No. _____

IN THE SUPREME COURT OF THE UNITED STATES

ENRIQUETA MARTINEZ,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

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QUESTION PRESENTED

Whether the invited error doctrine applies to situations where a party who does not induce or provoke an initial error but proposes curative actions to attempt mitigation of the prejudice caused by the error waives issues regarding the effectiveness of the curative actions.

PARTIES, RELATED PROCEEDINGS, AND RULE 29.6 STATEMENT

The parties to the proceeding below were Petitioner Enriqueta Martinez and the United States. There are no nongovernmental corporate parties requiring a disclosed 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. Enriqueta Martinez, 3:22-cr-01753-GPC (S.D. Cal. 2022)

United States v. Enriqueta Martinez, No. 23-4290, ECF 49, 2025 WL 2427173 (9th Cir. Aug. 22, 2025)

United States v. Enriqueta Martinez, No. 23-4290, ECF No. 54 (9th Cir. Jan. 6, 2026)

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

CASES **PAGE(S)**

STATUTES

APPENDIX INDEX

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Petitioner Enriqueta Martinez 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 August 22, 2025.

INTRODUCTION

The invited error doctrine prevents a party from inducing action by a district court and later seeking reversal on the ground that the requested action was error. The doctrine prevents appellate review of an issue when the party complaining of an error, "himself invited or provoked the district court to commit" the error. *United States v. Wells*, 519 U.S. 482, 488 (1997) (cleaned up). The very purpose of the doctrine is to "control[] the party who wishes to change its position on the way from the district court to the court of appeals." *Id.* (cleaned up). It is meant to prevent a party from profiting or taking advantage of an error the party, itself, caused. *F.W. Woolworth Co. v. Contemp. Arts, Inc.*, 344 U.S. 228, 230–31 (1952).

Several circuit courts, including the Second, Fifth, Tenth, Eleventh, and the D.C. Circuits, have made clear that the invited error doctrine is limited to situations where the party is intentionally or strategically attempts to insert error that it can later appeal.

The Ninth Circuit takes a different approach. The Ninth Circuit broadens the traditional application of the invited error doctrine. Here, the district court allowed the admission of inadmissible prior bad acts at trial and later reversed itself. The Petitioner requested a mistrial, but when the mistrial was denied, she proposed a curative instruction that was accepted by the district court and given to the jury. On appeal, she argued that the admission of the evidence was so prejudicial that no curative instruction could cure it and the instructions given were, in fact, not sufficient.

In denying the appeal, the Ninth Circuit expanded the invited error doctrine. The Circuit now holds that a party, like Petitioner, cannot complain about the curative instructions being insufficient to cure the prejudice when the party is the one that drafted the instruction. Thus, in the Ninth Circuit applies invited error to situations where the party was not the cause of the error but merely proposed remedies for errors that already occurred. The circuit expands the doctrine to situations where the party does not induce the district court to do something that it would not otherwise do. The circuit expands the doctrine even though there is no gamesmanship or tactical advantage on the part of the party.

The Ninth Circuit's opinion in this case creates a circuit split. The Court should grant review to resolve this split as to the application of the invited error doctrine.

OPINION BELOW

The Ninth Circuit Court of Appeals affirmed Petitioner's conviction in an unpublished memorandum on August 22, 2025. *See* Appendix A at 1–2. Petitioner then petitioned for panel rehearing and rehearing en banc. The Ninth Circuit also denied Petitioner's petition for panel rehearing and rehearing en banc on January 6, 2026 (attached here as Appendix B).

JURISDICTION

On August 22, 2025, the Ninth Circuit denied Petitioner's appeal and affirmed her conviction. *See* Appendix A. The Ninth Circuit then denied the petition for rehearing and or rehearing en banc on January 6, 2026. Appendix B. This Court has jurisdiction under 28 U.S.C. § 1254(1).

ISSUES PRESENTED FOR REVIEW

Whether the invited error doctrine applies to situations where a party who does not induce or provoke an initial error but proposes curative actions to attempt mitigation of the prejudice caused by the error waives issues regarding the effectiveness of the curative actions.

STATEMENT OF THE CASE

In 2022, Ms. Martinez drove a car across the United States-Mexico border when customs agents found drugs concealed in different areas of her car. She was

arrested and charged in an information with one count of unlawful importation of methamphetamine and one count of unlawful importation of fentanyl in violation of 21 U.S.C. §§ 952, 960.

Almost a decade prior, in 2013, Ms. Martinez pleaded guilty to a possession of marijuana misdemeanor. In preparation for trial, the district court stated that it would allow the government to introduce evidence of the 2013 prior under Federal Rule 404(b). Despite being concerned with the remoteness of the prior, the district court stated it would allow the evidence to be introduced because of the prosecution's promise that the evidence would show *similarities in the manner of concealment* of the drugs to the instant offense.

Because the district court admitted the evidence pre-trial, the jurors heard explicit and implicit evidence of Ms. Martinez previously smuggling drugs in 2013 throughout trial. First, a Customs and Border Patrol agent testified that she reviewed Ms. Martinez's border crossings records. Specifically, records from 2013. The agent explained to the jury that on one particular day in 2013, Ms. Martinez's car was inspected as she was coming across the United States-Mexico border. The car was inspected because there was a customs alert, meaning the car was suspected of "possible smuggling of drugs, humans, or medicine." The agent's testimony suggested that nothing was found in the car at that time and the car entered the United States. But the car was stopped again at an internal Border Patrol checkpoint, after another customs alert, because of suspicion of smuggling

drugs. The border crossing records that showed the customs alerts were introduced and admitted as exhibits at trial.

After the customs agent's testimony, the defense objected to the admission of the 2013 prior. Looking at the witness list and exhibits, Ms. Martinez's counsel noted that it did not appear that the government would be able to come through with its pre-trial promise of being able to show similarities in the manner of concealment of the drugs between the prior and the instant offense. The court ordered the government not to admit further evidence of the 2013 prior until after the court had an opportunity to revisit the issue.

Despite this admonition, the prosecutor introduced evidence of the 2013 prior. The government's agent told the jury that he investigated an almost decades-old event and interviewed a 2013 "associate" of Ms. Martinez. The prosecutor then directly asked the case agent whether Ms. Martinez admitted to previously smuggling drugs. The prosecutor asked:

> Q: Agent Bernal, during the defendant's post-arrest interview, did the defendant mention a prior smuggling incident where she was driving a different car loaded with drugs?
>
> A: Yes.

Immediately recognizing the prosecutor had violated the court's admonition, the court stepped in. The court instructed the prosecutor, "[n]ext question. In a different area." The court also informed the jury that the "jury is instructed to disregard the last question." The court denied the defense's request to be heard, and the

prosecutor continued her questions regarding Ms. Martinez's other post-arrest statements.

Later, the court revisited the issue. The court indicated that had it known that the government lacked evidence of similarities in concealment, it would not have allowed the admission of the 2013 events under Rule 404(b).

The defense requested a mistrial. The defense argued the evidence was prejudicial because the jury heard that Ms. Martinez allegedly confessed to previously smuggling a car full of drugs. The defense added that the jury may be left thinking that she previously smuggled thousands of pounds of methamphetamine. The defense argued there was so much prejudicial evidence that was introduced, the error could not be cured. The district court denied the motion for mistrial.

The district court said it would not give a curative instruction. The district court reasoned that a curative instruction would put a "spotlight" on otherwise prejudicial evidence. The trial proceeded with other witnesses.

The next day, the defense reiterated that the proper remedy was a mistrial. But because of the district court's denial of the mistrial motion, the defense prepared a curative limiting instruction that was accepted by the district court and read to the jury. Specifically, the instruction told the jurors it was striking the exhibits that referenced the 2013 prior custom alerts. The jurors were told to disregard those exhibits. The jurors were also instructed to disregard the "question and answer" given by case agent.

The instructions did not repeat the content of the "question and answer" from the case agent's direct examination. The instruction did not instruct the jury to disregard the customs agent's testimony regarding the 2013 customs alerts that suggested Ms. Martinez was previously suspected of smuggling drugs.

The jury returned a guilty conviction.

On appeal, Ms. Martinez argued that her conviction should be vacated because the district court errored in failing to declare a mistrial after the government introduced inadmissible evidence of the 2013 prior drug smuggling offense. Because of the extent of the evidence admitted at trial, Ms. Martinez argued that any curative instruction would be insufficient to cure the prejudice and the instructions given at trial did not cure the prejudice.

In an unpublished memorandum, the Ninth Circuit affirmed the conviction finding that, although evidence of the prior was prejudicial, it agreed with the district court that the evidence was "limited" and the district court "immediately admonished and instructed the jury." *United States v. Martinez*, No. 23-4290, 2025 WL 2427173, at *1 (9th Cir. Aug. 22, 2025) (unpublished) (internal quotations and citation omitted).[1] The Ninth Circuit further found that, because the defense drafted a subsequent curative instruction given to the jury before their deliberations, under the "invited error doctrine," the defense waived argument that the curative instruction was insufficient to cure the error. *Id.*

[1] A copy of the decision is attached in Appendix A.

REASONS FOR GRANTING THE PETITION

I. The Ninth Circuit's opinion is contrary to the Second, Fifth, Tenth, Eleventh, and D.C. Circuits' interpretation of invited error doctrine as a means to prevent a party from intentionally provoking an error.

The invited doctrine precludes an appellate court from reviewing an error when the complaining party appears to have caused the error. *United States v. Wells*, 519 U.S. 482, 488 (1997). The doctrine is meant to "control[] the party who wishes to change its position on the way from the district court to the court of appeals. *Id.*

The Fifth Circuit has explained why the invited error doctrine does not apply to situations, like Ms. Martinez's case, where the defendant proposes curative instructions after inadmissible evidence is introduced at trial. The Fifth Circuit held that invited error must be limited to situations where the party "invited" or "provoked" the error below and not "merely [where the party is] attempting to prevent further prejudicial error." *Munoz v. State Farm Lloyds of Texas*, 522 F.3d 568, 573–74 (5th Cir. 2008) (quotations omitted). In that case, State Farm objected to the introduction of inadmissible evidence and the district court overruled the objection. *Id.* After the evidence was admitted, the district court realized that admitting the evidence was a mistake. *Id.* State Farm proposed a curative instruction. *Id.* The Fifth Circuit rejected the plaintiff's argument that State Farm could not now complain about the curative being insufficient because State Farm drafted it. *Id.* The Fifth Circuit explained that a claim that State Farm "invited" or "provoked" in these circumstances would "impermissibly stretch the doctrine of invited error beyond its traditional scope." *Id.* at 574. "State Farm did not abandon,

waive, or otherwise sanction the district court's initial error of admitting" prejudicial evidence. *Id.*

Other Circuit Courts of Appeals have also emphasized that the invited error doctrine is limited to situations where the party is intentionally seeking to create a tactical advantage. The Second Circuit explained, invited error is meant to prevent a party from "deliberately provok[ing] a procedural irregularity" and "seeks to avoid rewarding mistakes stemming from a defendant's own intelligent, deliberate course of conduct in pursuing his defense." *United States v. Bastian*, 770 F.3d 212, 218–19 (2d Cir. 2014) (internal citation omitted).

The Tenth Circuit observed that in the typical invited error scenario, a party "*induce[s]* the district court to do [some]thing it would not otherwise have done," and later attempts to challenge the "proposition that [it] ... urged the district court to adopt." *Tesone v. Empire Mktg. Strategies*, 942 F.3d 979, 993 n.10 (10th Cir. 2019). Thus, the Tenth Circuit has found that it is not invited error when the party does not "*induce* the district court to do anything it would not otherwise have done." *Tesone v. Empire Mktg. Strategies*, 942 F.3d 979, 993 n.10 (10th Cir. 2019).

As stated by the D.C. Circuit, "said another way, statements amounting to invited error are a species of waiver and generally evince an intent by the speaker to convince the district court to do something that it would not otherwise have done." *United States v. Long*, 997 F.3d 342, 353–54 (D.C. Cir. 2021) (cleaned up). This is in keeping with this Court's long-established tenant that a true "waiver" can

only be affected by "an intentional relinquishment or abandonment of a known right or privilege." *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)).

And the Eleventh Circuit highlighted that the doctrine is meant to "prevent[] litigants from sandbagging district courts by 'introducing error at trial with the intention of creating grounds for reversal on appeal.'" *United States v. Duldulao*, 87 F.4th 1239, 1255 (11th Cir. 2023) (citation omitted). None of these circuits hold that the doctrine applies to a litigant who merely attempts to mitigate an error that it did not create.

II. The Ninth Circuit creates a circuit split by expanding the invited error doctrine to situations where the party seeks to mitigate an error they did not create.

The Ninth Circuit's application of the invited error doctrine, however, contradicts the Second, Fifth, Tenth, Eleventh and the D.C. Circuit Courts. According to the Ninth Circuit, invited error applies even where the defendant did not set in motion the error challenged on appeal. It is sufficient under the Ninth Circuit rule that a litigant proposes an instruction that is meant to mitigate the error they did not cause. Thus, under the Ninth Circuit rule, a defendant would be precluded from arguing on appeal that the curative instructions could not have cured the prejudice caused by the error if the litigant attempted to mitigate some of that harm during trial.

This expansion of the invited error doctrine is contrary to both this Court and other Circuit Court precedent.

III. The division among the circuits demands the Court's attention and this case is a proper vehicle.

Resolving this circuit split is particularly important here. The current Ninth Circuit interpretation of the invited error doctrine places a litigant in a proverbial cath-22. When the jury hears inadmissible prejudicial evidence through no fault of the defense, and the district court denies the defense motion for mistrial, the defense cannot suggest ways of mitigating the harm, without waiving issues regarding the effectiveness of the curative instruction.

Furthermore, Ms. Martinez's case is the right vehicle to resolve this circuit split, as her case squarely presents the issue. Ms. Martinez did not introduce, or directly set in motion, the error of which she complains, namely the admission of prior bad act evidence and denial of the motion for mistrial. Nor did she attempt to sandbag the district court by claiming one thing at trial and another on appeal. In this case, it was the government who introduced inadmissible evidence. The defense objected to the introduction of the evidence both before and during trial. And the defense adamantly argued that the only remedy for that error was a mistrial, but the district court denied giving her that remedy. The district court itself suggested that a curative instruction would only further prejudice Ms. Martinez by putting a "spotlight" on the already introduced prejudicial evidence. Only at this point, in an effort to *mitigate* the error of the introduced prejudicial evidence, did the defense propose a curative instruction that would not further prejudice the defense.

Furthermore, Ms. Martinez consistently argued below and on appeal that the only proper remedy was mistrial and that any instruction to the jury could not cure the error complained of on appeal.

Yet the Ninth Circuit rule states that, by proposing an instruction in an attempt to mitigate district court error, Ms. Martinez somehow waived the argument that any instruction could not cure the harm done. Had Ms. Martinez's case been in the Fifth, Tenth, Eleventh, or D.C. Circuits, it would have been likely found that no curative instruction could have sufficiently cured the error caused by the admission of the prior bad acts.

If the Court agrees that the Ninth Circuit improperly conducted the invited error analysis, Ms. Martinez would be eligible for relief. The evidence of a prior smuggling event was extremely prejudicial and could not have been cured by any instruction. The Ninth Circuit's improper application of the invited error doctrine contributed to its finding that the curative sufficiently cured the prejudice. Accordingly, Ms. Martinez's case provides an ideal vehicle to resolve this circuit split.

CONCLUSION

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

Respectfully submitted,

Date: April 6, 2026

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