No. _____

IN THE SUPREME COURT OF THE UNITED STATES

HECTOR TORRES-ESPINOZA,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

KARA HARTZLER
Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, California 92101
Telephone: (619) 234-8467

Attorneys for Petitioner

QUESTION PRESENTED

Whether an affirmative verbal invocation of a Fifth Amendment right is admissible evidence of guilt at a criminal trial.

PARTIES, RELATED PROCEEDINGS, AND RULE 29.6 STATEMENT

The parties to the proceeding below were Petitioner Hector Torres-Espinoza and the United States. There are no nongovernmental corporate parties requiring a disclosure statement under Supreme Court Rule 29.6.

All proceedings directly related to the case, per Rule 14.1(b)(iii), are as follows:

- *United States v. Espinoza,* U.S. District Court for the Southern District of California, Order issued August 28, 2023.
- *United States v. Espinoza*, No. 23-4156, U.S. Court of Appeals for the Ninth Circuit. Memorandum disposition issued October 31, 2025.
- *United States v. Espinoza*, No. 23-4156, U.S. Court of Appeals for the Ninth Circuit. Order denying petition for rehearing. December 11, 2025.

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

Petitioner Hector Torres-Espinoza respectfully prays that the Court issue a writ of certiorari to review the order of the United States Court of Appeals for the Ninth Circuit entered on December 11, 2025.

INTRODUCTION

The Court should grant this petition to clarify a simple yet critical principle—that just as the admission of an accused's *silence* at trial violates the Fifth Amendment, so too does the admission of an accused's *verbal invocation* of the right to silence. Though this Court has said so explicitly, and most circuits have agreed, the Ninth Circuit holds that the verbal invocation of a Fifth Amendment right may be admissible at a criminal trial if it is ambiguous. Given that silence itself is "insolubly ambiguous," *Doyle v. Ohio*, 426 U.S. 610, 617 (1976), it makes no sense to treat an ambiguous verbal invocation as different than a silent invocation. Because the Ninth Circuit's approach is out of step with this Court's precedent and every

other court of appeals to have addressed the issue, this Court should grant the petition for certiorari.

OPINION BELOW

The unpublished decision of the U.S. Court of Appeals for the Ninth Circuit is reproduced on pages 1 through 4 of the appendix. The court's denial of Petitioner's petition for rehearing can be found on page 5 of the appendix.

JURISDICTION

The court of appeals entered judgment on October 31, 2025. Pet. App. 1a. The court denied the petition for rehearing on December 11, 2025. Pet. App. 5a. This Court has jurisdiction under 28 U.S.C. § 1254(1)(1).

STATEMENT OF THE CASE

One evening in January 2023, a Kia SUV approached a port of entry at the U.S./Mexico border near Tecate, California. The SUV was sent to secondary inspection, where an officer asked the driver to step out of the car and open all the doors. When the officer looked over the third row of seats, he saw Mr. Espinoza lying down under a black cover. He arrested Mr. Espinoza and charged him with attempted illegal reentry under 8 U.S.C. § 1326. The case then proceeded to trial.

At the first trial, the defense argued that Mr. Espinoza may have simply been sleeping in the back seat when the driver decided to go through the port of entry. Accordingly, he argued, the government could not prove that Mr. Espinoza had the necessary intent to reenter the United States illegally. The jury could not reach a verdict, and the case ended in a mistrial.

At the second trial, the government presented the same witnesses but sought to introduce a video of Mr. Espinoza being advised of his *Miranda* rights after the arrest. After the officer advised Mr. Espinoza of his rights, the following exchange occurred:

[Officer]:	Understanding your rights, Hector, would you like to speak to us today or do you want to wait for an attorney?
[Mr. Espinoza]:	I mean, it's pretty simple. I mean, I tried coming in illegal and the charges that I'm accepting. I mean, *I don't see any reason why to keep talking though*. The charges are there, and it's pretty obvious that I tried coming in illegally. . . .
[Officer]:	Uh-huh.
[Mr. Espinoza]:	And I knew – like I said, I knew the consequences of trying to come back, and here we are.
[Officer]:	Okay. I have questions regarding all that stuff, but I can't ask you unless you want to talk to me.
[Mr. Espinoza]:	Well, I mean –
[Officer]:	If not, if you want to wait for an attorney, that's fine. That's why – I can't do that until you answer the question. Do you want to wait for an attorney or would you like to speak with us today?
[Mr. Espinoza]:	Uh-huh. I mean, *I don't see the point of talking*. I mean, you're –
[Officer]:	Okay. So you want to wait for your attorney.
[Mr. Espinoza]:	*I guess*. I mean –
[Officer]:	I can't – I'm the arresting officer.
[Mr. Espinoza]:	Yeah.
[Officer]:	I can't –

[Mr. Espinoza]: Well, no. I – I understand. I just –

[Officer]: I can't advise you what to do. But like --

[Mr. Espinoza]: Well, I mean, it -- I mean, my -- from my perspective, I get the -- like, you asked if I understood the charges, what they are or whatever, coming in illegal after de-- getting -- being deported. And I mean, it's pretty simp–pretty obvious and pretty straightforward *so I don't see the point of, you know, talking.*

[Officer]: Okay. So you want to wait for an attorney?

[Mr. Espinoza]: *I guess, yeah.*

[Officer]: Okay.

[Mr. Espinoza]: *I mean, sure.*

[Officer]: Okay. It's – it's – it's a "yes" or "no" question.

[Mr. Espinoza]: Okay. *Yes.* Sorry.

[Officer]: It's not, like, a "sure," "fine," or "I guess."

[Mr. Espinoza]: I know. *Okay.*

[Officer]: It's not – that's not what I'm looking for.

[Mr. Espinoza]: Oh, okay. I'm sorry.

[Officer]: It's a very straight --

[Mr. Espinoza]: Okay. *Yes.*

[Officer]: It's either a "yes" or "no." So you are saying "yes?"

[Mr. Espinoza]: *(Nods head, yes.)*

[Officer]: Okay. So, yes, you want to wait for an attorney?

[Mr. Espinoza]: *Yes.*

(emphases added). Mr. Espinoza then signed a form officially invoking his *Miranda* rights and declining to answer any questions.

At the second trial, the district court admitted portions of this video over Mr. Espinoza objections. The government then brought two new witnesses to present the following excerpts from this video:

> [Mr. Espinoza]: I mean, it's pretty simple. I mean, I tried coming in illegal and the charges that I'm accepting. I mean*, I don't see any reason why to keep talking though*. The charges are there, and it's pretty obvious that I tried coming in illegally. . . .
>
> [Officer]: Uh-huh.
>
> [Mr. Espinoza]: And I knew – like I said, I knew the consequences of trying to come back, and here we are.
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> [Mr. Espinoza]: Well, I mean, it -- I mean, my -- from my perspective, I get the -- like, you asked if I understood the charges, what they are or whatever, coming in illegal after de-- getting -- being deported. And I mean, it's pretty simp–pretty obvious and pretty straightforward so *I don't see the point of, you know, talking.*

(emphases added).

During closing arguments, the prosecutor relied heavily on this video. The first words out of the prosecutor's mouth during his closing argument were:

> "I mean, it's pretty simple. I mean, I tried coming in illegal. It's pretty obvious that I tried coming in illegally. Coming in illegal after being deported, it's pretty obvious and pretty straightforward."
>
> Ladies and gentlemen, those are statements by the defendant, Hector Torres Espinoza, that were made to Officer Nicasio after she had arrested him at the port of entry.

This time, the jury reached a unanimous verdict and found Mr. Espinoza guilty.

On appeal, Mr. Espinoza argued that the admission of these statements violated the Fifth Amendment guarantee that no person "shall be compelled in any criminal case to be a witness against himself." He explained that this Court's decision in *Doyle v. Ohio*, 426 U.S. 610 (1976), prevents the government from using an accused's silence against him at trial. What's more, this Court has held that "silence does not mean only muteness; it includes the statement of a desire to remain silent as well as of a desire to remain silent until an attorney has been consulted." *Wainwright v. Greenfield*, 474 U.S. 284, 294 n. 13 (1986)). Because the video excerpts the government presented were explanations of Mr. Espinoza's decision to remain silent—i.e., "statement[s] of a desire to remain silent"—he thus argued that the district court erred in admitting them.

In response, the government's sole argument was that Mr. Espinoza's invocation of his right to remain silent was admissible because it was "ambiguous." To do so, it relied on precedent holding that the ambiguous invocation of a Fifth Amendment does not require an officer to *stop questioning* a suspect during an interrogation. But the government did not explain how this precedent applied to the separate and distinct question of whether an individual's actual "statement of a desire to remain silent" was admissible. And the government conceded that if the admission of these statements was error, it was not harmless.

In a memorandum disposition, the Ninth Circuit agreed with the government, stating that "Espinoza did not clearly and unambiguously invoke his right to silence or counsel." Pet. App. 2a. In contrast to other defendants who had

"unambiguously invoked [their] right to silence," the Ninth Circuit found that "Espinoza's statements were equivocal," and "[o]ur precedent demands a more definite invocation." Pet. App. 2a–3a. The court thus concluded that "[b]ecause Espinoza did not unambiguously communicate a desire to remain silent or to contact an attorney, the admission of his statements at trial did not violate the Fifth Amendment." Pet. App. 3a.

Mr. Espinoza petitioned for rehearing, arguing that the Ninth Circuit's decision squarely contradicted this Court's longstanding precedent. Specifically, he pointed to *Doyle*'s statement that "every post-arrest silence is insolubly ambiguous" and that if a person's *ambiguous silence* cannot be used against them, neither can an *ambiguous explanation* of that silence. The panel voted to deny the petition, and the full court declined to rehear the case en banc. Pet. App. 5a. This petition follows.

REASONS FOR GRANTING THE PETITION

I.

Unlike the Court and every other circuit to have decided the issue, the Ninth Circuit holds that an ambiguous verbal invocation of a Fifth Amendment right is admissible evidence of guilt.

For fifty years, this Court has held that prosecutors may not use a suspect's silence as evidence of his guilt at trial. In *Doyle v. Ohio*, 426 U.S. 610, 613 (1976), a prosecutor cross-examined a defendant at trial by repeatedly asking why the defendant did not tell his version of events to an investigating officer. The Court reversed, holding that the Fifth Amendment precluded the use of a person's post-*Miranda* silence for impeachment purposes. *Id*. at 617. Specifically, the Court explained that "[s]ilence in the wake of these warnings may be nothing more than

the arrestee's exercise of these *Miranda* rights," which could not be used as evidence against him at trial. *Id*.

A decade after *Doyle*, this Court then confirmed that "silence does not mean only muteness; it includes the statement of a desire to remain silent, as well as of a desire to remain silent until an attorney is consulted." *Wainwright v. Greenfield,* 474 U.S. 284, 295 n.13 (1985). Thus, neither a defendant's silence nor his "statement of a desire to remain silent" may be used as evidence of guilt at trial. *Id.*

Every federal court of appeal that has addressed this issue has applied *Greenfield*'s holding that an affirmative invocation of the right to silence may not be admitted to establish guilt.[1] In *Fields v. Leapley*, 30 F.3d 986, 990 (8th Cir. 1994), a prosecutor attempted to use the defendant's statements to an officer—that "I ain't saying nothing" and "I won't talk to you about that without an attorney"—to impeach the defendant at trial. The Eighth Circuit rejected the use of these statements, explaining that "[u]nder *Greenfield,* both of the statements that the prosecutor used to impeach Fields' trial testimony were invocations of Fields' *Miranda* rights." *Id.* Thus, "Fields' invocation of his *Miranda* rights, i.e., the 'statements' quoted by the prosecutor, are treated not as statements, but as 'silence' for purposes of *Doyle*." *Id.* Accordingly, "the prosecutor twice violated *Doyle* by impeaching Fields' trial testimony with his prior invocation of his *Miranda* rights." *Id.* at 991.

[1] The First, Third, and D.C. Circuits do not appear to have addressed this issue.

The Sixth Circuit reached the same conclusion. In *Combs v. Coyle*, 205 F.3d 269, 279 (6th Cir. 2000), the prosecutor repeatedly relied on the defendant's statement to a police officer that the officer should "talk to my lawyer." Although this statement referred "not to silence but to his right to an attorney," the Sixth Circuit explained that it was "best understood as communicating a desire to remain silent outside the presence of an attorney." *Id.* Relying on *Greenfield*, the court held that "the prosecutor's comment on Combs's prearrest silence in its case in chief and the trial court's instruction permitting the jury to use Combs's silence as substantive evidence of guilt violated Combs's Fifth Amendment rights." *Id.* at 279, 286.

Other circuit courts have similarly relied on *Greenfield* to hold that "[a] defendant's exercise of his right to remain silent includes the defendant's expressed desire to remain silent until counsel has been consulted," which may not be used as substantive evidence of guilt. *Jones v. Stotts,* 59 F.3d 143, 146 (10th Cir. 1995) (citing *Greenfield*); *see also United States v. Okatan*, 728 F.3d 111, 116 (2d Cir. 2013) (holding that the Fifth Amendment "allows a person to express his desire to remain silent, or to remain silent until he has the assistance of an attorney") (citing *Greenfield*); *United States v. Askew*, 98 F.4th 116, 126 (4th Cir. 2024) ("As established by the Supreme Court in *Doyle v. Ohio*, the Due Process Clause guarantees that defendants who invoke their constitutional rights to silence and counsel will not have that invocation used against them at trial.") (citing *Greenfield*); *Engle v. Lumpkin,* 33 F.4th 783, 792 (5th Cir. 2022) (quoting *Greenfield*

to state that "'silence' in this context 'does not mean only muteness; it includes the statement of a desire to remain silent, as well as of a desire to remain silent until an attorney has been consulted'"); *Vanda v. Lane*, 962 F.2d 583, 585 (7th Cir. 1992) (acknowledging that in Greenfield, "the Supreme Court applied Doyle to requests for an attorney"); *Hill v. Turpin*, 135 F.3d 1411, 1414 (11th Cir. 1998) ("Thus, although the improper references at issue in *Doyle* concerned only the defendants' post-*Miranda* silence, the prohibition extends equally to impeachment use of a defendant's post-*Miranda* invocation of the right to counsel.") (citing *Greenfield*).

Importantly, *Greenfield* also held that the *ambiguous nature* of an affirmative invocation had no effect on its admissibility. In *Greenfield*, prosecutors attempted to use an affirmative invocation of counsel to establish that a defendant comprehended *Miranda* warnings for the purpose of defeating an insanity defense. 474 U.S. at 283. The state argued that reliance on *Doyle*'s "insolubly ambiguous" silence was "far more probative of sanity than of commission of the underlying offense." *Id.* But the Court in *Greenfield* squarely rejected this theory, stating that "the ambiguity of the defendants' silence in *Doyle* merely added weight to the Court's principal rationale, which rested on the implied assurance contained in the *Miranda* warning." *Id.* at 284. Thus, the state's claim that ambiguity renders an invocation admissible "fails entirely to meet the problem of fundamental unfairness that flows from the State's breach of its implied assurances." *Id.* at 284.

In sum, the Court held in *Greenfield* that prosecutors may not use an ambiguous verbal invocation of the Fifth Amendment right to counsel to establish a

defendant's guilt at trial. Furthermore, no federal court of appeals has ever claimed it may use a defendant's ambiguous verbal invocation of their Fifth Amendment right for this purpose—except the Ninth Circuit.

Unlike *Greenfield* and other circuits, the Ninth Circuit holds that the ambiguity of a verbal invocation of the right to counsel may render it admissible. In its decision here, for instance, the Ninth Circuit held that Mr. Espinoza's statements invoking his right to counsel were admissible because he "did not clearly and unambiguously invoke his right to silence or counsel." Pet. App. 2a. In contrast to other defendants who had "unambiguously invoked [their] right to silence," the Ninth Circuit found that "Espinoza's statements were equivocal," and "[o]ur precedent demands a more definite invocation." Pet. App. 2a-3a. The court thus concluded that "[b]ecause Espinoza did not unambiguously communicate a desire to remain silent or to contact an attorney, the admission of his statements at trial did not violate the Fifth Amendment." Pet. App. 3a.

No other circuit court has relied on the ambiguity of a defendant's invocation to determine its admission in this context. To be clear, the Court and other circuits *have* held that "[i]f the suspect's statement is not an unambiguous or unequivocal request for counsel, the officers have no obligation to *stop questioning him*." *Davis v. United States*, 512 U.S. 452, 461–62 (1994) (emphasis added). This is because ambiguity forces police officers to "make difficult judgment calls about whether the suspect in fact wants a lawyer even though he has not said so, with the threat of suppression if they guess wrong." *Id.* at 461.

But ambiguity does not require courts to make "difficult judgment calls" *in the moment*—as an interrogating officer would. Rather, it only requires courts to consider *in retrospect* whether the individual was asserting "a desire to remain silent." *Greenfield,* 474 U.S. at 295 n.13. If they were, then the use of such statements to prove guilt presents "the problem of fundamental unfairness that flows from the [government's] breach of its implied assurances" that such statements would not be used against them. *Id*. at 284. Thus, any case law judging the ambiguity of an invocation for purposes of halting an officer's questioning does not apply here.

Even assuming that Mr. Espinoza's initial responses were ambiguous, there is no question he was asserting "a desire to remain silent." *Greenfield,* 474 U.S. at 295 n.13, as this exchange shows:

[Officer]:	Understanding your rights, Hector, would you like to speak to us today or do you want to wait for an attorney?
[Mr. Espinoza]:	I mean, it's pretty simple. I mean, I tried coming in illegal and the charges that I'm accepting. *I mean, I don't see any reason why to keep talking though*. The charges are there, and it's pretty obvious that I tried coming in illegally. . . .
[Officer]:	Uh-huh.
[Mr. Espinoza]:	And I knew – like I said, I knew the consequences of trying to come back, and here we are. . . . I mean, my -- from my perspective, I get the -- like, you asked if I understood the charges, what they are or whatever, coming in illegal after de-- getting -- being deported. And I mean, it's pretty simp–pretty obvious and pretty straightforward *so I don't see the point of, you know, talking.*

[Officer]: Okay. So you want to wait for an attorney?

[Mr. Espinoza]: *I guess, yeah.*

[Officer]: Okay.

[Mr. Espinoza]: *I mean, sure.*

[Officer]: Okay. It's – it's – it's a "yes" or "no" question.

[Mr. Espinoza]: Okay. *Yes.* Sorry.

[Officer]: It's not, like, a "sure," "fine," or "I guess."

[Mr. Espinoza]: I know. *Okay.*

[Officer]: It's not – that's not what I'm looking for.

[Mr. Espinoza]: Oh, okay. I'm sorry.

[Officer]: It's a very straight --

[Mr. Espinoza]: Okay. *Yes.*

[Officer]: It's either a "yes" or "no." So you are saying "yes?"

[Mr. Espinoza]: *(Nods head, yes.)*

[Officer]: Okay. So, yes, you want to wait for an attorney?

[Mr. Espinoza]: *Yes.*

(emphases added).

Even assuming Mr. Espinoza's statements at the beginning of this exchange were ambiguous, they were nevertheless "the statement of a desire to remain silent." *Greenfield,* 474 U.S. at 295 n.13. What's more, the exchange ended with an unequivocal invocation, after which Mr. Espinoza signed a form stating that he was invoking his *Miranda* rights. So if the question were whether the officer should

have stopped questioning Mr. Espinoza at the beginning of the exchange under *Davis*, 512 U.S. at 461–62, the answer might be different. But the question instead is whether the statements Mr. Espinoza made—even if ambiguous—were "the statement[s] of a desire to remain silent." *Greenfield,* 474 U.S. at 295 n.13. Because they were, they could not be used to prove Mr. Espinoza's guilt under *Doyle* and *Greenfield*. The Ninth Circuit's holding to the contrary is out of step with this Court's precedent and other circuits—all of which have held that a verbal invocation of one's Fifth Amendment rights is not admissible to prove guilt.

II.

This case presents an important constitutional issue.

The Fifth Amendment privilege against self-incrimination is "the essential mainstay of our adversary system." *Miranda v. Arizona*, 384 U.S. 436, 460 (1966). Its importance stems from the fact that "our accusatory system of criminal justice demands that the government seeking to punish an individual produce the evidence against him by its own independent labors, rather than by the cruel, simple expedient of compelling it from his own mouth." *Id.* And this privilege is fulfilled "only when the person is guaranteed the right to remain silent unless he chooses to speak in the unfettered exercise of his own will." *Id.* (quotations and citation omitted).

But here, the Ninth Circuit has grafted a superfluous consideration onto this fundamental right that no other court has. This superfluous consideration strips individuals of the constitutional guarantee that their words will not be involuntarily

used against them to deprive them of their liberty. And as a result of this anomaly, arrestees in the nation's largest circuit will be held to a lower constitutional standard than arrestees elsewhere—one where an *ambiguous silence* cannot be used against them but an *ambiguous explanation* of that silence can. Because this will make hundreds, if not thousands, of convictions a matter of geographical happenstance, this Court should grant certiorari.

III.

This case presents an excellent vehicle to resolve the question presented.

Finally, this case presents an excellent vehicle to correct the Ninth Circuit's misguided precedent. Below, Mr. Espinoza objected to the admission of his statements on Fifth Amendment grounds and then contested it at every stage of the proceedings. The Ninth Circuit was squarely confronted with arguments that its reliance on ambiguity violated case law but refused to conform itself to this Court's precedent. The only course of action is for this Court to bring the Ninth Circuit into alignment with the jurisprudence of this Court and other circuits.

What's more, there is no dispute that this error caused Mr. Espinoza prejudice. The government conceded this on appeal, admitting that if the introduction of Mr. Espinoza's statements were error, it could not meet its burden to show such error was harmless. Nor *could* the government meet this burden, given that the introduction of this video was the only thing distinguishing the second trial from the first trial in which the jury could not reach a verdict. Indeed, the government relied so heavily on Mr. Espinoza's statements that they were the first

words out of the prosecutor's mouth in his closing argument. Because the erroneous introduction of Mr. Espinoza's statements changed the outcome of the trial, this is precisely the type of case that provides an ideal vehicle for this Court's consideration.

CONCLUSION

For these reasons, this Court should grant Mr. Espinioza's petition for a writ of certiorari.

Respectfully submitted,

Date: March 10, 2026

s/ Kara Hartzler

KARA HARTZLER
Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, California 92101
Telephone: (619) 234-8467

Attorneys for Petitioner