No. 26-5206

IN THE SUPREME COURT
OF THE UNITED STATES

OLAMIDE OLATAYO BELLO,
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

REPLY BRIEF FOR PETITIONER

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Opposition reference: Brief for the United States in Opposition, Bello v. United States, No. 26-5206 (U.S., submitted Oct. 23, 2026), cited by printed page. Each record citation identifies its court, case number, ECF entry, and available page or paragraph pinpoint. ECF entries in No. 25-40043 are distinct from entries in No. 25-40772. Proposed briefs and motions are distinguished from accepted briefs and court findings; no later scope or briefing ruling is presumed.

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INTRODUCTION

Petitioner submits this reply under Rule 15.6. The opposition rests on two propositions: petitioner may never have clearly elected counsel, and another appeal makes the loss of his first appeal inconsequential. Bello v. United States, No. 26-5206 (U.S.), Brief in Opposition at 12-14. The record contradicts the first proposition. The opposition itself leaves the second unresolved.

Document 82-1 expressly elected appointed counsel before reconsideration was denied. Document 83 separately requested counsel "to represent Appellant." The government does not address the former filing or the latter language. Its alternative argument depends on a scope question it acknowledges remained pending. Petitioner seeks review and remand or, alternatively, a hold until the asserted substitute for his dismissed appeal is established.

I. THE RECORD CONTAINS AN EXPRESS COUNSEL ELECTION.

On November 14, 2025, petitioner's response to the August 12 order was docketed. It stated: "Mr. Bello elects to proceed with representation by appointed counsel under the Criminal Justice Act (CJA) for the remainder of his direct criminal appeal." United States v. Bello, No. 25-40043 (5th Cir.), ECF No. 82-1, at 1, para. 5. It requested leave to respond out of time and acceptance of that election. United States v. Bello, No. 25-40043 (5th Cir.), ECF No. 82-1, at 1, paras. 4-5. The Clerk acknowledged receipt but stated: "This case has been dismissed, therefore, we are taking no action on this request." United States v. Bello, No. 25-40043 (5th Cir.), ECF No. 82-2, at 1.

Three days later, petitioner asked: "Appoint CJA counsel to represent Appellant." United States v. Bello, No. 25-40043 (5th Cir.), ECF No. 83, at 1, Relief Requested para. 3. The opposition quotes his request for counsel "for assistance" but does not address this express request for representation. Bello v. United States, No. 26-5206 (U.S.), Brief in Opposition at 6, 12. Reconsideration was denied November 20. United States v. Bello, No. 25-40043 (5th Cir.), ECF No. 91-2, at 1.

The election was late; petitioner does not claim otherwise. But lateness and ambiguity are different questions. The government's suggestion that petitioner never chose counsel overlooks a filing that did precisely that. The remaining question is whether his explanation justified relief from default, not whether he continued to insist on hybrid representation.

II. NOTICE AND COUNSEL REQUIRE SEPARATE CONSIDERATION.

Petitioner does not assert a constitutional entitlement to hybrid representation. Martinez v. Court of Appeal of California, Fourth Appellate District, 528 U.S. 152, 163-164 (2000), recognizes that there is no federal constitutional right to appellate self-representation. Denying that mode of representation, however, is different from terminating the appeal after an express election of appointed representation.

Evitts v. Lucey, 469 U.S. 387, 396, 400-401 (1985), protects effective representation on a first appeal as of right. Evitts concerned counsel's procedural default in a state appeal, whereas petitioner challenges his own late response in a federal appeal under the Fifth Amendment. Its relevant principle is that procedural administration must respect meaningful appellate access. It does not automatically excuse every

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missed deadline.

Petitioner explained that he was in custodial transit from July 28 through August 28, 2025, lacked incoming legal mail during transit, and did not receive the August 12 order. United States v. Bello, No. 25-40043 (5th Cir.), ECF No. 82-1, at 1, paras. 1-3. These are record assertions, not adjudicated findings. Because transit ended before the response deadline, the dates alone do not establish the entire explanation. The material questions are whether the order ever reached petitioner, when he learned of it, and whether his subsequent efforts warranted restoration.

The opposition recounts that explanation but does not identify a finding resolving those notice questions. Bello v. United States, No. 26-5206 (U.S.), Brief in Opposition at 5-6. The November 14 letter declined action because the case was already dismissed; it did not explain why the express election was inadequate. The November 20 denial likewise supplied no explanation. Petitioner asks for consideration of those matters, not a presumption that nonreceipt has conclusively been proved.

Link v. Wabash Railroad Co., 370 U.S. 626, 629-636 (1962), recognizes substantial dismissal authority in civil litigation. It does not decide whether continued denial of this first criminal appeal was permissible after the counsel election and notice explanation. Nor does the number of petitioner's other cases establish receipt of this particular order. Docket-management authority is not the disputed premise; its exercise on this record is.

III. THE ALTERNATIVE APPEAL DOES NOT YET ANSWER THE LOSS-OF-REVIEW QUESTION.

The government's strongest alternative argument is that No. 25-40772 permits review of the original conviction and custodial sentence. Bello v. United States, No. 26-5206 (U.S.), Brief in Opposition at 12-14. Petitioner accepts the government's position that such review is available. The unresolved question is whether the Fifth Circuit will afford a meaningful opportunity to present the claims. The opposition acknowledges that petitioner's scope motion remained pending when it was filed. Bello v. United States, No. 26-5206 (U.S.), Brief in Opposition at 9, 13 (citing United States v. Bello, No. 25-40772 (5th Cir.), ECF No. 410).

The government's actual briefing position below qualifies its reliance on that alternative. Its February appellee brief said petitioner raised no conviction or pretrial challenges and sought dismissal or summary affirmance. United States v. Bello, No. 25-40772 (5th Cir.), ECF No. 203, at 3-5, 7 n.3, 9. It then opposed an amended opening brief adding sufficiency, jury-instruction, loss, enhancement, and restitution arguments because briefing was complete. United States v. Bello, No. 25-40772 (5th Cir.), ECF No. 229, at 3-4. In October it urged that additional arguments be deemed waived and opposed all motions to amend or supplement. United States v. Bello, No. 25-40772 (5th Cir.), ECF No. 440-1, at 6-8 & n.1. It continued to seek dismissal or summary affirmance even after the district court found excusable neglect. United States v. Bello, No. 25-40772 (5th Cir.), ECF No. 440-1 at 8 n.2.

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Those positions are not necessarily contradictory propositions about appellate power. The government also maintains that petitioner already had a full and fair opportunity to raise the issues, and criticizes the proposed supplemental brief's compliance with Rule 28. United States v. Bello, No. 25-40772 (5th Cir.), ECF No. 440-1 at 7-8. But that leaves a concrete question: whether the existing briefs, prepared before material record developments, provided the meaningful review the opposition now invokes. The government cannot establish that question's answer merely by pointing to a pending motion whose requested briefing it opposes.

The district court's own transcript ruling makes the problem concrete. It denied renewed transcript requests as moot on March 3 because it understood the pending appeals to involve limited amended-judgment and notice-of-divestiture questions. United States v. Bello, No. 4:23-cr-00136-ALM-BD (E.D. Tex.), ECF No. 911, at 1-2. That is the district court's characterization, not a government concession or a controlling Fifth Circuit scope ruling. Nevertheless, it demonstrates why broad review cannot be assumed from the docket number alone.

The opening and reply briefs were filed January 21 and February 20, 2026. Bello v. United States, No. 26-5206 (U.S.), Brief in Opposition at 7. On March 1 petitioner sought supplemental briefing to integrate materials he said had become accessible after the opening brief, or alternatively record clarification under Federal Rule of Appellate Procedure 10(e). United States v. Bello, No. 25-40772 (5th Cir.), ECF No. 243, at 1-2, 5-6. His October motion tendered a proposed replacement brief but expressly distinguished tender from acceptance, reinstatement, scope, and

permission to reopen briefing. United States v. Bello, No. 25-40772 (5th Cir.), ECF No. 446, at 1-2. The existence of that proposed brief therefore does not establish that its claims are before the Fifth Circuit for decision.

Three examples show why access and authorized briefing matter. The proposed presentation links the interpreter issue to identified indiscernible allocution passages and the sentencing court's stated rationale; identifies disputed Guidelines findings and loss attribution; and seeks reconstruction of suppression testimony bearing on passwords and inevitable discovery. United States v. Bello, No. 25-40772 (5th Cir.), ECF No. 446, at 3-5. A separate motion requests the July 9 and December 19, 2024 transcripts for self-representation, interpreter, defense-instruction, and other pretrial issues. United States v. Bello, No. 25-40772 (5th Cir.), ECF No. 449, at 1-3. These are concrete asserted review needs, not findings that the underlying claims succeed.

Petitioner does not perpetuate his original assertion that no sentencing transcript exists. The April 27 order states that a certified transcript had been provided and that no sentencing audio recording exists. United States v. Bello, No. 4:23-cr-00136-ALM-BD (E.D. Tex.), ECF No. 933, at 1. Absence of audio does not alone establish that reconstruction is impossible; Rule 10(c) permits other available means. Likewise, the government's earlier statement that the transcript was unavailable was expressly distinguished from a concession that it could never be produced. United States v. Bello, No. 25-40772 (5th Cir.), ECF No. 176, at 2-3 & n.1. The relevant questions now concern material omissions, actual access, feasible record settlement, and a sufficient opportunity to brief the

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resulting record.

The August 27 excusable-neglect finding resolves the lateness issue identified in the limited remand; it does not itself accept a replacement brief or define the issues reviewable in the later appeal. United States v. Bello, No. 4:23-cr-00136-ALM-BD (E.D. Tex.), ECF No. 974; Bello v. United States, No. 26-5206 (U.S.), Brief in Opposition at 8-9. Manrique v. United States, 581 U.S. 116, 123 (2017), recognizes two appealable judgments in deferred-restitution cases. The government relies on circuit decisions to argue that the later appeal reaches the conviction and sentence. Bello v. United States, No. 26-5206 (U.S.), Brief in Opposition at 13. Petitioner welcomes that position, but requests that the availability of meaningful review be established rather than presumed.

A hold is the appropriate alternative to immediate review. It would allow the Fifth Circuit to clarify scope and briefing, address the material record issues, and determine which otherwise reviewable claims can be presented. If that process supplies the review invoked by the government, the parties can report it. If review is restricted, the continuing consequence of the dismissal in No. 25-40043 will be clear. Petitioner does not ask this Court to decide the underlying trial and sentencing claims through this reply.

The petition does not assert an established circuit split on identical facts. Its basis for review is the claimed conflict between termination of a first appeal and the governing protections of notice and counsel, on a record containing an express election the opposition omits. The alternative appeal has not been shown to eliminate that issue. Rule 10's limits on

error correction warrant a focused presentation of that question, not an assumption that a disputed substitute has restored the lost opportunity.

IV. ANY MERITS REMAND SHOULD PERMIT PROMPT CONSIDERATION OF A PROPERLY PRESENTED RELEASE REQUEST.

Petitioner's earlier application for bail was denied by Justice Alito on October 17, 2026. Bello v. United States, No. 26-5206 (U.S.), docket entry of Oct. 17, 2026 (Application No. 26A517). Petitioner acknowledges that denial. This reply does not ask the Court to reconsider that application or treat the opposition as establishing entitlement to release. If the Court grants the petition and remands for restoration or reconsideration of direct appellate review, petitioner requests that the remand permit prompt Fifth Circuit consideration of a properly presented renewed motion for release pending appeal.

Any such request must independently satisfy 18 U.S.C. § 3143(b), Federal Rule of Appellate Procedure 9(b)-(c), and Fifth Circuit Rules 9.2-9.3. Petitioner must establish the required absence of flight risk and danger by clear and convincing evidence, a non-delay purpose, and a substantial appellate question satisfying the statute's specified outcome requirements: reversal, a new trial, a sentence without imprisonment, or a qualifying reduction below time served plus the expected appeal duration. Neither record delay nor a procedural remand alone establishes those requirements. A renewed motion must address the earlier denial, identify any material change in circumstances or legal posture, and supply the relevant district-court release ruling, reasons, judgment, and supporting materials. The appropriate lower-court procedures and any necessary

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factfinding remain for those courts.

The requested ancillary relief is consideration, not an order of release or an instruction to disregard an earlier ruling. If the Court instead holds this petition, petitioner does not seek a stand-alone bail remand through the reply; any otherwise available release request remains subject to the appropriate lower-court process.

CONCLUSION

The Court should grant the petition, vacate the judgment terminating petitioner's appeal, and remand for consideration of his express counsel election, his nonreceipt explanation, and restoration of meaningful direct appellate review. Alternatively, the Court should hold the petition pending clarification whether No. 25-40772 will provide review of the original conviction and custodial sentence, with access to the material record, necessary record settlement, and an adequate opportunity for authorized supplemental briefing. If the Court grants review and remands, petitioner further requests that the remand permit prompt consideration by the Fifth Circuit of any properly presented renewed release motion under Federal Rule of Appellate Procedure 9(b) and 18 U.S.C. § 3143(b), without directing its outcome. See Sup. Ct. R. 16.1.

Respectfully submitted,
/s/ Olamide Olatayo Bello
Olamide Olatayo Bello, Petitioner, Pro Se
Dated: October 23, 2026