



**U.S. Department of Justice**

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March 1, 2017

Hon. Michael E. Gans  
Clerk of Court  
Eighth Circuit Court of Appeals  
Via Electronic Filing

Re: *United States v. Michael Maggio*  
Eighth Circuit Court of Appeals Case No. 16-1795 CRIMINAL

Dear Mr. Gans:

This letter is submitted pursuant to Fed. R. App. P. 28(j). This case has been briefed by both parties and has been set for argument on March 8, 2017.

After the parties submitted their briefs in this appeal, on February 21, 2017, the United States Supreme Court granted the petition for a writ of certiorari filed in *Rodney Class v. United States*, an appeal from an unpublished opinion of the Court of Appeals for the District of Columbia Circuit Case No. 15-3015, United States Supreme Court Docket No. 16-424. The question presented in the *Class* appeal is “Whether a guilty plea inherently waives a defendant’s right to challenge the constitutionality of his statute of conviction.”

The *Class* appeal holds potential relevance to the *Maggio* case in that the United States argues, as an alternate ground for affirmance of Maggio’s conviction, that Maggio’s valid guilty plea forecloses his “as applied” constitutional challenge to his statute of conviction. United States Br. at 33-34. It is the position of the United States, however, that the *Class* appeal does not require a stay of the *Maggio* case. The parties have briefed the underlying merits of the “as applied” constitutional challenge – whether a judge who accepts a bribe in exchange for a favorable ruling in a civil case can be convicted under 18 U.S.C. § 666 as a matter of law – in reference to Maggio’s argument that the district court erred in denying Maggio’s motion to withdraw his guilty plea on that basis. Appellant Br. at 26-33, 37-44; United States Br. at 34-42; Appellant Reply Br. at 1-2. The district court ruled on this issue in its memorandum opinion. DCD 39.

The United States respectfully requests that this letter be forwarded to Judges Riley, Gruender, and Gritzner for their consideration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been sent this 1st day of March, 2017, to John Wesley Hall, counsel for appellant.

/s/ Julie Peters  
JULIE PETERS