No. _____

IN THE

Supreme Court of the United States

DION ALEXANDER

Petitioner

v.

UNITED STATES

Respondent

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

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PETITION FOR A WRIT OF CERTIORARI

Steven M. Klepper
Counsel of Record
KRAMON & GRAHAM, P.A.
One South Street, Suite 2600
Baltimore, Maryland 21202-3201
(410) 752-6030
sklepper@kg-law.com

COUNSEL FOR PETITIONER

QUESTIONS PRESENTED

Attorneys and judges often misunderstand Type-C plea agreements. When the parties agree to a sentence under Rule 11(c)(1)(C), their agreement is not effective unless the district court finds the sentence reasonable in light of the otherwise-applicable Guidelines range. But when that safeguard fails, errors have gone unchallenged or held subject to appeal waivers. *United States v. Sutton*, 962 F.3d 979 (7th Cir. 2020); *United States v. Williams*, 682 F. App'x 453 (6th Cir. 2017).

Here, the district court approved the agreement based on its clearly erroneous finding that the sentence mooted petitioner's desire to seek coram nobis relief as to two state convictions. Notwithstanding *Garza v. Idaho*, 139 S. Ct. 738 (2019), in which this Court recognized that appellate waivers do not apply to challenges to the validity of the plea agreement, the Fourth Circuit summarily rejected petitioner's appeal in an unreported per curiam opinion. Its rationale effectively precludes appellate review any time a district court errs in accepting a Type-C plea agreement, because the resulting sentence will by definition fall within the appeal waiver.

Petitioner presents two questions.

1. Can an appeal waiver in a Type-C plea agreement bar a claim that the district court's rationale for approving the agreement was clearly erroneous?

2. Is a plea agreement knowing and voluntary when the district court gives the defendant clearly erroneous assurances regarding matters that the defendant indicates are critical to his assent?

LIST OF PARTIES

Petitioner is a natural person, whose name appears in the caption. Respondent is the United States.

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PETITION FOR A WRIT OF CERTIORARI

Dion Alexander petitions this Court to issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS AND ORDERS BELOW

The decision under review, *United States v. Alexander*, 795 F. App'x 220 (4th Cir. 2020), was unreported. *See* Appendix A. There is no written district court opinion. Excerpts from the sentencing hearing transcripts, containing the relevant findings, are attached as Appendices B and C.

JURISDICTION

The Fourth Circuit entered judgment on February 28, 2020, and this petition is being filed within 150 days thereafter under this Court's general order of March 19, 2020. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

PERTINENT RULE AND SENTENCING GUIDELINE

This appeal turns on the plea agreement procedures set forth in Rule 11(c) of the Federal Rules of Criminal Procedure:

> (1) *In General.* An attorney for the government and the defendant's attorney, or the defendant when proceeding pro se, may discuss and reach a plea agreement. The court must not participate in these discussions. If the defendant pleads guilty or nolo contendere to either a charged offense or a lesser or related offense, the plea agreement may specify that an attorney for the government will:
>
> (A) not bring, or will move to dismiss, other charges;
>
> (B) recommend, or agree not to oppose the defendant's request, that a particular sentence or sentencing range is appropriate or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request does not bind the court); or
>
> (C) agree that a specific sentence or sentencing range is the appropriate disposition of the case, or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor

> does or does not apply (such a recommendation or request binds the court once the court accepts the plea agreement).
>
> (2) *Disclosing a Plea Agreement.* The parties must disclose the plea agreement in open court when the plea is offered, unless the court for good cause allows the parties to disclose the plea agreement in camera.
>
> (3) *Judicial Consideration of a Plea Agreement.*
>
> (A) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the court may accept the agreement, reject it, or defer a decision until the court has reviewed the presentence report.
>
> (B) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(B), the court must advise the defendant that the defendant has no right to withdraw the plea if the court does not follow the recommendation or request.
>
> (4) *Accepting a Plea Agreement.* If the court accepts the plea agreement, it must inform the defendant that to the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the agreed disposition will be included in the judgment.
>
> (5) *Rejecting a Plea Agreement.* If the court rejects a plea agreement containing provisions of the type specified in Rule 11(c)(1)(A) or (C), the court must do the following on the record and in open court (or, for good cause, in camera):
>
> (A) inform the parties that the court rejects the plea agreement;
>
> (B) advise the defendant personally that the court is not required to follow the plea agreement and give the defendant an opportunity to withdraw the plea; and
>
> (C) advise the defendant personally that if the plea is not withdrawn, the court may dispose of the case less favorably toward the defendant than the plea agreement contemplated.

Fed. R. Crim. P. 11(c).

To guide district courts' approval of Type-C plea agreements, the United States Sentencing Guidelines provide:

> In the case of a plea agreement that includes a specific sentence (Rule 11(c)(1)(C)), the court may accept the agreement if the court is satisfied either that:
>
> (1) the agreed sentence is within the applicable guideline range; or

> (2) (A) the agreed sentence is outside the applicable guideline range for justifiable reasons; and (B) those reasons are set forth with specificity in the statement of reasons form.

USSG § 6B1.2(c).

STATEMENT

Alexander and the Government entered into a plea agreement, stipulating that a 108-month sentence was appropriate. A key safeguard for such an agreement is that it does not bind the district court unless the district court accepts it. To inform that decision, the Guidelines require a finding that the agreed sentence is within the range that would otherwise apply, or that a departure is justified for reasons specified on the record.

At two hearings, and in correspondence to the district court, Alexander expressed that he wanted an opportunity pursue coram nobis relief in the state courts to vacate two convictions involving a disgraced former police officer. But the district court assured him, over and over, that this concern was misplaced because 108 months fell within the Guidelines range that would apply if those prior convictions were vacated. Upon those assurances, Alexander declined an opportunity to withdraw from the plea agreement, and the district court accepted it.

Those assurances were wrong. Had Alexander secured coram nobis relief, the Guidelines maximum would have been 11 months lower. When Alexander raised this issue on appeal, the Government did not dispute the district court's clear error. Instead, it asserted that Alexander waived his appellate rights and that, in any event, he had nothing to complaint about because he received the 108 months to which he agreed. This argument was circular, because Alexander agreed to the plea deal, and

the district court approved it, on the erroneous premise that 108 months was within the Guidelines range that would have applied if Alexander had secured coram nobis relief. But the Fourth Circuit agreed with the Government.

A. The parties executed a Type-C plea agreement, with a 108-month sentence and an appeal waiver.

The Government charged Alexander and 12 other defendants with conspiracy to distribute one kilogram or more of heroin. The Government and Alexander signed a plea agreement, in which Alexander would plead guilty to a single count of conspiracy to distribute and possess with the intent to distribute heroin, in exchange for an agreed sentence of 108 months. The plea agreement included the following appeal waiver: "The Defendant and this Office knowingly waive all right, pursuant to 18 U.S.C. § 3742 or otherwise, to appeal whatever sentence is imposed[,] including the right to appeal any issues that relate to the establishment of the advisory guidelines range, the determination of the defendant's criminal history, the weighing of the sentencing factors, and the decision whether to impose and the calculation of any term of imprisonment[.]"

B. The district court told Alexander his desire to pursue coram nobis was "moot" because the convictions he wished to challenge were "not going to have any effect" on the 108-month sentence.

At re-arraignment, Alexander raised his desire to seek coram nobis relief to attack prior state convictions, but the district court assured him the point was moot:

> THE COURT: Is there anything that you've asked [defense counsel] to do which he has not done?
>
> THE DEFENDANT: The coram nobis, but that's it.
>
> THE COURT: The coram nobis in terms of attacking a prior state conviction?

> THE DEFENDANT: Yes.
>
> THE COURT: That doesn't relate to here, but it relates to your challenging a prior conviction you have in the state court system. Is that right?
>
> THE DEFENDANT: Yes.
>
> THE COURT: Okay, and as to that, what is the issue there, Mr. Trainor?
>
> MR. TRAINOR: No issue has been articulated. I know he had discussed that with [prior appointed counsel] but what I explained to my client is that we worked out a sentencing number that would not be a career offender status.
>
> THE COURT: So what that means, Mr. Alexander, is that to *the extent that there's a prior state conviction, it's not going to have any effect upon me in the sentence that's imposed.* And so your attorney is essentially indicating so that's really *a moot point now because you reached an agreement of a sentence which is less than and not in any way factored by a particular conviction that you would like to challenge*. Do you understand that?
>
> THE DEFENDANT: Yes.

Pet. App. 5a–6a (emphasis added). As discussed below, those assurances were incorrect.

C. Alexander's guidelines range would have been 11 months lower if his prior convictions were disregarded or expunged.

In fact, Alexander's request to pursue coram nobis relief was not moot. The district court conflated two separate inquiries: (1) whether the 108-month sentence treated Alexander as a career offender under Guideline 4B1.1; and (2) whether vacating the prior convictions would have further affected Alexander's criminal history category under Guideline 4A1.1 That distinction is subtle, but it had an 11-month impact on his Guidelines range.

It is not surprising when even the most experienced district judge takes a wrong turn in "the labyrinth that is the United States Sentencing Guidelines." *United*

States v. Gatling, 687 F.3d 382, 383 (D.C. Cir. 2012). Depending on whether Alexander was sentenced as a career offender Guideline 4B1.1, his Offense Level was either 27 or 29, which is subject to the following Guidelines ranges:

Offense Level	**Criminal History Category (Criminal History Points)**					
	I (0 or 1)	**II (2 or 3)**	**III (4, 5, 6)**	**IV (7, 8, 9)**	**V (10,11, 12)**	**VI (13 or more)**
27	70–87	78–97	87–108	100–125	120–150	130–162
29	87–108	97–121	108–135	121–151	140–175	151–188

Alexander had three prior nonviolent state drug convictions that counted as criminal history under Guideline 4B1.1:

Arrest Date (Age)	**Docket No. (Drug)**	**Sentence Date**	**Sentence**	**Points**
11/29/2008 (Age 19)	209005049 (Cocaine)	6/25/2010 (Consolidated)	10 years, concurrent (most suspended)	3
3/24/2010 (Age 20)	110099011 (Heroin)			2
8/25/2009 (Age 20)	809267012 (Marijuana)	9/25/2009	2 days	1

Although six points would have otherwise placed Alexander into Category III, the nature of the prior convictions qualified him for career offender status under Guideline 4B1.1, which increased both his offense level (from 27 to 29) and his criminal history (Category III to Category VI). Thus, without any coram nobis relief, his Guidelines range would have been 151 to 188 months.

The marijuana and heroin convictions had a common link: former Baltimore City Police Officer Fabien Laronde. The Police Commissioner fired Laronde in 2016 for a litany of misconduct, and the Baltimore City State's Attorney announced the office would review "each and every case" involving Laronde that was open in 2016

"to determine the viability of those cases." Justin Fenton, *City Officer Accused of Misconduct is Fired*, BALT. SUN, Feb. 8, 2016; *see Laronde v. Blount*, 2015 WL 5923679, at *1 (Md. Ct. Spec. App. Aug. 17, 2015) (affirming false imprisonment tort judgment against Laronde in favor of courthouse employee whom Laronde falsely accused of being a Crips gang member); *Laronde v. Lopez*, 2020 WL 550674, at *1 (Md. Ct. Spec. App. Feb. 3, 2020) ("The evidence supported a finding that Mr. Laronde intentionally put [a crime victim] in fear for his life, and that he was playing head games with [the victim] to amplify his torment."). Alexander's long-closed cases were not subject to automatic review, but certainly there was cause to investigate coram nobis relief.

Contrary to what the district court told him, vacating those prior state convictions would have made a difference. As the district court correctly found, Alexander would no longer have been a career offender under Guideline 4B1.1. Thus, his offense level would have been 27 (instead of 29), and his criminal history category would have been based on his actual points instead of automatically jumping to Category VI. But the district court overlooked the impact on Alexander's criminal history points under Guideline 4A1.1. Vacating those convictions would have reduced Alexander's criminal history points from six to three, putting him in Category II, instead of Category III. The resulting Guidelines range would have been 78 to 97 months.

D. Alexander objected that he was still "getting the points," but the district court erroneously assured him otherwise.

Alexander sent a pro se supplemental letter to the district court before final approval of the agreement:

> I also want to let you know, during the time I was incarcerated, I ask[ed] my first attorney … to file a coram nobis for my criminal history. He stated he need[ed] to get permission from [the court] which he never bother[ed] to get. I advise[d] him that the officer in my case was no longer a police officer base[d] on the conditions that he stole money, assault[ed] victims, and repeatedly lied on the stand[ ] …. On June 25, 2010 I plead[ed] guilty to a case but receive[d] several felonies and 1 sentence for them all. The cases were consolidated but the government states that I'm a career criminal, which I'm not. Your Honor I accepted this plea on Feb 8 2018 because I didn't want to aggravate the DA and he takes it out on me.

Pet. App. 22a.

That letter became a point of contention at the hearing where the district court approved the plea agreement and imposed the agreed 108-month sentence. The district court reiterated its erreonous assurance that Alexander's request to pursue coram nobis relief was irrelevant, even as Alexander correctly observed that he was "still getting the points" from the prior convictions:

> THE COURT: … I have read your letter that you sent to me within the last week and a half, last ten days, Mr. Alexander. And I see references to a police officer named LaRonde Fabien.[1]
>
> THE DEFENDANT: Yes.
>
> THE COURT: Who has now been found guilty in terms of police corruption. *The involvement of Mr. Fabien, and any activity he had in a prior case in terms of your criminal history has had no effect on the Court at all.* Because you're not being sentenced as a career offender, do you understand that?

[1] The former officer's name is Fabien Laronde, not LaRonde Fabien.

THE DEFENDANT: Right.

THE COURT: Okay. So that will not be a factor. And *I want to make sure the record's clear that total and apart from any prior convictions you're not being treated as a prior offender here.*

THE DEFENDANT: *But I'm getting the points, though, right?*

THE COURT: *No*, my point is --

THE DEFENDANT*: I'm not supposed to be in that category.*

THE COURT: My point is you're being sentenced as if you were not a career offender. Do you understand what I'm saying?

THE DEFENDANT: Yes.

THE COURT: Your sentence here today of nine years, 108 months, is well below the guideline range.

THE DEFENDANT: Yeah, but I didn't know I had opportunity from 87 to 108, I thought it was 108 to 135. I didn't know I would have been in a category, level 27 --

THE COURT: We'll clarify this or I'll strike your guilty plea and we can have a trial. Simple as that. I'm trying to explain to you, and I'll go over it in more detail, *the corruption of … LaRonde Fabien … has absolutely no effect on the sentence being imposed here today. Now, I don't know how many more times I can repeat that for you this morning*. Do you understand what I'm saying to you?

THE DEFENDANT: Yes.

THE COURT: *It has no effect at all.* I'm not sentencing you as a career offender. I'm not sentencing you in a range that would result from that. The range as a career offender with a range of 151 to 188 months, which translates out to some 12 and a half years to 15 and a half years. You're not being sentenced in that range. And I've accepted the guilty plea well below that range for those very reasons. *So the matter of Fabien has absolutely nothing to do in this case*.

And, Mr. Trainor, I want to make sure we cover this, because I'm not interested in having some pleading being filed a year and a half from now, *it has no effect on this Court's sentencing*. If there's any confusion about that with your client, I will entertain striking the guilty plea. And unlike all the other 14 defendants, he'll go to trial. So it's as simple as that. Did you see what he filed in his own handwriting?

MR. TRAINOR: I did see it.

THE COURT: Okay. We're going to need to address that today. I want to make sure that it's abundantly clear to the defendant that that is the status of it.

MR. TRAINOR: Your Honor, for the record I think we addressed this at the re-arraignment as well, and the Court made it clear at that time as well.

THE COURT: Well, I'll check.

MR. TRAINOR: I don't know that we addressed this particular defendant, but the career offender issue.

THE COURT: No, we addressed the career offender issue, but we didn't address the matter of Officer Fabien.

MR. TRAINOR: I think the Court is correct.

Pet. App. 12a–14a (emphasis added).

The district court then articulated its view of the appropriate sentencing range:

THE COURT: All right. Consistent with the plea agreement. So there's a total offense level of 29 as was anticipated in the plea agreement of February the 5th and introduced as Government Exhibit 1 on February 22nd.

Your criminal history is attached here, pages 6 through 16. There are four juvenile offenses. And there are a series of drug offenses which cause you to be classified as a career offender under 4B1.1(b) of the advisory guidelines. *That is inflated. I'm not considering that in any way. And also, I'm not considering anything, in any case, in which Officer [Laronde] was involved.* If you were not a career offender you would be at a total offense level of 27, Criminal History Category III, a range of 87 to 108 months. And I'm treating you as not being a career offender. And I'm essentially abiding by the agreed sentence in this case of 108 months.

Pet. App. 17a–18a (emphasis added).

REASONS FOR GRANTING THE PETITION

I. An appeal waiver cannot bar a claim that a district court approved a Type-C plea agreement based on a clearly erroneous rationale.

Type-C plea agreements are powerful prosecutorial tools that nearly always include appeal waivers. District courts are not rubber-stamps for such plea agreements. A district court must exercise independent judgment and determine either that the agreed-upon sentence is within the applicable Guidelines range or, for reasons articulated on the record, that there is good reason for the departure from that range. Here, the district court emphasized that the sentence was justifiable because it fell within the range that would apply but for the convictions involving Office Laronde. That was clearly erroneous, because there is no dispute the sentence was 11 months above the range if those convictions were disregarded. By the district court's rationale, the 108-month sentence was too high, and the plea agreement (including the appeal waiver) should have therefore been rejected.

Most case law focuses on traditional plea agreements that bind the defendant *before* the district judge considers the Guidelines range. Under Rule 11(c)(1)(B), the Government will "recommend, or agree not to oppose the defendant's request, that a particular sentence or sentencing range is appropriate," but "such a recommendation or request does not bind the court." When accepting the guilty plea under such an agreement, the trial court "must advise the defendant that the defendant has no right to withdraw the plea if the court does not follow the recommendation or request." Fed. R. Crim. P. 11(c)(3)(B). After accepting the agreement, the district court will then sentence the defendant under the ordinary discretionary analysis. If that sentence

falls within the range specified in an appeal waiver in the plea agreement, the appellant loses most appeal rights, including any claim that the district court misapplied the Guidelines.

A Type-C agreement is different, because the agreement is not effective until after the district court considers the Guidelines range. The "recommendation or request binds the court once the court accepts the plea agreement," Fed. R. Crim. P. 11(c)(1)(C), and the "bargain between the parties is contingent until the court accepts the agreement." *Freeman v. United States*, 564 U.S. 522, 529–530 (2011). Given the high stakes that come with a sentence that binds the district court, the district judge must "give due consideration to the relevant sentencing range, even if the defendant and prosecutor recommend a specific sentence as a condition of the guilty plea." *Id.* at 530. Guideline 6B1.2(c) addresses that independent exercise of discretion:

> In deciding whether to accept an agreement that includes a specific sentence, the district court must consider the Sentencing Guidelines. The court may not accept the agreement unless the court is satisfied that "(1) the agreed sentence is within the applicable guideline range; or (2)(A) the agreed sentence is outside the applicable guideline range for justifiable reasons; and (B) those reasons are set forth with specificity."

Hughes, 138 S. Ct. at 1773 (quoting USSG § 6B1.2(c)). If the district court finds the sentence unreasonable in view of the Guidelines range, it must reject the plea agreement and the agreed sentence. *United States v. Kraus*, 137 F.3d 447, 453 (7th Cir. 1998).

If a district court would have rejected a Type-C plea agreement, but for the Guidelines error, then the error goes to the validity of the entire agreement, including the appeal waiver. Such error is fundamentally unlike Guidelines error under a Type-

B plea agreement—where the agreement, including the appellate waiver, becomes effective *before* the district court determines the appropriate sentence. *See* Fed. R. Crim. P. 11(c)(3)(b). No binding Type-C agreement exists before the district court performs the Guidelines analysis and finds the bargained-for sentence appropriate. *Hughes*, 138 S. Ct. at 1773; *Freeman*, 564 U.S. at 529–530.

A challenge to the overall validity of a plea agreement is precisely the sort of claim that appellate courts have held to fall outside the scope of an appeal waiver. *Garza v. Idaho*, 139 S. Ct. 738, 745 & n.6 (2019) (collecting exceptions). Before the Fourth Circuit, Alexander cited an unreported opinion in which one circuit judge (outvoted by a circuit judge and a district judge sitting by designation) recognized that if "the district court committed reversible error in accepting the [Type-C] plea agreement, then the agreement is invalid and neither side is bound by the terms therein, including the appellate waiver." *United States v. Frazier*, 576 F. App'x 184, 191–192 (4th Cir. 2014) (Traxler, C.J., concurring in the result). Because Alexander unlike the defendant in *Frazier*, squarely raised his objection in the district court, he asked the Fourth Circuit to hold oral argument and issue a reported opinion resolving the issue.

Instead, Alexander's argument died an unceremonious *per curiam* death: "We conclude that this argument—essentially arising from a purported Guidelines error—falls within the scope of Alexander's valid appeal waiver." Pet. App. 4a. There was no acknowledgment of Alexander's substantial argument based on Judge Traxler's *Frazier* concurrence, even though Judge Traxler was on the panel. Somehow, the

Fourth Circuit is becoming less open to challenges to C-Type plea agreements' validity after *Garza*.

There appears to be no reported authority, much less a division of reported authority, on this issue. The only other on-point case we have located is *United States v. Williams*, 682 F. App'x 453 (6th Cir. 2017), which held that an appeal waiver barred a claim of clear Guidelines error in approving a Type-C agreement, even as the Sixth Circuit acknowledged the district court's grave mistake. *Id.* at 456 n.2 (district court stated that the sentence was below-Guidelines, but sentence represented an upward departure of 39 months). Given the increasing use of Type-C plea agreements, there is little reason to believe that such mistakes are rare.

Why, then, the paucity of case law? It is likely because defense attorneys—who have played a key role in negotiating the pleas and believe them to be in their clients' best interests—fail to identify the errors or press them on appeal. All too often, defense attorneys disregard their clients' instructions to file appeals following pleas. The problem is so widespread that, when this Court held in *Garza* that a presumption of Sixth Amendment prejudice arises in that situation, nearly every circuit had issued a reported opinion on that question. *Garza*, 139 S. Ct. at 743 n.3. Given the frequent misunderstanding of the scope of appeal waivers, it is likely that many attorneys, even when a notice of appeal is filed, conclude that a challenge is unsupportable. *See id.* at 746 n.8 (describing procedure under *Anders v. California*, 386 U.S. 738, 744 (1967)). After all, if a district court has sentenced a defendant under a Type-C plea

agreement, the sentence necessarily will fall within the range set forth in any appeal waiver.

Take, for example, the Seventh Circuit's decision last month in *United States v. Sutton*, 962 F.3d 979, 986 (7th Cir. 2020). The defendant in *Sutton* sought a First Step Act reduction of a sentence imposed in 2011 under a Type-C plea agreement that, according to the sentencing judge, was designed to "'supersede the presentence report' and make all disputes 'irrelevant' and 'moot'" regarding the Guidelines range. *Id.* at 981–982. The Seventh Circuit noted that "the Guidelines require a district court to calculate a sentencing range before accepting a sentencing agreement," and that "did not happen here." *Id.* at 985 (citing USSG § 6B1.2(c)). Thus, the district court had blessed the Government's and defense counsel's misuse of Type-C plea agreement to avoid calculating a Guidelines range.

It has become clear that this serious issue will not receive the attention it deserves unless this Court weighs in. This case is a perfect vehicle to do so, because Alexander squarely raised the issue before the district court; the error is clear on the face of the district court's reasoning in approving the plea; and Alexander's sentence was at least 11 months too high under the district court's stated rationale. The Court should grant certiorari on Question 1.

II. A defendant's assent to a plea agreement is not knowing and voluntary when based on clearly erroneous assurances by the district court.

Although it is rare for the Court to grant certiorari based on the misapplication of a properly stated rule of law, the Fourth Circuit's error here is so great as to warrant certiorari on Question 2.

Courts, including the Fourth Circuit, have recognized that an appeal waiver does not foreclose a claim that the defendant's assent to the agreement was not knowing and voluntary. Pet. App. 3a (citing cases); *Garza*, 139 S. Ct. at 746 n.8. Here, the Fourth Circuit held: "Alexander contends that the court misled him because, absent these offenses, the top end of his Guidelines range might have been lower than 108 months," but that the district "court was correct that, because Alexander entered into a Rule 11(c)(1)(C) agreement, he was *bound* by the parties' joint sentencing recommendation, regardless of the validity of the state offenses." Pet. App. 4a (emphasis added).

To the contrary, Alexander's plea agreement was merely "contingent," not binding, until the district court accepted it. *Freeman*, 564 U.S. at 529–530. Before accepting it, the district court had to consult the Guidelines. *Id.* Alexander told the district court that he wanted an opportunity to challenge the convictions involving Officer Laronde. When the district court assured him that it was sentencing him without regard to those convictions, Alexander asked: "But I'm getting the points, though, right?" Pet. App. 12a. The district court erroneously responded: "No." *Id.*

The district court made crystal-clear that Alexander could still have withdrawn from the plea agreement. Pet. App. 14a (Officer Laronde's misconduct "has no effect on this Court's sentencing. If there's any confusion about that with your client, I will entertain striking the guilty plea. And unlike all the other 14 defendants, he'll go to trial."). Alexander adhered to the plea deal, rather than seeking coram nobis relief that stood to reduce his criminal history category, in reliance on the

district court's incorrect assurances. That assent could not have been knowing and voluntary.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted:

Steven M. Klepper
KRAMON & GRAHAM, P.A.
One South Street, Suite 2600
Baltimore, Maryland 21202-3201
(410) 752-6030
sklepper@kg-law.com

Counsel for Petitioner

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