19-6899

NO.

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

JOSE LUIS MEZA-LOPEZ, aka PARIENTE,

Movant

-vs-

UNITED STATES OF AMERICA,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Does the Court's holding in Cuellar v. United States, Require more than a finding of concealing something for transportation to show money laundering; If so was Meza's counsel ineffective for advising him to plead guilty to that charge, although Meza did not know or admit to knowing the funds were concealed for the purpose of hiding that they were obtained illegally and the factual basis of guilt was no sufficient?

II. Is a guilty plea voluntary when counsel coerce a defendant into pleading guilty based on the false claim that by pleading guilty he would avoid a consequence that would occur if he went to trial and lost; If so was Meza's counsel ineffective for coercing him to do so?

PARTIES TO THE PROCEEDINGS

Petitioner, Jose Meza-Lopez was the criminal defendant in the United States District Court for the District of Nebraska. The United States Court of Appeals was Plaintiff in the United States District of Nebraska and Appellee in the United States Court of Appeals for the Eight Circuit in the same case. No other relevant parties are presented in the instant action.

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STATEMENT OF THE CASE

A. THE CRIMINAL PROCEEDINGS

Meza was charged with conspiracy to distribute 500 grams or more of methamphetamine and conspiracy to launder money. Apx. at 14. Meza appeared before a magistrate judge for the purpose of pleading guilty to both counts without the benefit of a plea agreement. Apx. at 16.

During the hearing, Meza fully accepted committing acts constituting a violation of 21 U.S.C. § 846 by conspiring to distribute methamphetamine. Apx. at 31-32. As for the money laundering conspiracy, Meza fully accepted that he provided vehicles to assist in the distribution of methamphetamine with drugs hidden in cars and that money used to pay for the drugs were also hidden in cars. Apx. at 32. But when asked if he used the hidden compartments to conceal the fact that the money was the proceeds of drug sales, he asked to speak to his attorney. Apx. at 33. He admitted knowing there were illegal items in the vehicles but asserted that he did not know about how or where they were concealed. Apx. at 33.

Defense counsel (not Meza) reported that Meza knew that money would be in the cars that related to the drug sales. Apx. at 38. But Meza did not answer the question of whether he was trying to keep authorities from discovering that the money was related to drug sales. Apx. at 39. The magistrate judge noted that there was "nothing illegal about driving money down the interstate," and announced her concern as to the money laundering conspiracy count because Meza had stated that he did not know why the money was not deposited into a bank and had not admitted knowledge that the money was hidden in cars to conceal it as being proceeds of drug sales. Apx. at 39-40.

Once the magistrate found that the factual basis was so far insuf-

ficient as to the money laundering conspiracy count, the court recessed for Meza to speak with his counsel. Apx. at 44. Returning on the record, Meza admitted that the money was the illegal proceeds of drug sales and that the money was hidden in the vehicle to keep the government from finding it. Apx. at 45. Meza did not admit to knowing the money was concealed to hide the nature of the funds as proceeds of illegal activity.

Meza's separate admissions that (a) the money was from illegal drug sales and (b) that the money was hidden to keep the government from finding it, were made only after the break where counsel advised Meza. This break would become important later in the case. Equally important is that the magistrate judge did not return to question Meza on whether he had been coerced or threatened as she had done at the beginning of the hearing and before this factual basis sufficiency issue arose.

Following the hearing, the magistrate judge officially recommended that the district court accept the guilty plea. The district court adopted the recommendation and found Meza guilty. Apx. at 52.

The presentence investigation report found that Meza was responfor 17.45 kilograms of methamphetamine for a total offense level of 37. With that total offense level and criminal history category I,the total offense level was 210 to 262 months. At sentencing, the district court noted that Meza's counsel had no objections to the presentence report, adopted the report, and imposed a term of incarceration of 210 months. Apx. at 55-56, 63. See Apx. at 69.

Meza timely appealed, challenging his sentence, arguing only that it was substantively unreasonable. This Court affirmed the sentence. United States v. Meza-Lopez, 808 F.3d 743 (8th Cir. 2015).

B. PROCEEDINGS UNDER 28 U.S.C. § 2255

Meza timely filed a motion for relief under 28 U.S.C. § 2255(f)(1). Apx. at 133. Among other arguments, his sixth ground for relief (claim F.) was that he pleaded guilty as a result of the ineffective assistance of counsel and that his appellate counsel erred in failing to appeal the validity of the guilty plea. Apx. at 95.

Meza's grounds for claiming that the guilty plea was invalid was two-fold. First, he noted he pleaded guilty unknowingly, unintelligently and involuntarily as a result of ineffective assistance, as his counsel advised him to plead guilty when he did not intentionally join a conspiracy to sell drugs and to conceal the nature, location, source, ownership or control of the proceeds. Knowing that cash was from drug resources (as already admitted by pleading guilt to Count One) and that the money was purposely hidden during travel was not the same as admitting to knowingly engaging a conspiracy to conceal the nature of the case as proceeds of illegal activity.

Second, Meza noted that he pleaded guilty unknowingly, unintelligently and involuntarily as a result of ineffective assistance, as his counsel convinced him to plead guilty on the false statement that Meza could not go to trial on (thus, that he had to plead guilty to) the money laundering conspiracy charge because losing at trial would lead the district court to lead the sentences for the two conspiracies consecutively.

The district court reviewed the filings and, rather than order the government to respond, found that an evidentiary hearing was not needed and proceeded to rule on the claims. Apx. at 106-07. On Meza's claim that the factual basis was insufficient, the district court found that Meza's admissions were sufficient to support the conviction

because he "readily admitted not only knowing that money was hidden in the vehicles, but that the money was the proceeds of selling drugs" and later admitted that the money was hidden from the government. Apx. at 1-11.

As to Meza's claim that his attorney coerced him to plead guilty with a false statement about the sentencing consequences of going to trial and losing, the district court accepted Meza's statements about what his attorney told him off the record during a break as true for the sake of ruling on the § 2255 motion. Apx. at 112, n.2. But district court denied relief on the finding that the risk of receiving consecutive sentences existed with pleading guilty as well, nothing in the record suggested that consecutive sentences could not be imposed with a guilty plea, and Meza nevertheless pleaded guilty. Apx. at 112.

The district court dismissed the § 2255 motion and denied relief. Apx. at 116. But it certified for appeal whether Meza's "plea of guilty to conspiracy to launder money resulted from ineffective assistance of counsel. Id.

Meza remains incarcerated at FMC Fort Worth in Texas, under the sentence of incarceration of 210 months.

C. STANDARDS OR SCOPE OF REVIEW FOR EACH ARGUMENT

(i) The Court reviews ineffective assistance claims de novo and reviews the underlying findings of fact for clear error. Calkins v. United States, 795 F.3d 896, 897 (8th Cir. 2015).

(ii) The question of whether the guilty plea was entered knowingly, intelligently and voluntarily is a constitutional question that the Court also reviews de novo. United States v. Goodson, 569 F.3d 379, 382 (8th Cir. 2016).

(iii)The district court's finding that the factual basis was sufficient is reviewed for clear error. United States v. Borders, 829 F.3d 558, 567 (8th Cir. 2016).

SUMMARY OF THE ARGUMENT

The district curt erred in failing to find that Meza's guilty plea to the charge of conspiracy to launder money was unknowingly and unintelligently entered as the result of ineffective assistance of counsel. Meza was not guilty of that conspiracy. He knew and admitted the money was obtained from illegal drug activity. And he knew and admit knowing that the money was hidden to conceal that it was the proceeds of drug activity and, thus, obtained illegally. The attorney was ineffective for advising Meza to plead guilty and failing to object to the lack of a sufficient factual basis under those circumstances, and the district court erred in failing to make that ruling.

The district court erred in failing to find that Meza's appellate attorneys do not have to raise every issue. But when an attorney discards a clearly superior argument in favor of others, appellate counsel is ineffective. Even reviewed for plain error, the lack of factual basis as a result of Meza's statements at the plea hearing was raised on appeal. Meza asks the Court to find that it would have granted that argument on appeal or order reinstatement of Meza's direct appeal rights.

The district court erred in failing to find that Meza's defense attorney was prejudicially ineffective for coercing Meza to plead guilty to the money laundering conspiracy. Meza knew he was not guilty of the money laundering conspiracy, and he did not want to plead guilty to that offense. During a break, this attorney coerced him to plead guilty with a false statement. That false statement was that

Meza had to plead guilty because otherwise, if he wnet to trial and lost, the district court would. The district court did not hold an evidentiary hearing. But it accepted as true that Meza was given this false advice. The district court avoided finding the attorney ineffective on the conclusion that Meza was not promised that he would avoid consecutive sentences by pleading guilty and, thus, not prejudiced. But the obvious implication of the attorney's warning (taken as true) was that Meza would necessarily receive consecutive sentences by going to trial and losing but that he would necessarily avoid that circumstance by pleading guilty. Because the attorney's false statement is what led Meza to plead guilty, counsel was ineffective, and the district court erred in making that ruling.

ARGUMENT

I. Does this court's holding in Cuellal v. United States require more than a finding of concealing something for transportation to show money laundering; If so, was Meza's counsel Ineffective for advising him to plead guilty to that charge, although Meza did not know or admit to knowing the funds were concealed for the purpose of hiding that they were obtained ilegally and the factual basis of guilt was not suffiecient?

LAW AND ARGUMENT

I. The District Court Erred in Failing to Find that Meza's Guilty Plea to the Charge of Conspiracy to Launder Money was the Result of Ineffective Assistance of Counsel, as Counsel Advised Meza to Plead Guilty to that Conspiracy although Meza did not Know and did not Admit Knowing the Funds were Concealed for the Purpose Of Hiding the Fact that they were Obtained Illegally, and the Factual Basis to

Support a Finding of Guilt was Not Sufficient.

A. A Guilty Plea is only Valid if Knowingly, Intelligently, and Voluntarily Entered and if the Factual Basis Demonstrates the Defendant Committed Every Element of the Offense.

Every defendant charged with a felony has the right to jury trial. U.S. Const., amend. VI. But that right can be waived. "A criminal defendant may knowingly and voluntarily waive many of the most fundamental protections afforded by the Constitution." United States v. Mezzanatto, 513 U.S. 196, 201, 115 S. Ct. 797 (1995); see also Peretz v. United States, 501 U.S. 923, 936, 111 S. Ct. 2661 (1991) ("The most basic rights of criminal defendants *** subject to waiver."). This includes the right to a jury trial. Boykin v. Alabama, 395 U.S. 238, 243, 89 S. Ct. 1709 (1969). But for the waiver to be valid, the defendant must enter it knowingly, intelligently and voluntarily. Parke v. Raley, 506 U.S. 20, 28, 113 S. Ct. 517 (1992); United States v. Gray, 152 F.3d 816, 819 (8th Cir. 1998).

"(T)he Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime." In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068 (1970); see also Gilmore v. Taylor, 508 U.S. 333, 343-44, 113 S. Ct. 2112 (1993); Sandstrom v. Montana, 442 U.S. 510, 512-14, 521, 99 S. Ct. 2450 (1979). For a defendant's waiver of the right to trial to be valid under the Due Process Clause, it must be "an intentional relinquishment or abandonment of a known right or privilege." Johnson v. Zerbst, 304 U.S. 458, 464, 58 S. Ct. 1019 (1938). Federal Rule of Criminal Procedure 11 "is designed to assist the district judge in making the constitutionally required

determination that a defendant's guilty plea is truly" knowing and voluntary. McCarthy v. United States, 394 U.S. 459, 463, 89 S. Ct. 1166 (1969). Thus, "a defendant is entitled to plead anew if a United States district court accepts his guilty plea without fully adhering to the procedure provided for in Rule 11." Id. at 463.

Rule 11 provides, "Before entering judgment on a guilty plea, the court must determine that there is a factual basis for the plea." Fed. R. Crim. P. 11(b)(3). "A guilty plea is supported by an adequate factual basis when the record contains "sufficient evidence at the time of the plea upon which a court may reasonably determine that the defendant likely committed the offense." United States v. Cheney, 571 F.3d 764, 769 (8th Cir. 2009) (quoting United States v. Gamble, 327 F3d 662, 664 (8th Cir. 2003)). Available sources for that evidence that might reach a sufficient quantity to support the factual basis include facts gathered from the prosecutor's summarization of the plea agreement and the language of the plea agreement itself, a colloquy between the defendant and the district court, and the stipulated facts before the district court. United States v. Brown, 331 F3d 591, 595 (8th Cir. 2003).

The Rule 11 "requirement that there be a factual basis for a plea must mean that there must be a factual basis for every element of the crime charged." United States v. Glass, 720 F.2d 21, 22 (8th Cir. 1983). As a result, this Court at times has vacated guilty pleas on the grounds that the factual basis was insufficient as to a particular element of the offense. For example, in United States v. Stewart, 739 F.2d 1379 (8th Cir. 1984), the court found that the record was devoid of any evidence that a weapon met the statutory definition of firearm, and vacated the judgment of the district court. Id. at 1381.

In United States v. Hilyer, 543 F.2d 41 (8th Cir. 1976), the court found that there was an issufficient factual basis to support the interstate commerce element of the charged crime, vacated the plea and remanded the matter to the district court. Id. at 43. See, also, United States v. Carr, 271 F.3d 172, 181 (4th Cir. 2001) (concluding that the record was insufficient for the district court to find a factual basis for the guilty plea; United States v. Johnson, 246 F.3d 749, 752 (5th Cir. 2001) (vacating guilty plea and remanding for further proceedings where there was an insufficient factual basis supporting guilty plea).

B. DEMONSTRATING THAT A DEFENDANT HAS BEENDEPRIVED OF THE RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL.

The Sixth Amendment to the U.S. Constitution guarantees that criminal defendants are entitled to the assistance of counsel in presenting their defense. U.S. Const., amend VI; Kansas v. Ventris, 556 U.S. 596, 129 S. Ct. 1841 (2009). The right to assistance of counsel is a fundamental right of criminal defendants; it assures the fairness, and thus the legitimacy, of our adversary process." Kimmelman v. Morrison, 477 U.S. 365, 374, 106 S. Ct. 2574 (1986); McMann v. Richardson, 397 U.S. 759, 771, 90 S. Ct. 1441 (1970); Montayne v. United States, 77 F.3d 226 (8th Cir. 1996).

To succeed on a claim of ineffective assistance of counsel, a defendant must demonstrate that the representation he received "fell below an objective standard of reasonableness" and "a reasonable probability that but for counsel's unprofessional errors, the results of the proceedings would have been different." Strickland v. Washington, 466 U.S. 668, 688, 694, 104 S. Ct. 2055, 2063 (1984); see Payne v. United States, 78 F.3d 343, 345 (8th Cir. 1996). The

Supreme Court "has allowed for the possibility that a single error may suffice" to show that counsel's performance fell blow an objective standard of reasonableness "if that error is sufficiently egregious and prejudicial." Williams v. Lemmon, 557 F.3d 534, 538 (7th Cir. 2009) (quoting Murray v. Carrier, 477 U.S. 478, 496, 106 S. Ct. 2639 (1986)).

As for prejudice, the defendant need not show that it is more likely than not that the attorney's error harmed him. Strickland, 466 U.S. at 693-94. Instead, the defendant need only show a reasonable probability exists that, but for the errors, the outcome of his case would have been different. Stanford v. Parker, 266 F.3d 442, 454(6th Cir. 2001). If a reasonable probability exists that the result of the proceedings "would have been different absent the deficient act or omission," counsel was ineffective. Hinton v. Alabama, 134 S. Ct. 1081, 1083, 188 L. Ed. 2d. 1 (2014). Prejudice is shown, for example, from even one additional day in prison. Glover v. United States, 531 U.S. 198, 203, 121 S. Ct. 696 (2001).

C. IN THIS CASE, MEZA WAS NOT GUILTY OF THE MONEY LAUNDERING CONSPIRACY, AND THE FACTUAL BASIS WAS INSUFFICIENT TO ACCEPT THE PLEA: YET HIS COUNSEL NEVERTHELESS ADVISED MEZA TO PLEAD GUILTY IN THE ABSENCE OF A SUFFICIENT FACTUAL BASIS, FAILED TO OBJECT TO THE ENTRY OF THE GUILTY FINDING, AND FAILED TO MOVE TO WITHDRAW THE INVALID PLEA.

To prove Meza guilty of a conspiracy to launder money, it was not sufficient to show that Meza knew the funds were proceeds from illegal activity or that the money was intentionally hidden. It was necessary to show that Meza knew the funds were hidden for the purpose of hiding their nature as proceeds of illegal activity. See

Cuellar v. United States, 553 U.S. 550, 128 S. Ct. 994, 2005-06 (2008).

In Cuellar, the defendant hid money in secret compartments of his car in order to transport it undetected from United States to Mexico, 128 S. Ct. at 1998-99. The Cuellar Court found no evidence that the transportation was designed to conceal anything about the money itself (such as the fact that it was obtained illegally). Id. The Cuellar Court noted that "(t)here is a difference between concealing something to transport it, and transporting something to conceal it." Id. at 2005 (internal quotations and citation omitted). "In short, the Court held that evidence of why the money was hidden was more important than the mere fact that it was hidden." United States v. Williams, 605 F.3d 556,565 (8th Cir. 2010) (emphasis supplied). With only evidence that the defendant hid the money to make it easier to transport, and no evidence that the defendant intended to conceal the nature of the funds as proceeds of illegal activity, the evidence was insufficient. Cuellar, 128 S. Ct. at 2006.

In United States v. Brown, 553 F.3d 768 (5th Cir. 2008), the Fifth Circuit discussed Cuellar and acknowledged the holding was that "how one moves the money is distinct from why one moves the money. Evidence of the formenr, standing alone, is not sufficient to prove the latter." Id. at 787 (quoting Cuellar, 128 S. Ct. at 2005) (emphasis supplied in Cuellar).

In Meza's case, the sources for finding a factual basis did not establish what was needed. After looking at the plea agreement, hearing the prosecution's version of the offense and questioning Meza, the magistrate judge concluded that the record was insufficient to establish Meza knew that the money was hidden to conceal the nature of the

money as illegal drug proceeds rather than to safely transport cash. Apx. at 44. After all, it was not illegal to transport money. See Apx. at 40. He knew the money represented proceeds from selling drugs. Apx. at 39. But to the direct question of why it was being transported rather than deposited into a bank, Meza did not know. Apx. at 39. On the question of whether he was using the compartment inside the care as method of concealing the fact that the money was acquired from illegal drug activity, he could not answer or did not know. Apx. at 33.

After a recess, further questioning of Meza revealed that he knew money was hidden in the car. Apx. at 44. Meza knew and admitted knowing the funds were hidden from the government. Apx. at 45. And he once again admitted that he knew that the money was obtained from illegal drug sales. Apx. at 45. But he did not know, and did not admit knowing, that the money was concealed for the purpose hiding its nature of being money that was obtained illegally. Apx. at 45. (failing to answer whether the money was hid frome the governemt because "the money was from drug sales").

In short, nothing the magistrate judge established from questioning Meza after the recess demonstrated what Cuellar declares necessary - the "why," evidence that Meza knew the money was concealed for the purposes of hiding its nature as proceeds of illegal drugs. As a result, the factual basis elicited in this case was insufficient for the scienter element of the offense. See Cuellar, 128 S. Ct. at 2005-06.

D. THE RECORD ESTABLISHES PREJUDICE, AND THUS MEZA'S COUNSEL WAS PREJUDICIALLY INEFFECTIVE.

Where, as here, a claim of ineffective assistance arises from

the plea bargaining stage of criminal proceedings, the second part of the Strickland analysis, i.e., the prejudice prong, "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Hill v. Lockhart, 474 U.S. 52, 59, 106 S. Ct. 366 (1985). Once the defendant has satisfied the first prong of Strickland by establishing that counsel's performance was constitutionally defective, the threshold showing of prejudice required to satisfy the second prong is comparatively low-in such cases, the prejudice prong is satisfied if there is a "reasonable probability" that the defendant would have taken another route but for counsel's ineffective assistance or inadequate advice. Lafler v. Cooper, 132 S. Ct. 1376, 1385, 182 L. Ed. 2d 398 (2012).

To at least one federal circuit, it is easier to show prejudice in the guilty plea context than in other contexts because the claimant need only show a reasonable probability that he would have proceeded differently. Hodges v. Colson, 727 F.3d 517, 550 (6th Cir. 2013) (en banc). In this case, Meza showed his reticence with pleading guilty to the money laundering conspiracy charge. When asked if he was trying to keep the authorities from finding out that he was getting money from drug sales, he did not answer. Apx. at 39. When asked the direct question of why money was being transported rather than deposited into a bank, he answered that he did not know. Apx. at 39. When asked if he did not want the government to find the money because he knew the money was from drug sales, he did not answer. Apx. at 45. And when the magistrate judge returned from a recess, Meza gave the same (insufficient) answers.

On these facts, a reasonable probability exists that, but for the advice of Meza's counsel that he continue to try to plead guilty,

and only because his attorney did not object or move to withdraw the plea on these grounds, Meza would not have gove forward to a point of having his guilty plea accepted. See Lafler, 132 S. Ct. at 1385. Thus, counsel's error prejudiced Meza, and counsel was constitutionally ineffective. See Strickland, 466 U.S. at 693-94.

II. IS A GUILTY PLEA VOLUNTARY WHEN COUNSEL COERCE A DEFENDANT INTO PLEADING GUILTY BASED ON THE FALSE CLAIM THAT BY PLEADING GUILTY HE WOULD AVOID A CONSEQUENCE THAT WOULD OCCUR IF HE WENT TO TRIAL AND LOST; IF SO WAS Meza'S COUNSEL INEFFECTIVE FOR COERCING HIM TO DO SO? "Here THE DISTRICT COURT ERRED IN FAILING TO FIND THAT MEZA'S GUILTY PLEA TO THE CHARGE OF CONSPIRACY TO LAUNDER MONEY WAS THE RESULT OF INEFFECTIVE ASSISTANCE OF COUNSEL, AS COUNSEL COERCED MEZA TO PLEAD GUILTY TO THAT CONSPIRACY ON THE FALSE CLAIM THAT BY PLEADING GUILTY HE WOULD AVOID A CONSEQUENCE THAT WOULD OCCUR IF HE WENT TO TRIAL AND LOST-THE DISTRICT COURT WOULD IMPOSE THE SENTENCES FOR THE TWO CONSPIRACIES CONSECUTIVELY."

A. A GUILTY PLEA IS MUST BE VOLUNTARY AND NOT COERCED.

The due process requirements for a valid guilty plea include a knowing and voluntary plea entered with a "full understanding of what the plea connotes and of its consequence(s)." Boykin v. Alabama, 395 U.S. 238, 244 89 S. Ct. 1709 (1969); see Bradshaw v. Stumpf, 545 U.S. 175, 125 S. Ct. 2398 (2005); United States v. Ruiz, 536 U. S. 622, 628-29, 122 S. Ct. 2450 (2002); Alabama v. Smith, 490 U.S. 794,796, 109 S. Ct. 2201 (1989); Brady v. United States, 397 U.S. 742, 748, 90 S. Ct. 1463 (1970). Stated differently, "(t)he longstanding test for determining the validity of a guilty plea is 'whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.'" Hill v. Lock-

hart, 474 U.S. 52, 56, 106 S. Ct. 366 (1985) (quoting North Carolina v. Alford, 400 U.S. 25, 31, 91, S. Ct. 160 (1970)). Whether a plea is knowing and intelligent is determined in light of all relevant circumstances surrounding the plea. Brady, 397 U.S. at 749.

B. DEFENDANTS HAVE THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL DURING THE STAGE OF A CASE WHEN A DEFENDANT IS CONSIDERING WHETHER TO PLEAD GUILTY OR GO TO TRIAL.

"It is well settled that the right to the effective assistance of counsel applies to certain steps before trial." Missouri v. Frye, 132 S. Ct. 1789, 182 L. Ed. 2d 379, 387 (2012). "The 'Sixth Amendment guarantees a defendant the right to have counsel present at all "critical" stages of the criminal proceedings." Id. (quoting Montejo v. Louisiana, 556 U.S. 778, 786, 129 S. Ct. 2079 (2009), and United States v. Wade, 388 U.S. 218, 227-228, 87 S. Ct. 1926 (1967)). "Critical stages include arraignments, postindictment interrogations, postindictment lineups, and the entry of a guilty plea." Id.

"(P)lea bargains have become so central to the administration of the criminal justice system that defense counsel have responsibilities in the plea bargain process, responsibilities that must be met to render the adequate assistance of counsel that the Sixth Amendment requires in the criminal process at critical stages." Id. at 389. Because the United States' criminal justice system "is for the most part a system of pleas, not a system of trials," Lafler v. Cooper, 132 S. Ct. 1376, 182 L. Ed. 2d 398 (2012), "it is insufficient simply to point to the guarantee of a fair trial as a backstop that inoculates any errors in the pretrial process." Frye, 182 L. Ed. 2d at 389. Plea bargaining "is not some adjunct to the criminal justice system; it is the criminal justice system." Scott & Stuntz, PLEA

BARGAINING AS CONTRACT, 101 Yale L. J. 1909, 1912 (1992). "In today's criminal justice system, therefore, the negotiation of the plea bargain, rather than the unfolding of a trial, is almost always the critical point for a defendant." Frye, 182 L. Ed. 2d at 390.

Accordingly, the Supreme Court has recently made clear in Frye and Lafler that the right to effective assistance of counsel extends to the plea negotiation stage of a case. Frye, 182 L. Ed. 2d at 390; Lafler, 182 L. Ed. 2d at 406. The cases did not take the "difficult" step of "defin(ing) the duty and responsibilities of defense counsel in the plea bargain process." Frye, 182 L. Ed. 2d at 390. Instead, the cases were the early forays into the development of case law that will define those duties. The Frye Court established that "defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused." Id.

C. THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL ON WHETHER TO PLEAD GUILTY OR GO TO TRIAL INCLUDES THE RIGHT TO CORRECT ADVICE ABOUT SENTENCING EXPOSURE.

A defense attorney has a duty to inform a client of the sentencing exposure the defendant will face as a consequence of deciding whether to plead guilty or reject a plea. See Smith v. United States, 348 F.3d 545, 553 (6th Cir. 2003). In other words, if a defendant is considering letting a plea offer lapse, the attorney must explain to his or her client what higher sentence the client will face upon losing trial. "A Criminal defendant has a right to expect at least that his attorney will *** explain the sentencing exposure the defendant will face as a consequence of exercising" the option to go to trial." Id. This is true even when a defendant insists that he is

innocent. Sawaf v. United States, 570 Fed. Appx. 544 (6th Cir. 2014).

When communicating a plea offer, counsel "should usually inform the defendant of the strengths and weaknesses of the case against him." Purdy v. United States, 208 F.3d 41, 45 (2d Cir. 2000) (citing United States v. Gordon, 156 F.3d 376, 380 (2d Cir. 1998); Jones v. Murry, 947 F.3d 1106, 1110-11 (4th Cir. 1991)). But the duty is more t than telling a client that the state's case is strong or that the defense is weak. The duty is for the attorney to advise the defendant on how to react to that news in the face of a plea offer. "o-ÃA defense lawyer in a criminal case has the duty to advise his client fully on whether a particular plea to a charge appears to be desirable." Boria v. Keane, 99 F.3d 492, 496 (2d Cir. 1996) (emphasis supplied by Second Circuit) (quoting American Bar Association, MODEL CODE OF PROFESSIONAL RESPONSIBILITY, RESPONSIBILITY, Ethical Consideration 7-7 (1992)).

While the ultimate decision whether to plead guilty is the defendant's, "counsel may and must give the client the benefit of counsel's professional advice on this crucial decision." Id. at 497 (emphasis added) (quoting Anthony G. Amsterdam, TRIAL MANUAL 5 FOR THE DEFENSE OF CRIMINAL CASES § 201 at 339 (1988)). This advice must be truthful. In Lafler, the parties agreed that the performance of the defendant's attorney "was deficient when he advised (the defendant) to reject the plea offer on the grounds he could not be convicted at trial." Lafler, 182 L. Ed. 2d at 406. See Gallo-Vasquez v. United States, 402 F.3d 793, 798 (7th Cir. 2005) (finding attorney's performance deficient if "he advises his client to reject a plea bargain in the face of overwhelming evidence of guilt and an absence of viable defenses").

D. IN THIS CASE, DEFENSE COUNSEL WAS PREJUDICIALLY INEFFECTIVE FOR COERCING MEZA TO PLEAD GUILTY ON THE FALSE ADVICE THAT MEZA HAD TO PLEAD GUILTY TO AVOID THE DISTRICT COURT IMPOSING CONSECUTIVE SENTENCES FOR THE TWO CONSPIRACIES.

During a recess, Meza's counsel lied to him. She told Meza that he had no choice to plead guilty to the money laundering conspiracy because going to trial and losing would result in the district court running the sentences for the two conspiracies consecutively. In particular, Meza reported that his attorney advised him that he "could not go to trial on the money laundering (conspiracy) count because (the court) would stack the time he would received from money laundering offense on top of the time he received on the drug offense if he" went to trial. Apx. at 96. The obvious implication of the statement was that Meza would be sentenced to consecutive sentences only if he went to trial and lost but <u>not</u> if he pleaded guilty that day. Otherwise the advice to plead guilty to avoid trial and a negative consequence made no sense.

The district court accepted Meza's statements about what his attorney told him off the record during a break as true for the sake of ruling on the § 2255 motion. Apx. at 112. But district court denied relief on the finding that "nothing in the record suggest(s) that the defendant was assured of concurrent sentences when he elected to plead guilty." In other words, the district court denied relief because the record did not show Meza was promised concurrent sentences by pleading guilty.

The district court's distinction was meaningless under Strckland. It may be true that nothing in the record <u>other than the defense attorney's advice</u> established that Meza was promised concurrent sent-

ences if he pleaded guilty. But the record shows that he received concurrent sentences by pleading guilty and that his attorney's advice-adopted as accurate by the district court-informed Meza that he would receive consecutive sentences by going to trial and losing and would not receive consecutive sentences by pleading guilty. The district court's conclusion failed to account for the fact that it was assuming Meza's recollection of his attorney's statements were true and, thus, that was now a part of the record.

In sum, but for the attorney's false claim about the awful sentencing consequences of going to trial, Meza would not have pleaded guilty and proceeded to trial, demonstrating prejudice. Lafler, 182 L. Ed2d at 406; Smith, 348 F.3d at 553.

CONCLUSION

For the reasons stated above, this Court should Grant the Petition to provide clear and indisputable guidance for the lower courts on important matters that affect all criminal defendants in the federal system. Alternatively, Grant, Vacate and Remand to the Eighth Circuit Court of Appeals.

Respectfully Submitted

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