No. 18-288

IN THE

Supreme Court of the United States

PHILLIP A. MEARING,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

BRIEF FOR THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS AMICUS CURIAE IN SUPPORT OF PETITIONER

JEFFREY T. GREEN
CO-CHAIR AMICUS COMMITTEE
NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS
1660 L Street, NW
Washington, DC 20036

CHRISTOPHER E. BABBITT
Counsel of Record
HELAM GEBREMARIAM
WILMER CUTLER PICKERING HALE AND DORR LLP
1875 Pennsylvania Ave., NW
Washington, DC 20006
(202) 663-6000
christopher.babbitt@wilmerhale.com

ALAN E. SCHOENFELD
WILMER CUTLER PICKERING
HALE AND DORR LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007

FELICIA H. ELLSWORTH
CHRISTOPHER D. DODGE
WILMER CUTLER PICKERING
HALE AND DORR LLP
60 State Street
Boston, MA 02109

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

STATUTORY PROVISIONS

TABLE OF AUTHORITIES—Continued

Page(s)

OTHER AUTHORITIES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

STATEMENT OF INTEREST[1]

The National Association of Criminal Defense Lawyers (NACDL) is a nonprofit voluntary professional bar association that works on behalf of criminal defense attorneys to ensure justice and due process for those accused of crime or misconduct. NACDL was founded in 1958. It has a nationwide membership of many thousands of direct members, and up to 40,000 with affiliates. NACDL's members include private criminal defense lawyers, public defenders, military defense counsel, law professors, and judges. NACDL is the only nationwide professional bar association for public defenders and private criminal defense lawyers.

NACDL is dedicated to advancing the proper, efficient, and just administration of justice. NACDL files numerous amicus briefs each year in the U.S. Supreme Court and other federal and state courts, seeking to provide amicus assistance in cases that present issues of broad importance to criminal defendants, criminal defense lawyers, and the criminal justice system as a whole.

This case presents a question of great importance to NACDL and the clients its attorneys represent because the overwhelming majority of criminal prosecutions are resolved through plea agreements. NACDL has a strong interest in the uniform interpretation of

---

[1] No counsel for a party authored this brief in whole or in part, and no entity or person, other than amicus curiae, its members, and its counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Petitioner filed a blanket consent with the Court on September 10, 2018; counsel for NACDL sought consent to file this brief from the government on October 1, 2018, which was provided on October 2, 2018. The relevant letters of consent are on file with the Clerk.

appellate waivers, which prosecutors have increasingly demanded as a core term in such agreements. Given NACDL's expertise in these matters, NACDL respectfully submits that its perspective on the first question presented may assist the Court in evaluating the importance of this case and whether to grant certiorari.

INTRODUCTION

For decades, American criminal justice has been predominantly administered through private negotiations between prosecutors and defendants, wherein defendants agree to forego fundamental rights in exchange for the hope of leniency. *See* NACDL, *The Trial Penalty: The Sixth Amendment Right to Trial on the Verge of Extinction and How to Save It* 14 (2018). Each year, the percentage of federal criminal defendants pleading guilty continues to rise, and it is now estimated that over 97% of federal criminal prosecutions are resolved through plea agreements. *Id.* As a result, these plea agreements have become an essential element of our criminal justice system. *See infra* Part I.A.

As the use of plea agreements continues to increase, so too have prosecutors increasingly demanded that such agreements include a series of waivers, affecting everything from a defendant's right to appeal a conviction to the ability to obtain collateral relief, access discovery materials, and access effective and competent counsel. *See* Klein et al., *Waiving the Criminal Justice System: An Empirical and Constitutional Analysis*, 52 Am. Crim. L. Rev. 73, 76-88 (2015) (discussing the rise of waiver provisions in plea agreements and observing that "[w]aivers of discovery and appellate rights are sprouting up like wildfires"). Despite the pervasiveness of these waivers, however, there remains great uncertainty and confusion regard-

ing "what is waived, by whom, at what price, and how often." King & O'Neill, *Appeal Waivers and the Future of Sentencing Policy*, 55 Duke L.J. 209, 211 (2005). This is particularly true in the context of the appellate waiver at issue in petitioner's case, where there is an entrenched Circuit split as to whether a defendant's agreement to waive the right to appeal the "sentence" extends to an appeal from an order of restitution. *See infra* Part I.C.

NACDL submits this brief to emphasize two points in support of the petition. First, uniformity on issues of federal criminal justice is of paramount importance. Given the present disagreement among the Circuits, it is possible, and indeed quite likely, that federal criminal defendants entering identical plea agreements for the same federal crime would be understood to have waived different appellate rights, based solely on the jurisdiction in which their case is pending. Such inconsistency in the application of our laws undermines faith in the criminal justice system and should be resolved by this Court. *See infra* Part I.

Second, this case is an appropriate vehicle for resolving the split. The plea agreement at issue in petitioner's case is identical in all material respects to the Department of Justice's model for appellate waivers, which is used in some form throughout the nation. *See infra* Part II.A. Moreover, unlike in recent cases in which the Court has declined to grant certiorari to address this issue, Mearing's ability to pursue the merits of his appeal turns exclusively on the issues presented in his petition. *See infra* Part II.B.

ARGUMENT

I. THIS CASE PRESENTS AN IMPORTANT QUESTION OF FEDERAL CRIMINAL PROCEDURE ON WHICH NATIONAL UNIFORMITY IS NEEDED

A. Plea Agreement Procedure Is Fundamental To Modern Criminal Procedure

This Court has long recognized that plea agreements are a cornerstone of the criminal justice system. *See Santobello* v. *New York*, 404 U.S. 257, 260 (1971) ("The disposition of criminal charges by agreement between the prosecutor and the accused … is an essential component of the administration of justice."); *Lafler* v. *Cooper*, 566 U.S. 156, 170 (2012) (recognizing the "central role plea bargaining plays in securing convictions and determining sentences"). That view has become even more pronounced over time as the criminal trial has become more and more infrequent. *See* Conrad & Clements, *The Vanishing Criminal Jury Trial: From Trial Judges to Sentencing Judges*, 86 Geo. Wash. L. Rev. 99, 153 (2018) ("In 1974, eighty percent of convictions came from plea agreements—today the number is approximately ninety-seven percent of federal criminal convictions."); *see also* Wright, *Trial Distortion and the End of Innocence in Federal Criminal Justice*, 154 U. Pa. L. Rev. 79, 90 (2005) (describing the "sustained climb" in guilty pleas from 1980 onwards); *Padilla* v. *Kentucky*, 559 U.S. 356, 372 (2010) (observing that, as of 2010, approximately 95% of state and federal convictions were obtained through pleas). What was once a bold claim is now a truism: plea bargaining is "not some adjunct to the criminal justice system; it *is* the criminal justice system." *Missouri* v. *Frye*, 566 U.S. 134, 144 (2012) (quoting Scott & Stuntz, *Plea Bargaining as Contract*, 101 Yale L. J. 1909, 1912 (1992)).

Until recently, this aspect of the American criminal justice system received only minimal judicial guidance and oversight. *See* Bibas, *Regulating the Plea-Bargaining Market: From Caveat Emptor to Consumer Protection*, 99 Cal. L. Rev. 1117, 1131 (2011) (discussing how this Court's criminal jurisprudence between 1970 and 2000 focused primarily on jury trials and "reviewed disproportionately fewer guilty pleas"). Historically, the judiciary had adopted what has been described as a "hands-off approach to plea bargaining." *Id.* at 1121; *see also, e.g.*, Covey, *Plea-Bargaining Law After* Lafler *and* Frye, 51 Duq. L. Rev. 595, 599-600 (2013) (discussing "laissez-faire judicial attitudes towards plea-bargaining tactics"). But as plea bargaining has grown synonymous with the criminal justice system, this Court has increasingly provided important guidance on the negotiation and enforcement of plea agreements. Such guidance is critical to ensuring predictability and fairness to defendants, prosecutors, and courts alike. *Cf. Class* v. *United States*, 138 S. Ct. 798, 807 (2018) (Alito, J., dissenting) ("[I]t is critically important that defendants, prosecutors, and judges understand the consequences of [guilty] pleas.").

The Court's increased attendance to the constitutional implications of plea agreements is reflected in a series of decisions beginning in 2010. In *Padilla* v. *Kentucky*, 559 U.S. 356 (2010), this Court held that failing to advise a noncitizen-defendant about the immigration consequences of pleading guilty constitutes ineffective assistance of counsel. *Id.* at 374. The Court next held in *Lafler* v. *Cooper*, 566 U.S. 156 (2012), that the right to effective assistance of counsel extends beyond instances where a defendant accepts a plea to situations where a defendant declines a plea offer due to deficient counsel and is subsequently prejudiced through greater

sentencing exposure at trial. *Id.* at 166. On the same day the Court announced its decision in *Lafler*, the Court held in *Missouri* v. *Frye*, 566 U.S. 134 (2012) that a criminal defendant has the right to be informed by his counsel of plea offers made by the government. *Id.* at 145. Finally, and most recently, in *Class* v. *United States*, 138 S. Ct. 798 (2018), the Court held that a guilty plea alone does not waive a defendant's right to pursue constitutional claims on appeal. *Id.* at 807.

Padilla, *Lafler*, *Frye*, and *Class* underscore the important constitutional dimensions of the negotiation and enforcement of plea agreements "in the larger context of a criminal justice system that is a plea bargaining system." Roberts, *Effective Plea Bargaining Counsel*, 122 Yale L.J. 2650, 2659 (2013). Each of *Padilla*, *Lafler*, and *Frye* recognizes the constitutional significance of providing defendants with competent counsel during plea negotiations—the stage of criminal proceedings where legal advice is most critically needed. *See Frye*, 566 U.S. at 144 (recognizing that "criminal defendants require effective counsel during plea negotiations" because "[a]nything less … might deny a defendant 'effective representation by counsel at the only stage when legal aid and advice would help him" (quoting *Massiah* v. *United States*, 377 U.S. 201, 204 (1964)). And the Court's opinion in *Class* is among the first squarely to confront growing questions about the scope and enforceability of appellate waivers that are increasingly fundamental to criminal procedure in the United States.

B. The Increasing Frequency Of Appellate Waivers In Plea Agreements Underscores The Need For The Court's Intervention

As the use of plea agreements to resolve criminal prosecutions has increased, so too has the use of appel-

late waivers. *See* King & O'Neill, *Appeal Waivers and the Future of Sentencing Policy*, 55 Duke L.J. 209, 211 (2005). Indeed, a recent analysis reveals that nearly eighty percent of plea agreements include appellate waivers as boilerplate. Klein et al., *Waiving the Criminal Justice System: An Empirical and Constitutional Analysis*, 52 Am. Crim. L. Rev. 73, 87, 122-126 (2015); *see also*, Bennardo, *Post-Sentencing Appellate Waivers*, 48 U. Mich. J.L. Reform 347, 348 (2015) ("Appellate waiver provisions rose to popularity in the 1990s and are today common components of plea agreements in many federal districts."). At the most basic level, these waivers, executed as part of a defendant's plea agreement, relinquish the defendant's statutory right to appeal his or her yet-to-be-imposed sentence.[2]

The need for clarity and uniformity in the construction of plea agreements is especially important because defendants bargain at a distinct disadvantage. Federal prosecutors have "virtually unbridled discretion over decisions that will dictate a defendant's ultimate sentence," and thus his or her life. NACDL, *The Trial Penalty: The Sixth Amendment Right to Trial on the Verge of Extinction and How to Save It* 16 (2018). Plea agreements are negotiated in the shadow of the law, without the benefit of transparency or formal rules. There is, as a result, "ample evidence that federal criminal defendants are being *coerced* to plead guilty" because the potential risk of exercising their constitution-

---

[2] "Appellate waivers grew in popularity after the Sentencing Reform Act of 1984, which provided hundreds of new sentencing issues for defendants to raise on appeal, even after pleading guilty." Note, *A Justified Obligation: Counsel's Duty to File A Requested Appeal in A Post-Waiver Situation*, 20 Wash. & Lee J. Civil Rts. & Soc. Just. 141, 147-148 (2013) (quotation marks omitted)); *see also* 18 U.S.C. § 3742.

al and statutory rights is simply too high. *See id.* at 6; *see also* Covey, *Reconsidering the Relationship Between Cognitive Psychology and Plea Bargaining*, 91 Marq. L. Rev. 213, 242-243 (2007) ("The routine use of high-pressure bargaining tactics and exploding offers, and the ever-present threat that next time one might find himself or herself standing before an even more vindictive or unreasonable judge, places added psychological stress on criminal defendants."); Scott & Stuntz, 101 Yale L.J. at 1912 (the plea bargaining system is inherently coercive because defendants "accept bargains because of the threat of much harsher penalties").

C. The Circuit Split Over The Reach Of Appellate Waivers Warrants This Court's Review

The rapid rise of plea agreements, and appellate waivers within them, has not surprisingly led to widespread disagreement about their meaning, scope, and enforceability. In particular, there is a deep and entrenched split among the Circuits over whether a defendant's waiver of the right to appeal the "sentence" extends to an appeal from an order of restitution. Indeed, on the facts of this case, five Circuit courts would permit petitioner to appeal his order of restitution, whereas four Circuits would not. *Compare United States* v. *Sistrunk*, 432 F.3d 917, 918 (8th Cir. 2006) (holding that an "appeal from [a] restitution order is beyond the scope of the waiver"); *United States* v. *Chemical & Metal Indus., Inc.*, 677 F.3d 750, 752 (5th Cir. 2012) (holding that the applicable appeal-waiver provision does not cover restitution); *In re Sealed Case*, 702 F.3d. 59, 64 (D.C. Cir. 2012) (same); *United States* v. *Oladimeji*, 463 F.3d 152, 156-157 (2d Cir. 2006) (same); *United States* v. *Zink*, 107 F.3d 716, 718 (9th Cir. 1997) (same), *with United States* v. *Perillo*, 897

F.3d 878, 883 (7th Cir. 2018) (holding that a defendant's appellate waiver includes his right to appeal an order of restitution); *United States* v. *Rafidi*, 730 F. App'x 338, 341 (6th Cir. 2018) (same); *United States* v. *Perez*, 514 F.3d 296, 298 (3d Cir. 2007) (same); *United States* v. *Cohen*, 459 F.3d 490, 496 (4th Cir. 2006) (same).

A defendant's appeal rights should not depend on the fortuity of where a case is charged. Such divergence is not only arbitrary and inconsistent with the uniformity demanded by federal law but undermines public faith in, and threatens the legitimacy of, the criminal justice system. *See e.g.*, *Davis* v. *United States*, 160 U.S. 469, 488 (1895) (Harlan, J.) ("[I]t is desirable that there be uniformity of rule in the administration of the criminal law in governments whose constitutions equally recognize the fundamental principles that are deemed essential for the protection of life and liberty."); *see also* Gilchrist, *Plea Bargains, Convictions and Legitimacy*, 48 Am. Crim. L. Rev. 143, 162 (2011) ("[T]he perception of procedural fairness is critical to fostering public confidence in the legal system."); Higley, *Requirements of Uniformity and the Federal Formulation of Criminal Responsibility*, 21 Buff. L. Rev. 421, 424 (1972) ("Uniform application of laws symbolizes a fundamental concern for the equal rights of all individuals. This concept, individual equality before the law, is the touchstone of American democracy.").

II. THIS CASE OFFERS AN APPROPRIATE VEHICLE FOR RESOLVING AN ENTRENCHED CIRCUIT SPLIT

A. The Appellate Waiver At Issue Is Typical

As plea bargaining has grown more routinized, plea agreements have increasingly relied on standardized boilerplate. *See* Klein et al., 52 Am. Crim. L. Rev. at 75.

Indeed, the model appellate waiver provision contained in the Department of Justice Criminal Resource Manual is identical in all material respects to the waiver provision in petitioner's plea agreement.[3]

In relevant part, the Justice Department's model reads:

> The defendant is aware that 18 U.S.C. § 3742 affords a defendant the right to appeal the sentence imposed. Acknowledging all this, the defendant knowingly waives the right to appeal any sentence within the maximum provided in the statute(s) of conviction (or the manner in which that sentence was determined) on the grounds set forth in 18 U.S.C. § 3742 or on any ground whatever, in exchange for the concessions made by the United States in this plea agreement.

Id. The plea agreement in this case is materially identical:

> The defendant also understands that 18 U.S.C. § 3742 affords a defendant the right to appeal the sentence imposed. Nonetheless, the defendant knowingly waives the right to appeal the conviction and any sentence within the statutory maximum described above (or the manner in which the sentenced was determined) on the grounds set forth in 18 U.S.C. § 3742 or on any ground whatsoever … in exchange for the concessions made by the United States in this plea agreement.

---

[3] *See* U.S. Dep't of Justice, *Criminal Resource Manual* § 626, https://www.justice.gov/jm/criminal-resource-manual-626-plea-agreements-and-sentencing-appeal-waivers-discussion-law.

See Pet. 21a.

Relevant here, both provisions leave the term "sentence" undefined but qualified, creating the ambiguity that has divided the Circuits. Specifically, both the model Department of Justice provision and the petitioner's plea agreement qualify the term "sentence" to those within the statutory maximum, without expressly addressing whether the waivers reach orders of restitution.

The Department of Justice's model is particularly consequential because the Department "has issued internal policy guidelines both approving the use of such waivers as well as mandating their use by federal prosecutors in certain circumstances to promote greater efficiency." Note, *Neither A "Moose" Nor A "Puppet": Defining A Lawyer's Role When Directed to Pursue an Appeal Notwithstanding A Valid Waiver of Appellate Rights*, 7 Ave Maria L. Rev. 265, 270 (2008); *see also United States* v. *Villaneuva-Calderon*, No. 12-CR-235, 2012 WL 2501092, at *2 (D. Colo. June 28, 2012) (describing "[t]he Department of Justice's unyielding insistence on including appellate waivers" in plea agreements).

The language of Mearing's appellate waiver is commonplace. While the Eastern District of Virginia has its own stock appellate waiver provision, *see, e.g.*, *United States* v. *Linder*, 552 F.3d 391, 392 (4th Cir. 2009), other jurisdictions throughout the country have versions that, modest variations aside, parallel both Mearing's appellate waiver and the Department of Justice model.[4] *See, e.g.*, *United States* v. *Browder*, 499 F.

[4] The only minor variation in the otherwise boilerplate appellate waiver provisions in the Eastern District of Virginia is that some versions, including Mearing's, expressly carve out a right to

App'x 74, 75 n.1 (2d Cir. 2012); *United States* v. *Greenidge*, No. 16-cr-21, 2018 WL 2753036 (D.V.I., Jan. 18, 2018); *United States* v. *Pupo*, No. 1:15-cr-217, 2016 WL 8411114 (W.D. Mich. Sept. 22, 2016); *United States* v. *Repolio*, No. 15-cr-615, 2015 WL 12672180 (D. Haw. Oct. 8, 2015); *United States* v. *Garcia-Holguin*, No. 10-cr-1566, 2012 WL 4322594 (D.N.M. May 8, 2012); *United States* v. *Davis*, No. 10-cr-43, 2010 WL 1622423 (D.D.C. Apr. 13, 2010); *United States* v. *Perea*, No. 06-cr-414-3, 2007 WL 5036957 (N.D. Ill. Mar. 30, 2007); *see also* Bennardo, *A Frank Look at Appellate Waiver in the Seventh Circuit*, 36 S. Ill. U. L.J. 531, 545 n.3 (2012) (reciting a "fairly standard waiver of appellate rights" within the Seventh Circuit that is similar to Mearing's (quoting *United States* v. *Chapa*, 602 F.3d 865, 867 (7th Cir. 2010)); Klein et al., 52 Am. Crim. L. Rev. at 114 (surveying appellate waivers in plea agreements).

---

appeal based on ineffective assistance of counsel. *See, e.g.*, *United States* v. *Brewer*, No. 1:18-mj-0290, 2018 WL 3214515 (E.D. Va. June 22, 2018) (plea agreement containing identical "Waiver of Appeal, FOIA, and Privacy Act Rights" provision as Mearing's plea agreement); *United States* v. *Latin-Hunter*, No. 4:17-cr-118, 2018 WL 3202521 (E.D. Va. Mar. 28, 2018) (same); *United States* v. *Linares*, No. 3:16-cr-67, 2018 WL 2445846 (E.D. Va. Feb. 22, 2018) (same); *United States* v. *Harris*, No. 1:17-cr-106, 2018 WL 3424674 (E.D. Va. Jan. 16, 2018) (same). Other appellate waivers filed within the district are identical in all other respects but do not include the phrase "other than an ineffective assistance of counsel claim that is cognizable on direct appeal." *See, e.g.*, *United States* v. *Cross*, No. 4:17-cr-118, 2018 WL 3202519 (E.D. Va. June 18, 2018) (plea agreement containing identical "Waiver of Appeal, FOIA, and Privacy Act Rights" provision as Mearing's plea agreement, excepting the ineffective assistance of counsel clause); *United States* v. *McKnight*, No. 4:17-cr-118, 2018 WL 3202520 (E.D. Va. June 11, 2018) (same); *United States* v. *Joe*, No. 4:17-cr-65, 2018 WL 3062367 (E.D. Va. June 6, 2018) (same); *United States* v. *Wince*, No. 3:18-cr-04, 2018 WL 2064527 (E.D. Va. Jan. 30, 2018) (same).

In sum, because the appellate waiver in petitioner's plea agreement is typical of waivers in jurisdictions across the country, the case is a good vehicle for the Court to address recurring issues about the scope and enforceability of such waivers.

B. The Appellate Waiver At Issue Is Squarely Presented For The Court's Review

Petitioner's case is also an appropriate vehicle for resolving the issues presented because Mearing's opportunity to pursue his underlying merits case turns exclusively on the questions presented. *See* Pet. 21-22.

As the petition notes (at 21), the Court has recently denied certiorari in cases that, though presenting similar issues, did not turn exclusively on the issues presented. Such defects can be seen in other recent cases in which certiorari was denied. For example, in several appeals where petitioners argued that appellate waivers did not preclude challenges to restitution orders, the petitioner had previously signed a plea agreement that expressly stated the sum, or estimate, of the restitution owed. *See, e.g.*, *United States* v. *Harrison*, 651 F. App'x 220, 222 (4th Cir. 2016) (defendant could not challenge restitution amount on appeal where, *inter alia*, sum of restitution was expressly stated in plea agreement and defendant acknowledged sum during Rule 11 hearing), *cert. denied*, 137 S. Ct. 2108 (2017); *Winans* v. *United States*, No. 17-1535, 2017 WL 8315838, at *3 (6th Cir. Oct. 20, 2017) (defendant could not obtain collateral relief from restitution order where the sum of restitution was expressly stated in the presentence report and the defendant chose not to object to the sum), *cert. denied*, 138 S. Ct. 1604 (2018).

Likewise, the Court has denied review of cases where the plea agreement expressly defined "sentence" to include "restitution to victims." *United States* v. *Keele*, 755 F.3d 752, 756 (5th Cir. 2014), *cert. denied*, 135 S. Ct. 1174 (2015); *see also United States* v. *Lo*, 839 F.3d 777, 787 (9th Cir. 2016) (appellate waiver provision included express reference to restitution), *cert. denied*, 138 S. Ct. 354 (2017); *United States* v. *Adkins*, 743 F.3d 176, 191 (7th Cir.) (plea agreement contained an appeal waiver stating defendant "expressly waive[d]" the right to appeal his conviction, sentence, or the restitution imposed), *cert. denied*, 134 S. Ct. 2864 (2014); *United States* v. *Thurman*, 316 F. App'x 599, 601 (9th Cir.) (dismissing appeal of restitution order where "waiver plainly encompassed the right to appeal the restitution order"), *cert. denied*, 558 U.S. 891 (2009).

Mearing's case presents no such defects. The appellate waiver provision at issue makes no reference of restitution, nor does the plea agreement's separate restitution provision reference any appellate waiver. *See* Pet. 21a-23a. His opportunity to challenge the asserted defects in the district court's restitution order therefore turns entirely upon this Court's resolution of the questions presented in his petition. His case is thus a strong vehicle for resolving recurring—and increasingly important—questions of plea agreement law that have resulted in an entrenched Circuit split.

CONCLUSION

For the foregoing reasons, the petition should be granted.

Respectfully submitted.

JEFFREY T. GREEN
CO-CHAIR AMICUS COMMITTEE
NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS
1660 L Street, N.W.
Washington, D.C. 20036

CHRISTOPHER E. BABBITT
Counsel of Record
HELAM GEBREMARIAM
WILMER CUTLER PICKERING HALE AND DORR LLP
1875 Pennsylvania Ave., NW
Washington, DC 20006
(202) 663-6000
christopher.babbitt@wilmerhale.com

FELICIA H. ELLSWORTH
CHRISTOPHER D. DODGE
WILMER CUTLER PICKERING HALE AND DORR LLP
60 State Street
Boston, MA 02109

ALAN E. SCHOENFELD
WILMER CUTLER PICKERING HALE AND DORR LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007

OCTOBER 2018