

No. _____

In the
Supreme Court of the United States

HERIBERTO MENDEZ-LOZANO,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent,

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a criminal defendant can waive any challenge to his conviction through his notice of appeal where claims-processing Rule 3(c)(6) describes the procedure for limiting the scope of appeal and the limitation in the notice is not express?

PARTIES TO THE PROCEEDING

The parties to the proceeding are named in the caption. Heriberto Mendez-Lozano was the defendant in the district court, appellant in the Fifth Circuit, and is the Petitioner here. The United States was the plaintiff in the district court, the appellee in the court below, and is the Respondent here.

DIRECTLY RELATED PROCEEDINGS

1. *United States v. Mendez-Lozano*, No. 7:22-cr-01706, U.S. District Court for the Southern District of Texas. Judgment imposed October 2, 2024.
2. *United States v. Mendez-Lozano*, No. 24-40631, U.S. Court of Appeals for the Fifth Circuit. Judgment entered March 10, 2026.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Heriberto Mendez-Lozano respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the Fifth Circuit appears at Appendix 1a-6a to the petition and is reported at 169 F.4th 605.

JURISDICTION

The Fifth Circuit rendered judgment on March 10, 2026. This Court has jurisdiction to review the Fifth Circuit's final decision under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Federal Rule of Appellate Procedure 3(c)(6) provides, in relevant part:

[a]n appellant may designate only part of a judgment or appealable order by expressly stating that the notice of appeal is so limited. Without such an express statement, specific designations do not limit the scope of the notice of appeal.

STATEMENT

Heriberto Mendez-Lozano was indicted for 13 counts: conspiracy to harbor aliens, five counts of concealing or harboring aliens, conspiracy to take hostages, five counts of hostage taking, and one count of felon-in-possession. App., *infra*, at 1a-2a.

Prior to trial, Mendez-Lozano moved the district court to bifurcate the trial to allow the jury to first hear evidence relating to Counts 1-12, hostage taking/alien harboring. 5th Cir. R. 109-118. Mendez-Lozano suggested that if the jury found him guilty on Counts 1-12, evidence could then be presented concerning his prior felony record for the purpose of Count 13, the felon in possession charge. 5th Cir. R. 109. Mendez-Lozano explained, “Absent a bifurcated trial, the jury will learn of MENDEZ’s alleged prior conviction even if he exercises his constitutional right to not testify.” 5th Cir. R. 109. Mendez-Lozano further explained the prior felony conviction would unfairly prejudice the jury against him. 5th Cir. R. 109.

The district court resolved the Motion for Bifurcate in a pretrial Order. 5th Cir. R. 145-48. The court recognized that, “even when charges are properly joined, Rule 14 provides that if joinder appears to prejudice

a defendant, the court may order separate trials of those count.” 5th Cir. R. 147. Nonetheless, the court denied the Motion, concluding joinder was proper and severance was not warranted. 5th Cir. R. 148.

The case proceeded to a jury trial.

Immediately after the Government called its first witness, the parties entered an agreed stipulation into evidence. 5th Cir. R. 807. The stipulation stated Mendez-Lozano had previously been convicted of a felony offense punishable by a term of imprisonment exceeding one year. 5th Cir. R. 808. Although it was admitted solely for the purpose of providing a predicate for the felon-in-possession count, the court only explained that it was “related to Count 13.” 5th Cir. R. 808. The court did not instruct the jury that it was admitted for, and should be considered for, a limited purpose. The court did not provide any limiting instruction or explain that the stipulation should not be considered as evidence of propensity or character conformity. *See* 5th Cir. R. 807-08.

No limiting instruction regarding the stipulation of Mendez-Lozano’s prior felony conviction was included in the jury charge. *See* 5th Cir. R. 555-56; *see generally* 5th Cir. R. 540-558.

After hearing closing arguments, the jury returned a verdict of guilty on all counts. 5th Cir. R. 559-565.

Ultimately, the district court sentenced Mendez-Lozano to 120 months imprisonment for Counts 1-6, 360 months imprisonment for Counts 7-12, and 160 months imprisonment for Count 13. 5th Cir. R. 1238. Counts 1-12 were to run concurrently, with Count 13 to be partially concurrent and partially consecutive, so that the sentence did not exceed 460 months.¹ 5th Cir. R. 1239.

On appeal, Mendez-Lozano argued the district court erred by denying his motion to sever the felon-in-possession charge from the remaining counts and bifurcate his trial. App., *infra*, at 2a. He also argued the district court failed to include a limiting instruction in the jury charge that would have restricted the jury's use of the evidence and his felony conviction. App., *infra*, at 2a.

The Fifth Circuit did not address the merits of these arguments. See App., *infra*, at 2a-3a. Instead, after requesting and reviewing supplemental briefing on Federal Rule of Appellate Procedure 3(c)(6), a

¹ The district court also ordered three years supervised release, a \$1,300 special assessment (total), as well as restitution for the immigration-related counts. 5th Cir. R. 1239-41.

majority of the court concluded Mendez-Lozano waived any challenge to his conviction because his notice of appeal stated his appeal was “limited to the sentence imposed and does not challenge the underlying conviction.” App., *infra*, at 2a-3a. One Justice concurred, declining to find waiver. App., *infra*, at 4a-6a (Concurrence, J. Graves).

REASONS TO GRANT THE PETITION

The Fifth Circuit’s decision that Mendez-Lozano waived any challenge to his conviction constitutes an important question of federal law that has not been, but should be, settled by this Court.

The Fifth Circuit erred by holding Mendez-Lozano waived any challenge to his conviction.

Mendez-Lozano’s notice of appeal states that the appeal “is limited to the sentence imposed and does not challenge the underlying conviction.” 5th Cir. R. 619-20. However, his briefing before the Fifth Circuit Court of Appeals made clear that Mendez-Lozano was challenging his conviction by arguing the district court should have: (1) severed his felon-in-possession charge, and (2) provided limiting instructions regarding the stipulation read to the jury.

Federal Rule of Appellate Procedure 3(c) details the required contents of a notice of appeal. 2021 amendments to Federal Rule of

Appellate Procedure 3 were intended to reduce the unintended loss of appellate rights.² In 2021, the rule was amended to clarify that “[d]esignation of the final judgment confers appellate jurisdiction over prior interlocutory orders that merge into the final judgment.” Fed. R. App. P. 3(c) advisory committee’s note to 2021 amendment. With this clarification, parties need not designate every district court order they wish to challenge, and courts are not limited to considering only listed orders. *Id.*

Rule 3(c)(6) allows appellants to limit the scope of appeal. *Id.* This provision serves “[t]o remove the trap for the unwary, while enabling deliberate limitations of the notice of appeal” *Id.*

There is no criminal case law involving the appeal of a conviction that has held a limiting statement made under Rule 3(c)(6) constitutes waiver. App., *infra*, at 5a (Concurrence, J. Graves). “Concluding that Mendez-Lozano waived the right to appeal his conviction . . . was

² United States Courts, Recent and Proposed Amendments to Federal Rules – Annual Report 2021 (last visited June 8, 2026), <https://www.uscourts.gov/data-news/reports/annual-reports/directors-annual-report/annual-report-2021/recent-and-proposed-amendments-federal-rules-annual-report-2021> (“Amendments to Appellate Rules 3 and 6, and Forms 1 and 2. The amendments were designed to reduce the inadvertent loss of appellate rights by clarifying the requirements for a notice of appeal.”).

imprudent and unnecessary.” App., *infra*, at 5a (Concurrence, J. Graves). Indeed, the Fifth Circuit majority relied on civil cases in arriving at its waiver decision. App., *infra*, at 3a, 5a.

The Fifth Circuit asked the parties to provide supplemental briefing concerning whether Rule 3(c)(6) was a jurisdictional or a claims-processing rule. App., *infra*, at 2a, 4a. Both Mendez-Lozano and Government concluded it was a claims-processing rule. App., *infra*, at 4a.

This Court clarified in *Gonzalez v. Thaler*, 565 U.S. 134, 141 (2012) and other cases that “a rule is jurisdictional if the Legislature clearly states that a threshold limitation on a statute’s scope shall count as jurisdictional.” 565 U.S. at 141-42 (quotation omitted). If “Congress does not rank a statutory limitation on coverage as jurisdictional, courts should treat the restriction as nonjurisdictional.” *Id.* at 142 (quotation omitted).

The Court further explained that it previously held the content requirements for notices of appeal were jurisdictional because it was “convinced that the harshness of [the] construction was imposed by the legislature.” *Id.* at 147 (quotation omitted). The Court also noted that

it's ruling was based on the Advisory Committee's view of the requirements of Rule 3 and 4 as jurisdictional in nature. *Id.* (quotation omitted).

More recently, this Court reiterated that a rule is jurisdictional only if it appears in a statute. *Hamer v. Neighborhood Housing Services of Chicago*, 583 U.S. 17, 24-28 (2017) (“[M]andatory and jurisdictional” is erroneous and confounding terminology where, as here, the relevant time prescription is absent from the U.S. Code.”). The Supreme Court made it clear that this principle applies even to requirements surrounding the filing of a notice of appeal when it held that Federal Rule of Appellate Procedure 4(a)(5)(C) was a claim-processing rule and not jurisdictional. *See id.*

Like Rule 4(a)(5)(C), Rule 3(c)(6) is not based on or related to a statutory rule. Consequently, it is a claim-processing rule, not a jurisdictional rule. *See Hamer*, 583 U.S. at 24-28. Although other portions or requirements of Rule 3 may be jurisdictional, Rule 3(c)(6) is not. Indeed, Rule 3(c)(6) is not really a requirement. Whether a party utilizes Rule 3(c)(6) is completely optional; consequently, it cannot be a prerequisite to establishing the Court's jurisdiction.

Even if limiting designations regarding an appeal could constitute waiver or were jurisdictional, Mendez-Lozano's designations were ambiguous in this case. They did not expressly designate only part of the judgment for appeal as required by Rule 3(c)(6), and they did not intentionally relinquish or abandon a known right. The Notice filed by Appellant's trial counsel provided notice that Appellant was appealing from the final judgment and sentence in the case. 5th Cir. R. 619-20. The final judgment, of course, included Mendez-Lozano's conviction. It was the second paragraph of the Notice of Appeal that stated: "This appeal is limited to the sentence imposed and does not challenge the underlying conviction." 5th Cir. R. 619. However, in the context of this case, this statement was indefinite, not express.

This case involved 13 different charges; after trial, Appellant was ultimately convicted on 13 different counts and received sentences on each count. 5th Cir. R. 652-54. The judgment lists the 13 separate convictions and sentences. 5th Cir. R. 652-54. The Notice of Appeal indicated it was limited to one sentence, "the sentence", and that it did not challenge one conviction, "the underlying conviction." But the Notice failed to identify which sentence was included and which of the 13

convictions was not challenged. Appellant did not “designate only part of” the judgment “by expressly stating” how the appeal should be limited. *See* Fed. R. App. P. 3(c)(6). Consequently, the “specific designation” made in the second paragraph of the Notice of Appeal “do[es] not limit the scope of the notice of appeal.” *See id.* Accordingly, in this case, Federal Rule of Appellate Procedure 3(c)(6) protects, rather than limits, the scope of Appellant’s appeal.

The Fifth Circuit’s conclusion finding waiver should be reversed.

CONCLUSION

Petitioner respectfully asks that this Court grant this petition and set the case for a decision on the merits.

Respectfully submitted,

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