06-11612 GONZALEZ V. UNITED STATES

DECISION BELOW:483 F3d 390

LOWER COURT CASE NUMBER: 05-40723

QUESTIONS PRESENTED:
Petitioner, a Mexican citizen who does not speak English, was represented by counsel at his federal drug-trafficking trial. After appearing before a United States district judge at several pretrial conferences, petitioner was brought before a United States magistrate judge for jury selection. At a bench conference outside of petitioner's presence and before petitioner had the assistance of an interpreter, defense counsel orally consented to the magistrate judge's presiding over the jury selection process. Thereafter, the magistrate judge did not obtain petitioner's consent or even mention that his attorney had consented outside of his presence. Based on the foregoing, the question presented is as follows:

Is a federal criminal defendant's counsel's oral consent to have a United States magistrate judge preside over jury selection binding on the defendant when the record does not reflect the defendant's own knowing and voluntary waiver of his constitutional right to have an Article III judge preside over jury selection?

Several United States Courts of Appeals have addressed this issue and have issued conflicting decisions.

CERT. GRANTED 9/25/2007

THE MOTION OF PETITIONER FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND THE PETITION FOR A WRIT OF CERTIORARI ARE GRANTED LIMITED TO THE FOLLOWING QUESTIONS: "1) MUST A FEDERAL CRIMINAL DEFENDANT EXPLICITLY AND PERSONALLY WAIVE HIS RIGHT TO HAVE AN ARTICLE III JUDGE PRESIDE OVER VOIR DIRE? 2) DID THE COURT OF APPEALS ERR WHEN IT REVIEWED PETITIONER'S OBJECTION FOR PLAIN ERROR?"
EXPEDITED BRIEFING SCHEDULE