No. 25A-____

In the Supreme Court of the United States

JACOB MATTHEW MEDINA,

Applicant,

v.

UNITED STATES OF AMERICA

ON APPLICATION FOR A CERTIFICATE OF APPEALABILITY TO THE HONORABLE ELENA KAGAN, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

APPLICATION FOR A CERTIFICATE OF APPEALABILITY

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QUESTIONS PRESENTED

In this case, the district court denied applicant's 28 U.S.C. § 2255 application—and denied a certificate of appealability (COA)—for one reason and one reason only: to enforce a collateral attack waiver. Applicant appealed and sought a COA from the Ninth Circuit. Rather than address the district court's rationale, the panel denied a COA on an entirely different ground: that "the underlying 28 U.S.C. § 2255 motion fails to state a federal constitutional claim debatable among jurists of reason." Ex. B. The Ninth Circuit denied a timely motion for reconsideration and reconsideration *en banc*. The questions presented are:

1. Whether Your Honor should issue a COA because reasonable jurists could find the correctness of the district court's decision to enforce the collateral attack waiver debatable or wrong and the habeas petition, construed in the light most favorable to the pro-se habeas applicant, *Estelle v. Gamble,* 429 U.S. 97, 106, (1976), states a claim of the denial of a constitutional right under *Brady v. Maryland*, 373 U.S. 83 (1963).
2. Whether Your Honor should issue a COA because reasonable jurists could find the correctness of the district court's decision to enforce the collateral attack waiver debatable or wrong and the habeas petition shows on its face that it is capable of amendment to cure any pleading deficiency.

PARTIES TO THE PROCEEDINGS

Jacob Matthew Medina was petitioner in the district court and appellant in the court of appeals proceedings.

United States was the respondent in the district court proceedings and appellee in the court of appeals proceedings.

Because Applicant is not a corporation, a corporate disclosure statement is not required under Supreme Court Rule 29.

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TO THE HONORABLE ELENA KAGAN, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE OF THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

Pursuant to Supreme Court Rule 22.1, Applicant Jacob Matthew Medina respectfully requests a Certificate of Appealability. The United States District Court for the District of Arizona issued an opinion denying habeas relief on March 4, 2025. A copy of that memorandum and order attached as Exhibit A. The United States Court of Appeals for the Ninth Circuit denied a certificate of appealability and dismissed the appeal on June 20, 2025. A copy of that order is attached as Exhibit B. The Ninth Circuit denied a timely Motion for Reconsideration or Reconsideration En Banc on August 15, 2025. A copy of that order is attached as Exhibit C. The applicant filed his motion to vacate, set aside, or correct his sentence on January 12, 2023. A copy of that petition is attached as Exhibit D.

Jurisdiction is founded on 28 U.S.C. § 2253(c)(1) which authorizes each justice of this Court to issue a certificate of appealability. A certificate of appealability should issue if "reasonable jurists could debate whether (or, for that matter, agree that) the [habeas] petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000) (internal quotation marks omitted); *see Autry v. Estelle*, 464 U.S. 1301, 1302 (1983) (White, J., in chambers) (concluding that a habeas petitioner had raised a "substantial question" that did not "lack[] substance," and thus "I am compelled to issue a certificate of probable cause to appeal, as I am authorized to do under § 2253."); *Davis v. Jacobs*, 454 U.S. 911, 918 (1981) (Rehnquist, J., dissenting) (certificate should issue if "any Member of this Court believes [the case] to be deserving of a certificate of probable cause").

INTRODUCTION

Your Honor should grant Applicant a certificate of appealability (COA). Applicant Jacob Matthew Medina filed a *pro se* 28 U.S.C. § 2255 application challenging his conviction. The application—while far from a model of clarity—contains allegations that prosecutors should have disclosed evidence that would have significantly undermined the credibility of prosecution's key witness. The complaint does not say how Mr. Medina found this evidence or whether he could prove his allegation, but he does plead it clearly enough to understand the claim he is making.

The district court thus dismissed the application *not* because Mr. Medina had failed to state a claim but because his plea agreement included a stock "collateral attack waiver" promising that he would forego his right to bring a § 2255 application. The district court held that the collateral attack waiver was valid and enforceable and on that basis dismissed Mr. Medina's application and denied him a certificate of appealability.

Aided by counsel, Mr. Medina appealed to the Ninth Circuit and sought from that court a COA authorizing him to challenge the district court's enforcement of the collateral attack waiver. But rather than address that question, a 2-judge panel skipped right over that issue—the only basis for the district court's decision—and instead denied the motion "because the underlying 28 U.S.C. § 2255 motion fails to state a federal constitutional claim debatable among jurists of reason." Ex. B (citing *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012)).

That was clearly wrong for two reasons. *First*, Mr. Medina's *pro se* complaint construed in the light most favorable to him states a claim for a violation of *Brady v. Maryland*, 373 U.S. 83 (1963). *Second*, even if the complaint does not state a claim, the

Ninth Circuit overlooked that a Court of Appeals cannot deny a certificate of appealability unless it appears clear that under no circumstances could the complaint be amended to overcome any pleading deficiency. After all, in a case like this one where no defect in the complaint was identified by the district court, on remand from the appeal Mr. Medina would be entitled to amend his complaint to overcome any deficiency in it. As a consequence, any decision to terminate his case by denying a COA must properly account for the fact that Mr. Medina will have the opportunity to amend his complaint.

This case raises an important question about the enforceability of collateral attack waivers and reasonable jurists could find the correctness of the district court's holding on that issue debatable or wrong. Because the complaint either already states a claim or could be amended to do so, Your Honor should issue a COA on the question whether the district court correctly enforced Applicant's collateral attack waiver and return this case to the Ninth Circuit for further proceedings.

STATEMENT

In March 2019, a grand jury returned a 4-count indictment charging Mr. Medina and another individual with drug crimes. *See* Complaint, Dist. Ct. Doc. 1. Mr. Medina pleaded guilty in May 2021 to Count 1: conspiracy to possess with intent to distribute controlled substances. *See* Plea Agreement, 9th Cir. Doc. (hereinafter "Doc.") 7-2 at 1. The agreement included the following appeal and collateral attack waiver:

> [Mr. Medina] waives . . . any right to an appeal, any collateral attack, and any other writ or motion that challenges the conviction, an order of restitution or forfeiture, the entry of judgment against the defendant, or any aspect of the defendant's sentence, including the manner in which the sentence is determined, including but not limited to any appeals under 18 U.S.C. § 3742 (sentencing appeals) and motions under 28 U.S.C. §§ 2241 and 2255 (habeas

> petitions), and any right to file a motion for modification of sentence, including under 18 U.S.C. § 3582(c). This waiver shall result in the dismissal of any appeal, collateral attack, or other motion the defendant might file challenging the conviction, order of restitution or forfeiture, or sentence in this case. This waiver shall not be construed to bar an otherwise-preserved claim of ineffective assistance of counsel or of "prosecutorial misconduct" (as that term is defined by Section II.B of Ariz. Ethics. Op. 15-01 (2015)).

Id. at 4-5. The district court sentenced Mr. Medina to 160 months in prison followed by a five-year term of supervised release. *See* Sentencing Transcript, Doc. 7-4 at 27-28. Mr. Medina did not directly appeal his conviction.

In January 2023, Mr. Medina filed a timely *pro se* 28 U.S.C. § 2255 motion to vacate his sentence. *See* Ex. D. In Ground One, he argued that his counsel was ineffective. *Id.* at 4. In Grounds Two through Five, Mr. Medina argued multiple instances of what amounted to prosecutorial misconduct. Specifically, he alleged in detail that the prosecutor deliberately concealed evidence favorable to Mr. Medina about the United States Postal Inspector who investigated him, including that the inspector:

- Mishandled and tampered with evidence, including switching drugs from other cases;
- Made false statements to other law enforcement officers;
- Falsified fingerprints found on the package Mr. Medina was tied to;
- Falsified records and handwritten reports in other defendants' cases;
- Planted evidence in other defendants' homes during searches;
- Stole money out of other defendants' homes during such searches;
- Had said racial slurs around colleagues and told them that she enjoyed lying and prosecuting people of color; and
- Was addicted to opioids.

See id. at 5-9. Mr. Medina certified his allegations under penalty of perjury. *See* 28 U.S.C. § 1746. He also requested an evidentiary hearing. *See* Ex. D at 12.

A magistrate judge analyzed the motion first. *See* Rep. and Rec., Civ. Dist. Ct. Doc. 31. The magistrate judge recognized that the collateral attack waiver excluded claims of

ineffective assistance of counsel. *See id.* at 6. But Mr. Medina's comments on the record contradicted his ineffectiveness claim and thus, the magistrate judge recommended Ground One be denied. *See id.* at 7-9.

The magistrate judge then moved to the other four grounds. Although couched in different terms, the gravamen of Mr. Medina's *pro se* claims all centered on the same key fact: the postal inspector was an unreliable witness. So, there was either ineffective assistance of counsel or prosecutorial misconduct, or both, in failing to bring that to light. Both grounds are expressly excluded from the plea agreement. *See* Doc. 7-2 at 4-5 (providing that the waiver "shall not be construed to bar an otherwise-preserved claim of ineffective assistance of counsel or of 'prosecutorial misconduct'").

Nonetheless, the magistrate judge recommended that Grounds Two through Five be dismissed under the collateral attack waiver alone. *See* Civ. Dist. Ct. Doc. 31. at 9-11. The magistrate judge did not otherwise analyze the merits of Mr. Medina's claim, other than to say that "to the extent that Grounds Three through Five assert that Movant's guilty plea was not knowing, intelligent, or voluntary due to the ineffective assistance of counsel, the claims are without merit" due to the plea colloquy. *Id.* at 11.

The district court then adopted the magistrate judge's recommendation despite Mr. Medina's objections. Ex. A at 2; *see* Objections to Rep. and Rec., Civ. Dist. Ct. Doc. 35 at 1-3. With respect to Grounds Two through Five, the district court relied solely on the collateral attack waiver to overrule Mr. Medina's objection. Ex. A at 2. The court held Mr. Medina offered no evidence to establish his plea agreement was not made knowingly, intelligently, and voluntarily. *See id.* The court did not reach the merits of these grounds

or order an evidentiary hearing. *See id.* Like the magistrate judge, the district court relied solely on the collateral attack waiver. The court thus denied the motion and refused a certificate of appealability. *Id.*

Applicant, now represented by appellate counsel, appealed to the Ninth Circuit. Because the district court had denied him a certificate, he moved for a COA pursuant to 28 U.S.C. § 2253. He argued that the district court erred in denying his petition on the basis of the collateral attack waiver. *See* Motion for COA, Doc. 7-1. A 2-judge panel denied the motion on June 20, 2025. *See* Ex. B. Skipping over the collateral attack waiver entirely, the panel denied the motion "because the underlying 28 U.S.C. § 2255 motion fails to state a federal constitutional claim debatable among jurists of reason." Ex. B (citing *Gonzalez*, 565 U.S. at 140-41).

On reconsideration, Applicant pointed out that the panel's decision deprived him of his statutory right to amend. The Ninth Circuit, however, summarily affirmed the panel's decision on August 15, 2025. Ex. C.

REASONS FOR GRANTING THE APPLICATION

Your Honor should issue a COA. There is little doubt that reasonable jurists could find the district court's decision to enforce Mr. Medina's collateral attack waiver debatable or wrong. That the Ninth Circuit skipped over the question is telling. Mr. Medina's petition also stated a claim for a *Brady* violation. And even if it had not, it could readily be amended to do so. The Ninth Circuit erred in denying Mr. Medina a COA and Your Honor is the only jurist authorized by 28 U.S.C. § 2253 to correct that error. Applicant thus respectfully requests that Your Honor issue a COA in this case

I. THE § 2255 APPLICATION STATES SUFFICENT FACTUAL MATTER ON ITS FACE TO PRECLUDE DENIAL OF A COA ON THE ALTERNATIVE BASIS THAT IT FAILS TO MAKE OUT A CONSTITUTIONAL CLAIM

A. The § 2255 Application States a Claim of the Denial of a Constitutional Right—Due Process—Resulting From A *Brady* Violation

The Ninth Circuit below denied Mr. Medina a COA on the grounds that his petition does not state a claim. The face of the motion shows that is clearly wrong. The petition plainly states a claim under *Brady*, 373 U.S. at 83.

"Where, as here, the district court denies a § 2255 motion without an evidentiary hearing," the reviewing court must "view the facts in the light most favorable to the § 2255 movant . . . and draw reasonable inferences in his favor." *United States v. Hashimi*, 110 F.4th 621, 627 (4th Cir. 2024) (citation omitted); *United States v. Schaflander*, 743 F.2d 714, 717 (9th Cir. 1984) (articulating the Ninth Circuit's even-more-generous standard). Even if the application's assertions are "improbable," they "cannot at this juncture be said to be [not credible]" without an evidentiary hearing. *Hashimi*, 110 F.4th at 627; *see Schaflander*, 743 F.2d at 717 ("A hearing *must be granted* unless the movant's allegations, when viewed against the record, do not state a claim for relief or are so palpably incredible or patently frivolous as to warrant summary dismissal.") (emphasis added).

Mr. Medina's motion is sprawling and inartful—*see, e.g.*, Ex. D—but that is not a reason to reject it. *Pro se* pleadings must be construed liberally, and their factual allegations credited when assessing whether a constitutional claim has been stated. As the Ninth Circuit has said many times, and in many ways, "where the petitioner is pro se . . . [courts should] construe the pleadings liberally and . . . afford the petitioner the benefit of any doubt." *Brown v. Tromba*, No. 19-16504, 2020 WL 13563853, at *1 (9th Cir.

Apr. 8, 2020) (quoting *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010)) (some alterations in original); *see also Estelle*, 429 U.S. at 106 ("[A] pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." (citation omitted)).

Here, the petition alleges facts that reasonably support a *Brady* violation. Mr. Medina alleges that "Federal Prosecutors knowingly and intentionally started withholding . . . favorable evidence displaying material facts" showing that Andrea Brandon—the government's key witness—"is a[n] Uncredible Witness and all her cases are questionable." Ex. D at 6A. The same page goes on to identify specific types of favorable evidence, including allegations of evidence tampering, false statements, and the falsification of "latent fingerprints found on [the] package tied to this movant." *Id.*

Taken as true and viewed in the light most favorable to Mr. Medina, these allegations describe classic *Brady* material—impeachment and exculpatory evidence that, if withheld, would undermine confidence in the outcome of the proceeding. *See Kyles v. Whitley*, 514 U.S. 419, 433-35; *Sanchez v. United States*, 50 F.3d 1448, 1453 (9th Cir. 1995) ("We therefore hold that a defendant challenging the voluntariness of a guilty plea may assert a *Brady* claim."). The panel overlooked that these allegations at least stated a claim, confirming the need for a COA.

B. Even if The § 2255 Application Fails to Plead Sufficient Facts to State a Claim of the Denial of a Constitutional Right It Shows On Its Face That It Could Be Amended to Do So

Even if Mr. Medina's complaint failed to state a claim, that still would not be a basis to deny him a COA on appeal. A COA cannot be denied on this alternative basis unless it is clear that there is no possibility that a habeas applicant could amend his complaint to state claim. That follows from the requirements of 28 U.S.C. § 2242 and innumerable decisions articulating the rights of *pro se* individuals to amend their pleadings, like the Ninth Circuit's decisions in *James v. Giles*, 221 F.3d 1074, 1077-78 (9th Cir. 2000) and *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc). Those cases establish that a district court must grant a habeas petitioner leave to amend "'if it appears at all possible that the plaintiff can correct the defect.'" *Lopez*, 203 F.3d at 1130 (citations omitted). The words "at all possible" mean what they seem to mean: a *pro se* litigant should be afforded an opportunity "to amend his complaint prior to its dismissal for failure to state a claim, unless the court can *rule out any possibility, however unlikely it might be*, that an amended complaint would succeed in stating a claim." *Id.* at 1128 (quoting *Gomez v. USAA Fed. Sav. Bank*, 171 F.3d 794, 796 (2d Cir. 1999)) (emphasis added).

The panel violated that cardinal principle by denying a COA on the ground that "the underlying 28 U.S.C. § 2255 motion fails to state a federal constitutional claim debatable among jurists of reason" without even considering whether the petition could be amended to cure the alleged defect. Ex. B.

Had the district court dismissed the petition for failure to state a claim, the Ninth Circuit's precedent would have required it to permit amendment. But the district court

denied the petition on an entirely different ground—enforcement of a collateral attack waiver—a rejection of the application that Mr. Medina could not amend his way around. His only option was to seek a COA from the Ninth Circuit. When the panel denied that COA based on an unraised pleading deficiency—without assessing the possibility of amendment—it effectively stripped him of the procedural rights guaranteed by *Lopez*, *Giles*, and § 2242. The conflict with § 2242 is especially significant: § 2253 must be read in harmony with that statute, and the only way to reconcile the two is to hold that a COA cannot be denied on pleading grounds unless the court first determines that amendment would be futile.

Congress intended, through § 2242, to ensure that habeas petitioners are treated with the same procedural fairness afforded to civil litigants—especially the critical opportunity to amend defective pleadings. That protection is essential for incarcerated individuals who often lack legal representation and formal training. If courts of appeals may now deny COAs for failure to state a claim without even considering whether amendment is possible, then a significant class of petitioners will be denied access to federal review despite presenting potentially valid constitutional claims that are fixable through amendment. That result is not merely a misapplication of a procedural standard—it is the wholesale denial of what is often a litigant's *only* chance to present a potentially valid constitutional claim.

II. THE DISTRICT COURT'S DECISION TO ENFORCE MR. MEDINA'S COLLATERAL ATTACK WAIVER WAS DEBATABLE OR WRONG

The COA Mr. Medina actually *seeks* in this case is the right to appeal the district court's decision to dismiss his § 2255 application on the basis of the collateral attack waiver

in his plea agreement. And as to *that* issue, the Ninth Circuit said nothing at all. It is clear that reasonable jurists could find the correctness of the district court's decision to enforce Mr. Medina's collateral attack waiver debatable or wrong for three reasons. *First*, collateral attack waivers are unconstitutional under the unconstitutional conditions doctrine. *Second*, even if they were permissible in theory, the waiver here by its terms did not cover prosecutorial misconduct claims. *Third*, claims of *Brady* violations cannot be waived and the enforcement of such a waiver here would work a miscarriage of justice.

A. Collateral attack waivers are unconstitutional under the unconstitutional conditions doctrine

Collateral attack waivers are unconstitutional because the prosecution may not use the defendant's right to habeas corpus as a bargaining chip in the inherently coercive context of plea bargains. Under the unconstitutional conditions doctrine, "the government may not deny a benefit to a person because he exercises a constitutional right." *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 604 (2013) (quoting *Regan v. Taxation With Representation of Wash.*, 461 U.S. 540, 545 (1983)). Nor can the government attach strings to a benefit to "produce a result which [it] could not command directly." *Speiser v. Randall*, 357 U.S. 513, 526 (1958); *Perry v. Sindermann*, 408 U.S. 593, 597 (1972). Among the rights the unconstitutional conditions doctrine safeguards is "[t]he Privilege of the Writ of Habeas Corpus," U.S. Const., art. I, § 9, cl. 2. When the government seeks to use this constitutional right as a bargaining chip in plea negotiations, courts must apply the "well-settled doctrine of 'unconstitutional conditions.'" *Koontz*, 570 U.S. at 604 (cleaned up) (quoting *Dolan v. City of Tigard*, 512 U.S. 374, 385 (1994)).

The doctrine applies on two conditions: when (1) the bargaining process is particularly coercive, and (2) the public costs of the government's demanded condition outweigh its potential public benefits. *Id.* at 604-06. Collateral attack waivers in plea bargains meet both criteria and thus violate the unconstitutional conditions doctrine.

First, collateral attack waivers in plea bargains involve people "especially vulnerable to the type of coercion that the unconstitutional conditions doctrine prohibits," due to disparities in both power and knowledge that favor the government. *Id.* The government wields broad institutional power and discretion to enhance or reduce a defendant's incarceration by years or decades. *See United States v. Andis*, 333 F.3d 886, 896 (8th Cir. 2003) (Bye, J., concurring). "As a result of these pressures, defendants routinely waive important constitutional rights under circumstances that cannot meaningfully be regarded as voluntary, and at least some defendants enter guilty pleas even though they have a reasonable chance of acquittal at trial." Donald G. Gifford, *Meaningful Reform of Plea Bargaining: The Control of Prosecutorial Discretion*, 1983 U. Ill. L. Rev. 37, 55 (1983). "Defendants acquiesce in plea bargains under many of the same conditions which would make civil contracts unenforceable under the doctrine of unconscionability." *Id.*

Second, the costs to the criminal justice system of permitting collateral attack waivers in plea bargains outstrip their benefits. There is little empirical evidence that waivers generate significant cost savings or decrease the number of appeals; in fact, studies have found the opposite. Individuals routinely file collateral attacks notwithstanding the presence of collateral attack waivers in their plea agreements, thus eliminating any supposed cost savings. And the numerous circumstances in which these waivers are

unenforceable mean that collateral attack waivers often make collateral attacks more costly and complex to adjudicate, rather than less.

Moreover, by specifically eliminating access to habeas corpus, collateral attack waivers inflict a special harm. The Supreme Court has never endorsed the idea that a person can validly waive his or her right to habeas corpus. The Constitution does not envision any suspension of habeas corpus even by consent; only in "Cases of Rebellion or Invasion" may the privilege be suspended, and only then if "the public Safety . . . require[s] it." U.S. Const., art. I, § 9, cl. 2. The Framers set no other limits because they understood the writ as a "right of first importance" in the project to "secure individual liberty," and a structural safeguard to our government's separation-of-powers design. *Boumediene v. Bush*, 553 U.S. 723, 742, 798 (2008). There is no practice of waiving the right to habeas corpus rooted in our nation's history and tradition. *See* Nancy J. King & Michael O'Neill, *Appeal Waivers and the Future of Sentencing Policy*, 55 Duke L.J. 209, 219-221 (2005) (explaining that waiver clauses only started to appear in plea agreements with regularity in the 1990s, with collateral review waivers becoming included soon after). The practice of securing collateral attack waivers in exchange for pleas is a modern phenomenon.

The foregoing shows that the district court's decision to enforce the collateral attack waiver in this case should be reversed. At minimum, it demonstrates that the issue here is "debatable" and that a certificate of appealability should issue. *Buck v. Davis*, 137 S. Ct. 759, 774 (2017). "[J]urists of reason" could disagree with the application of the waiver to bar some or all of Mr. Medina's arguments. *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

B. The district court misconstrued the scope of the collateral attack waiver in this case

Regardless of whether collateral attack waivers are unconstitutional in general, the application of the collateral attack waiver *here* was incorrect. The Ninth Circuit reviews *de novo* the scope and validity of collateral attack waivers. *See United States v. Rodriguez*, 49 F.4th 1205, 1211 (9th Cir. 2022).

"As courts widely agree, a valid and enforceable [collateral attack] waiver . . . only precludes challenges that fall within its scope." *Garza v. Idaho*, 586 U.S. 232, 238 (2019) (citation omitted). Here, the waiver provision unambiguously excluded prosecutorial misconduct claims. Yet the district court nevertheless barred them.

When construing the scope, the analysis "begins with the fundamental rule that plea agreements are contractual in nature and are measured by contract law standards." *United States v. Clark,* 218 F.3d 1092, 1095 (9th Cir. 2000) (citation omitted). Courts "will generally enforce the plain language of a plea agreement if it is clear and unambiguous on its face." *Davies v. Benov*, 856 F.3d 1243, 1247 (9th Cir. 2017) (citation omitted). And the Ninth Circuit "steadfastly appl[ies] the rule that any lack of clarity in a plea agreement should be construed against the government as drafter." *United States v. Spear*, 753 F.3d 964, 968 (9th Cir. 2014) (citation omitted).

The story Mr. Medina tells in Grounds Two through Five of his petition is undeniably one of prosecutorial misconduct. *See* Ex. D at 5-9. But the district court did not appreciate that Mr. Medina was raising prosecutorial misconduct claims. To be sure, Mr. Medina, a non-lawyer, used "inaccurate legal terminology," but the rule in the Ninth Circuit is that cannot be held against him. *Blaisdell v. Frappiea*, 729 F.3d 1237, 1241 (9th Cir. 2013); *see*

Agyeman v. I.N.S., 296 F.3d 871, 877 (9th Cir. 2002) ("Albeit inartfully, Aygeman raised pro se his due process claims . . . [notwithstanding that] he did not use the specific phrase 'due process violation'"). The district court "ha[d] an obligation to give a liberal construction to [his] filings" and conclude that Mr. Medina asserted prosecutorial misconduct claims. *Blaisdell*, 729 F.3d at 1241.

And the plain language of the waiver excludes such claims from its scope. The waiver states in relevant part:

> . . . This waiver shall not be construed to bar an otherwise-preserved[1] claim of ineffective assistance of counsel or of "prosecutorial misconduct" (as that term is defined by Section II.B of Ariz. Ethics Op. 15-01 (2015)).[2]

What is more, at the change of plea hearing, the court explicitly asked Mr. Medina whether he understood that he was "keeping [his collateral attack] rights for a few things, for ineffective assistance of counsel [and] *for prosecutorial misconduct*." Change of Plea Tr. at 16 (emphasis added). Same at sentencing. *See* Sentencing Tr. at 31 (Asking Mr. Medina if he understands that he is "waiv[ing] the right to appeal, except for the right to challenge the effectiveness of the assistance of [his] counsel or *any governmental misconduct*") (emphasis added). The record shows, beyond hope of contradiction, that Mr. Medina did

[1] Mr. Medina alleges that this information about the postal inspector is "newly discovered." Ex. D at 12. In any event, neither the magistrate nor the district court ruled on whether or not the claims are preserved. Nor could they without performing an evidentiary hearing.

[2] Prosecutorial misconduct "includes (but is not necessarily limited to) destroying evidence, suborning perjury, and knowingly failing to turn over exculpatory evidence." *See* Ariz. Ethics Op. 15-01 (2015), https://www.azbar.org/for-legal-professionals/ethics/ethics-opinions/?V=Opinions&OpinionId=724. The failure to turn over exculpatory evidence is exactly what Mr. Medina claims.

not agree to waive his right to collaterally attack his sentence on prosecutorial misconduct grounds.

Despite all that, the district court nevertheless concluded that Mr. Medina's prosecutorial misconduct claims were "foreclosed by the Waiver Provision." Civ. Dist. Ct. Doc. 43 at 2. That was error.

In barring the claim, the district court asked instead whether Mr. Medina knowingly and voluntarily entered into the agreement. *See id.* But the answer to that question has no bearing on his prosecutorial misconduct claims. The waiver, after all, excluded these claims, so it would not have reached them regardless of its validity. And in any event, as mentioned above, the Rule 11 colloquy and the sentencing hearing suggests that Mr. Medina did *not* knowingly and voluntarily agree to waive his right to collaterally attack his sentence on prosecutorial misconduct grounds. *See* Change of Plea Tr. at 16; Sentencing Tr. at 31.

Other district courts faced with the same waiver language have not made this mistake. In *United States v. Ruelas*, No. CR1700317001PHXJAT, 2020 WL 1911221 (D. Ariz. Apr. 20, 2020), an inmate raised claims of prosecutorial misconduct in his § 2255 motion. *Id.* at *2. His plea agreement contained the exact same waiver provision. *Id.* The district court correctly held the prosecutorial misconduct claim "was not waived in the plea agreement." *Id.*

Similarly, in *United States v. Mogler*, No. CR-15-01118-PHX-SPL, 2021 WL 4847228 (D. Ariz. Sept. 20, 2021), *report and recommendation adopted*, No. CR-15-01118-PHX-SPL, 2021 WL 4844115 (D. Ariz. Oct. 18, 2021), an inmate brought a habeas petition, also raising prosecutorial misconduct claims. *Id.* at *8. Again, the magistrate judge

concluded that "claims of prosecutorial misconduct, a claim category along with ineffective assistance of counsel, [are] expressly excluded from Movant's waiver in his plea agreement. Accordingly, Movant did not waive the ability to assert claims of prosecutorial misconduct on appeal or on collateral review." *Id.* (cleaned up).

Plea agreements "are essentially contracts." *Garza*, 586 U.S. at 238. Mr. Medina never agreed to waive his prosecutorial misconduct claims. In concluding that he did, the district court held him to a promise he did not make.

C. Claims of *Brady* violations cannot be waived

And even if he did, the district court still should not have enforced the waiver against him. To be enforceable, a collateral attack waiver must be "knowingly and voluntarily made." *Davies*, 856 F.3d at 1246 (citation omitted). A *Brady* violation goes to the heart of whether the waiver was knowingly and voluntarily made. *See Sanchez*, 50 F.3d at 1453 (agreeing with three other circuit courts that "a defendant can argue that his guilty plea was not voluntary and intelligent because it was made in the absence of withheld *Brady* material"). As the Ninth Circuit has put it, a waiver cannot be knowing and voluntary if it is "entered without knowledge of material information withheld by the prosecution." *Id.* That is because "a defendant's decision whether or not to plead guilty is often heavily influenced by his appraisal of the prosecution's case." *Id*

Mr. Medina has raised a colorable claim of a *Brady* violation. His petition asserts federal prosecutors "deliberately concealed favorable evidence" about a key witness. Ex. D. at 5. The petition further asserts the witness, among other things, tampered with evidence, falsified fingerprints, and was addicted to drugs. *See id.* at 6A. The district

court's decision to deny Mr. Medina's *Brady* claims on the grounds of the waiver alone was therefore error.

D. Application of the collateral attack waiver here works a miscarriage of justice

Mr. Medina's collateral attack waiver is unenforceable for an independent reason: its enforcement would work a miscarriage of justice. At least five circuits have recognized a "miscarriage of justice" exception to even voluntary and knowing waivers in plea agreements. *See United States v. Adams*, 814 F.3d 178, 182 (4th Cir. 2016) ("We will refuse to enforce an otherwise valid waiver if to do so would result in a miscarriage of justice."); *United States v. Guillen*, 561 F.3d 527, 531 (D.C. Cir. 2009) ("Nor should a waiver be enforced if the sentencing court's [error] results in a miscarriage of justice."); *United States v. Hahn*, 359 F.3d 1315, 1327 (10th Cir. 2004) (adopting the exception); *Andis*, 333 F.3d at 890-91 ("[W]e will still refuse to enforce an otherwise valid waiver if to do so would result in a miscarriage of justice."); *United States v. Khattak*, 273 F.3d 557, 562 (3d Cir. 2001) (similar); *United States v. Teeter*, 257 F.3d 14, 25-26 & n.9 (1st Cir. 2001) (similar); *but see United States v. Barnes*, 953 F.3d 383, 389 (5th Cir. 2020) ("[W]e have declined explicitly either to adopt or to reject [the miscarriage of justice exception]."); *Rudolph v. United States*, 92 F.4th 1038, 1048-49 (11th Cir. 2024) (similar).

One circumstance in which the circuit courts have recognized this exception is "where the waiver is otherwise unlawful." *Hahn*, 359 F.3d at 1327. To be otherwise unlawful, an "error must seriously affect the fairness, integrity or public reputation of judicial proceedings." *Id.*

Exactly the case here. In his *pro se* § 2255 petition, Mr. Medina gives an alarming account of prosecutorial misconduct, alleging the prosecutor deliberately concealed evidence favorable to Mr. Medina about the United States Postal Inspector who investigated him. But the district court did not even address the merits of these claims. Enforcing the waiver here, where Mr. Medina challenges evidence that would have influenced his decision to enter into the very plea agreement that contains the waiver, works a miscarriage of justice.

* * * * *

To be sure, cases in which a Circuit fails to issue a COA in a nonfrivolous appeal, requiring the intervention of a justice of this Court, are rare. But they do exist. This is such a case. In the decision below, the Ninth Circuit contradicted its own case law in its hurry to deny Mr. Medina his appellate rights. Applicant's arguments are substantial, and reasonable jurists could debate them. That is all that Congress required for the issuance of a COA.

CONCLUSION

For the foregoing reasons, Applicant respectfully requests the issuance of a Certificate of Appealability.

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Respectfully submitted,

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