482-7854

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

PEDRO A. MARTÍNEZ-MERCADO, *PETITIONER*,

v.

UNITED STATES OF AMERICA, *RESPONDENT*,

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

Petitioner asks that a writ of certiorari issue to review the opinion and judgment entered by the United States Court of Appeals for the First Circuit on March 19, 2025.

PARTIES TO THE PROCEEDING

The caption of this case names all parties to the proceeding in the court whose judgment is sought to be reviewed.

RELATED PROCEEDINGS

- United States v. Martinez-Mercado, No. 3:18-CR-569-RAM-1 (District of Puerto Rico) (criminal judgment entered Dec. 16, 2022).
- United States v. Martinez-Mercado, No. 23-1067, (USCOA for the First Circuit, March 19, 2025) (published).

TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW.....	i
PARTIES TO THE PROCEEDING.....	ii
RELATED PROCEEDINGS.....	ii
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES.....	4
OPINION BELOW.....	5
JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES.....	5
FEDERAL STATUTES INVOLVED.....	5
STATEMENT.....	7
REASONS FOR GRANTING THE WRIT.....	10
CONCLUSION.....	13
PROOF OF SERVICE.....	13
APPENDIX (<u>United States v. Martinez-Mercado</u> , No. 23-1067; USCOA for the First Circuit; March 19, 2025; Published)	15

TABLE OF AUTHORITIES

Cases:

United States v. American Grain & Related Industries, 763 F.2d 312 (8th Cir. 1985) Pg(s). 11

United States v. Martinez-Mercado, No. 3:18-CR-569-RAM-1 (District of Puerto Rico) (criminal judgment entered Dec. 16, 2022) Pg(s). 4

United States v. Martinez-Mercado, No. 23-1067, (USCOA for the First Circuit, March 19, 2025) (published) Pg(s). 4, 5

United States v. Wiseman, 274 F.3d 1235 (9th Cir. 2001). Pg(s). 11

Statutes and Rules:

Title 18 U.S.C. § 641 Pg(s). 5, 7, 9, 10, 11, 12, 13

Title 18 U.S.C. § 1711 Pg(s). 6, 7, 9, 10, 11, 13

28 U.S.C. § 1254(1) Pg(s). 5

Fed. R. Crim. P. 29 Pg(s). 8, 13

Sup. Ct. R. 13.1 Pg(s). 5

OPINION BELOW

A copy of the published opinion of the court of appeals, United States v. Martinez-Mercado, No. 23-1067; USCOA for the First Circuit; March 19, 2025, is reproduced at Appendix 1-24.

JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES

The opinion and judgment of the United States Court of Appeals for the First Circuit were entered on March 19, 2025. This petition is filed within 90 days after the opinion and judgment was entered. See Sup. Ct. R. 13.1. The Court has jurisdiction to grant certiorari under 28 U.S.C. § 1254(1).

FEDERAL STATUTES INVOLVED

Title 18 U.S.C. § 641 provides:

Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof; or

Whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted—

Shall be fined under this title or imprisoned not more than ten years, or both; but if the value of such property in the aggregate, combining amounts from all the counts for which the defendant is convicted in a single case, does not exceed the sum of \$1,000, he shall be fined under this title or imprisoned not more than one year, or both.

The word "value" means face, par, or market value, or cost price, either wholesale or retail, whichever is greater.

Title 18 U.S.C. § 1711 provides:

Whoever, being a Postal Service officer or employee, loans, uses, pledges, hypothecates, or converts to his own use, or deposits in any bank, or exchanges for other funds or property, except as authorized by law, any money or property coming into his hands or under his control in any manner, in the execution or under color of his office, employment, or service, whether or not the same shall be the money or property of the United States; or fails or refuses to remit to or deposit in the Treasury of the United States or in a designated depository, or to account for or turn over to the proper officer or agent, any such money or property, when required to do so by law or the regulations of the Postal Service, or upon demand or order of the Postal Service, either directly or through a duly authorized officer or agent, is guilty of embezzlement; and every such person, as well as every other person advising or knowingly participating therein, shall be fined under this title or in a sum equal to the amount or value of the money or property embezzled, whichever is greater, or imprisoned not more than ten years, or both; but if the amount or value thereof does not exceed \$1,000, he shall be fined under this title or imprisoned not more than one year, or both.

This section shall not prohibit any Postal Service officer or employee from depositing, under the direction of the Postal Service, in a national bank designated by the Secretary of the Treasury for that purpose, to his own credit as Postal Service officer or employee, any funds in his charge, nor prevent his negotiating drafts or other evidences of debt through such bank, or through United States disbursing officers, or otherwise, when instructed or required so to do by the Postal Service, for the purpose of remitting surplus funds from one post

office to another.

STATEMENT

Petitioner raises his challenges after being convicted for one count of misappropriation of federal funds in violation of 18 U.S.C. § 1711, and a second count of theft of government property in violation of 18 U.S.C. § 641. Petitioner was sentenced to a total term of six (6) months of imprisonment. He was also sentenced to two years of supervised release. Judgment was first entered on December 16th and then on December 20th, 2022, solely to reflect the correct case number.

COURSE OF THE PROCEEDINGS

On September 6, 2018, a grand jury sitting in the District of Puerto Rico brought a two count indictment charging Petitioner with one count of misappropriation of federal funds in violation of 18 U.S.C. § 1711 and another count of theft of government property in violation of 18 U.S.C. § 641.

Before trial the government filed a motion in limine seeking a jury instruction and evidentiary ruling barring the defense from presenting evidence or arguing that Petitioner had repaid the funds. Despite the lower court's acknowledgment that First Circuit had not ruled on the issue, it granted the government's motion barring evidence or argument regarding Petitioner's repayment of

the funds. Petitioner was prevented from proffering at trial any evidence or argument pertaining to his repayment of the funds. The case proceeded to trial and a jury was empaneled on February 28, 2022.

Subsequently, Petitioner took the stand in his own defense. During his testimony it was established that prior to becoming aware of any formal federal investigation he had sent a priority mail containing money orders, deposit slips, and receipts encompassing the September 18th remittance.

At the conclusion of the case, Petitioner moved for a judgment of acquittal under Federal Rule of Criminal Procedure ("Fed. R. Crim. P.") 29 because there was insufficient evidence of specific intent to sustain a conviction on both counts. In the alternative, Petitioner moved for a mistrial due to erroneously admitted evidence concerning alleged forged signatures in several deposit slips, a matter wholly irrelevant to the issue of whether Petitioner misappropriated postal funds or committed theft of government property. This confused the jury to the extent that they were unable to properly consider the elements required by each count to convict. However, Petitioner's Rule 29 motion was once again overruled by the district court.

On March 8, 2022, the jury found Petitioner guilty on both counts. As previously indicated, Petitioner filed a motion for

judgment of acquittal or, in the alternative, for a new trial. The government resisted, and on August 5, 2022, the Court entered an order denying Petitioner's request for judgment of acquittal as to either charge. Judgment was entered on December 16, 2022. An amended judgment was entered on December 20, 2022, solely to reflect the correct case number.

Petitioner filed a timely Notice of Appeal on December 27, 2022. On appeal, Petitioner argued that the judgment of the District Court must be vacated because the District Court erred in excluding relevant, admissible, and highly probative evidence regarding his state of mind which was offered to negate the intent element of the charged crimes. Petitioner's defense was that he did not have the requisite criminal intent and that he paid back the funds for the September 18, 2017, remittance. By excluding evidence and improperly giving instruction concerning the required intent to convict, the jury was left with the mislead impression that the evidence was sufficient to render a guilty verdict.

In Petitioner's case, the court of appeals affirmed the conviction of Petitioner for misappropriating postal funds and converting government property, in violation of 18 U.S.C. §§ 1711 and 641. The First Circuit found that Petitioner had waived his arguments concerning the exclusion of repayment evidence and the jury instructions by failing to preserve the issues and then

expressly agreeing to the court's rulings during trial. Although the court agreed that one of the prosecutor's remarks was inappropriate—suggesting that Petitioner's defense was typical of those with no real defense—it found the comment isolated and not prejudicial enough to constitute plain error. The appellate court also rejected Petitioner's sufficiency-of-the-evidence challenge, concluding that a reasonable jury could find he knowingly converted postal funds for his own use. Accordingly, the court affirmed both his convictions and the six-month prison sentence imposed by the district court.

REASONS FOR GRANTING THE WRIT

This Court should grant certiorari to resolve a significant and unsettled legal question concerning whether a defendant's intent to repay misappropriated or converted government funds is relevant to the element of criminal intent under 18 U.S.C. §§ 1711 and 641.

Petitioner was convicted for misappropriating postal funds and converting government property after taking a sealed remittance bag during the humanitarian crisis caused by Hurricane Maria and using some of the funds to support post-disaster recovery efforts. He returned the funds before learning of a formal federal investigation. His core defense, that he lacked the requisite

criminal intent because he intended to repay the funds—was excluded from trial by the district court.

This case presents a compelling vehicle for review because it presents a question that has divided the federal courts of appeal. As noted in the Petitioner's brief, some circuits, including the Eighth and Ninth Circuits, have held that evidence of an intent to repay can be probative of the absence of criminal intent under analogous statutes, even if not a complete defense. For example, in United States v. American Grain & Related Industries, 763 F.2d 312 (8th Cir. 1985), and United States v. Wiseman, 274 F.3d 1235 (9th Cir. 2001), the courts allowed evidence of repayment or intent to repay as relevant to whether a defendant acted willfully or with criminal intent. The First Circuit, however, has not squarely addressed this issue under §§ 1711 or 641 and affirmed the district court's exclusion of such evidence, effectively treating it as legally irrelevant.

This discrepancy creates an intra-circuit tension that warrants resolution. The legal uncertainty affects a substantial number of federal prosecutions involving alleged misuse of government funds, particularly by public employees or fiduciaries acting during emergencies or under extraordinary circumstances. Denying a jury the opportunity to consider a defendant's intent to

repay, even when repayment is made before an investigation begins, undermines the fair determination of criminal intent.

Additionally, the Petition implicates core principles of criminal law, including the presumption of *mens rea*. Statutes like § 641 require the government to prove that the defendant acted with "intent to deprive" the United States of its property. Petitioner argues that the district court's instructions and the exclusion of repayment evidence effectively diluted this burden, allowing the jury to convict based on a lesser showing of general intent (i.e., knowingly using the funds), rather than specific criminal intent to permanently deprive.

The case also presents broader implications for prosecutorial discretion and equitable justice in emergency contexts. Petitioners' conduct occurred during the chaos of a natural disaster, where rigid application of technical procedures is difficult and discretionary judgments are often required to serve the public interest. The refusal to allow a jury to consider that context, as demonstrated with the intent to repay, raises questions about the balance between regulatory enforcement and criminal punishment.

In sum, this Petition presents a live, recurring, and consequential legal issue that has not been resolved uniformly

across the circuits. This Honorable Court should grant certiorari to clarify whether evidence of intent to repay is admissible and relevant in prosecutions under §§ 1711 and 641, ensuring consistency in federal criminal jurisprudence and safeguarding defendants' rights to present a complete defense.

CONCLUSION

FOR THESE REASONS, Petitioner asks this Honorable Court to grant a writ of certiorari.

PROOF OF SERVICE

I, PEDRO A. MARTÍNEZ MERCADO, do swear or declare that on this date, June 16, 2025, as required by Supreme Court Rule 29, I have served the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

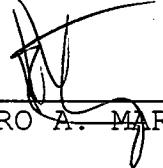
AUSA Camille Garcia-Jimenez
AUSA Michele Colon
AUSA Thomas F. Klumper

DOJ-USAO
District of Puerto Rico
Torre Chardon
350 Carlos Chardon Street
Suite 1201
San Juan, PR 00918

RESPECTFULLY SUBMITTED.

I declare under penalty of perjury that the foregoing is true
and correct.

In North Bergen, New Jersey, this 16th day of June 2025.



PEDRO A. MARTÍNEZ MERCADO