No. 22-186

IN THE
Supreme Court of the United States

TROY MANSFIELD,

Petitioner,

v.

WILLIAMSON COUNTY, TEXAS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF FORMER FEDERAL AND STATE JUDGES AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

BENJAMIN GRUENSTEIN
Counsel of Record
REBECCA J. SCHINDEL
ALLISON N. KEMPF
RAVI SINGH
CRAVATH, SWAINE & MOORE LLP
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019-7475
(212) 474-1000
bgruenstein@cravath.com

September 29, 2022

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Page(s)

Page(s)

Statutes & Rules

Other Authorities

Page(s)

Page(s)

INTEREST OF *AMICI CURIAE*[1]

Amici are former state court and federal court judges, who were tasked with ensuring the integrity, fairness and smooth administration of criminal proceedings.[2] As former members of the judiciary, *amici* have, all together, accepted thousands of guilty pleas and reviewed dozens of challenges to the same. *Amici* are thus well-suited to comment on the question presented by Petitioner's request for a writ of certiorari—whether the due process right guaranteed by *Brady v. Maryland*, 373 U.S. 83 (1963), requires prosecutors to disclose exculpatory evidence during pretrial plea negotiations.

This Court's holding in *Brady* requires, pursuant to the Due Process Clause of the Fifth and Fourteenth Amendments, that prosecutors provide "evidence favorable to an accused . . . where the evidence is material either to guilt or to punishment." 373 U.S. at 87. This Court has not yet held, however, precisely when such disclosures must be made. Though five circuits and five states have now concluded that due process requires the disclosure of material exculpatory evidence during plea negotiations and

---

[1] Pursuant to Supreme Court Rule 37.2(a), *amici* certify that they provided proper notice to Petitioner and Respondent and both have consented to the filing of this *amicus* brief. Pursuant to Rule 37.6, counsel for *amici* certifies that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici* or their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

[2] A complete list of *amici* appears in the Appendix to this brief.

before acceptance of a guilty plea, the Fifth Circuit and three other federal courts of appeal disagree. (*See* Pet. Br. at 3.) Mr. Mansfield's petition presents an opportunity to resolve this split.

A defendant who pleads guilty without knowing that the government holds material evidence of his factual innocence has been deprived of a fair choice. In such circumstances, the defendant has waived his right to trial—with all the procedural safeguards that a trial entails—without the critical information he needs to assess the strength of the government's case and the likelihood of conviction. The judge who has accepted the defendant's guilty plea is likewise blind to this key information, and therefore has no way to reliably ensure that the defendant's waiver is truly knowing, intelligent and voluntary. Because this information asymmetry furthers the already significant power imbalance between the prosecution and the defense during plea negotiations, and because this incongruity renders the constitutional guarantees that already apply to plea proceedings insufficient, due process requires a more level field. *Amici* thus urge the Court to grant Petitioner's certiorari petition and to resolve, for all courts in all jurisdictions, the core constitutional question raised therein.

SUMMARY OF ARGUMENT

For the vast majority of defendants, the plea proceeding is the most critical stage of a criminal case. It is where 9 out of 10 defendants allocute to their guilt, accept responsibility for their misconduct and waive their right to put the prosecution to its burden. The trouble, however, is that many defendants are

pleading guilty in exchange for an offer of leniency from the government—an offer that may be driven less by the government's desire to ensure the quick and efficient administration of justice and more by the government's concerns about the likelihood of securing a conviction. Put simply, prosecutors' incentive to offer an attractive guilty plea may be at an apex when their confidence in their case is at a low. Defendants, in turn, have the greatest incentive to accept the prosecutor's offer when they are ignorant of any exculpatory evidence, and are thus unable to assess with any accuracy the potential holes in the government's case. This is all the more true where prosecutors can threaten to pursue charges that carry stiff sentences—often with high mandatory minimums—if a defendant insists on a trial, while offering to pursue a much lighter sentence if the defendant takes a plea. The pull to plead guilty is often strongest for innocent defendants, such as Petitioner here, who cannot bear to risk the penalties that may result from trial, and who are likely going to be offered the most compelling plea deals because the exculpatory evidence in the government's files is particularly strong.

Against this backdrop, judges' ability to safeguard the fairness and integrity of criminal adjudications is constrained. Courts are duty-bound to protect a defendant's constitutional rights during plea proceedings—including the Fifth Amendment right to a fair trial absent a knowing, intelligent and voluntary guilty plea and the Sixth Amendment right to the effective assistance of counsel. But they cannot ensure a just process or a just outcome where a defendant is pleading guilty without knowing that the

government has, and before trial would be forced to disclose, evidence tending to show his factual innocence. The judiciary's interest in fairness is thus subverted where the prosecution knows all of the evidence that will be presented at trial, the defense knows only what the government has been required to disclose at that point in the proceedings and the court has no involvement in the negotiations between the two. Such unfairness is especially heightened now, where different jurisdictions have interpreted *Brady* differently, and defendants in some states and districts are entitled to receive material exculpatory evidence at the plea stage, while others are not.

Judges also have a unique interest in preserving and protecting "values beyond the concerns of the parties," such as "promot[ing] judicial efficiency" and ensuring the "conservation of judicial resources." *Acosta v. Artuz*, 221 F.3d 117, 123 (2d Cir. 2000). As former state and federal judges, *amici* are sensitive to the "workability" and "administrability" concerns that are cited by some as a basis for cabining *Brady*'s protections to the trial stage. Such concerns, however, are misplaced. Prosecutors in much of the country are already required—whether by constitutional law, statute, ethical rule, court order or government policy—to disclose exculpatory evidence before the defendant pleads guilty. There is simply no evidence that this practice has imposed undue burdens on prosecutors or subverted the efficient administration of justice.

ARGUMENT

I. Withholding *Brady* Evidence at the Plea Stage Undermines the Fundamental Fairness of Criminal Proceedings.

Judges have a "duty to safeguard [the] indispensable conditions to the fair administration of criminal justice." *Offutt v. United States*, 348 U.S. 11, 13 (1954). At its core, a judge's role in criminal cases is "to take all appropriate measures to ensure the fair and proper administration" of the proceedings. *State v. Tyler*, 821 A.2d 1139, 1146 (N.J. 2003). At the plea stage, judges ensure fairness in a number of ways. For instance, they have a "duty . . . to see that an accused has the assistance of counsel," *Holloway v. Arkansas*, 435 U.S. 475, 484 (1978) (quoting *Glasser v. United States*, 315 U.S. 60, 76 (1942)), including during plea negotiations, *Lafler v. Cooper*, 566 U.S. 156, 162 (2012). And judges take care, through Rule 11 of the Federal Rules of Criminal Procedure and otherwise, to satisfy themselves "that a defendant's guilty plea is truly [knowing, intelligent and] voluntary." *McCarthy v. United States*, 394 U.S. 459, 465 (1969); *see also United States v. Vonn*, 535 U.S. 55, 58 (2002) (stating that Rule 11 is "meant to ensure that a guilty plea is knowing and voluntary"). To that end, courts must "personally interrogat[e] the defendant . . . to ascertain the plea's voluntariness," "to satisfy himself that there is a factual basis for the plea" and to confirm that "a defendant who pleads guilty understands the nature of the charge against him and . . . is aware of the consequences of his plea." *McCarthy*, 394 U.S. at 466-67. "What is at stake for an accused facing death or imprisonment demands the utmost solicitude of which courts are capable in

canvassing the matter with the accused to make sure he has a full understanding of what the plea connotes and of its consequence." *Boykin v. Alabama*, 395 U.S. 238, 243-44, (1969). This is a duty *amici* always endeavored to discharge faithfully. But judges' ability to execute their safeguarding role is undermined when prosecutors fail to disclose material exculpatory evidence before a guilty plea is entered.

1. Judges' techniques for ensuring a just outcome at a plea proceeding are powerful, but not failproof. A court's assurance that a defendant has received effective assistance of counsel during plea bargaining, for instance, is dampened when both the defendant and his counsel are in the dark about information tending to show that the defendant is innocent of the alleged crime. And as several courts have now recognized, any judicial inquiry into the voluntariness of the defendant's plea is necessarily stymied when neither the defendant nor the court knows about material exculpatory information that would bear on the defendant's decision to waive his right to trial. *See Sanchez v. United States*, 50 F.3d 1448, 1453 (9th Cir. 1995); *United States v. Wright*, 43 F.3d 491, 495 (10th Cir. 1994). Because "a defendant's decision whether or not to plead guilty is often heavily influenced by his appraisal of the prosecution's case," a guilty plea "cannot be deemed 'intelligent and voluntary' if 'entered without knowledge of material information withheld by the prosecution.'" *Sanchez*, 50 F.3d at 1453 (quoting *Miller v. Angliker,* 848 F.2d 1312, 1320 (2d Cir. 1988)).

This is not to say that a defendant requires insight into all the intricacies of the government's case before deciding whether to plead guilty. As this Court

held in *United States v. Ruiz*, 536 U.S. 622 (2002), prosecutors are not constitutionally required to disclose "impeachment information relating to any informants or other witnesses" before entering into a plea agreement. *Id.* at 625. Impeachment information, this Court reasoned, is not "critical information of which the defendant must always be aware prior to pleading guilty given the random way in which such information may, or may not, help a particular defendant"—particularly since there are "various [other] forms of misapprehension under which a defendant might labor" that do not preclude a court from accepting a guilty plea. *Id.* at 630.

Material exculpatory evidence, however, is fundamentally different. Unlike impeachment information, which comes into play only at trial, if at all, material evidence of a defendant's factual innocence is not "information [that] is special in relation to the *fairness of the trial*." *Id.* at 629. And, unlike with impeachment information, there is no "randomness" in how exculpatory evidence will factor into a defendant's assessment of the strength of the government's case. Information tending to show the defendant's innocence necessarily and directly undercuts the government's position, in ways that witness-credibility concerns often may not.

Indeed, this Court seems to have already recognized these critical distinctions between impeachment and exculpatory evidence. In holding that the prosecutors in *Ruiz* were not constitutionally required to disclose impeachment evidence in advance of the defendant's guilty plea, the Court noted that "the proposed plea agreement at issue" required the government to "provide 'any information establishing

the factual innocence of the defendant.'" *Id.* at 631. This fact, "along with other guilty-plea safeguards," reassured the Court that due process did not require that the defendant have access to impeachment evidence as well. *Id.*

2. The lack of judicial involvement in plea bargaining makes the disclosure of exculpatory evidence all the more necessary. This Court has already reached a similar conclusion in the Sixth Amendment context, when it held that effective assistance of counsel is required during "the negotiation of a plea bargain" because that is a "critical phase of litigation," *Missouri v. Frye*, 566 U.S. 134, 141 (2012) (quoting *Padilla v. Kentucky*, 559 U.S. 356, 373 (2010)), where the parties' positions are "often in flux, with no clear standards or timelines and with no judicial supervision of the discussions between prosecution and defense," *id.* at 143. The same logic applies with equal force here. A defendant who "cannot be presumed to make critical decisions without counsel's advice" likewise cannot be presumed to make informed decisions in the absence of material, exculpatory information. *See Lafler*, 566 U.S. at 165; *see also* Michael Nasser Petegorsky, Note, *Plea Bargaining in the Dark: The Duty to Disclose Exculpatory Brady Evidence During Plea Bargaining*, 81 Fordham L. Rev. 3599, 3647-49 (2013) (explaining how the logic of *Lafler* and *Frye* supports recognizing a right to exculpatory *Brady* materials at the plea stage). In the absence of either, "the fairness and regularity of the process[]" are at stake. *Lafler*, 566 U.S. at 169.

3. The unfairness associated with depriving defendants of material exculpatory evidence at the

plea stage stems, in large measure, from the extreme leverage prosecutors already hold during the plea bargaining process. "[C]riminal justice today is for the most part a system of pleas, not a system of trials." *Id.* at 170. And within that system, prosecutors—not the courts—have the power to decide what crime to charge for a given offense, and a prosecutor commits no constitutional violation by charging the defendant with a crime carrying a more significant sentence if the defendant refuses to plead guilty. *See Bordenkircher v. Hayes*, 434 U.S. 357, 364-65 (1978). At both the federal and state level, such discretion can be employed, and often is, to threaten defendants with charges that carry high mandatory minimum sentences. *See* Stephanos Bibas, *Plea Bargaining Outside the Shadow of Trial*, 117 Harv. L. Rev. 2463, 2483-87 (2004) [hereinafter, "Bibas"]. As a result, defendants weighing whether to plead guilty or face their accusers at trial are no longer choosing between the risk of a slightly longer sentence if they proceed to trial or the certainty of a slightly discounted sentence if they take a plea. In cases such as Petitioner's, they are choosing instead between going to trial and potentially spending the rest of their lives in prison or pleading guilty and serving a matter of months. (*See* Pet. Br. at 6.) Put simply, overcharging, prosecutorial bluffing and "mandatory penalties create cliffs instead of smooth slopes," *see* Bibas at 2487, and the vast majority of defendants are terrified of the fall.

In light of this dynamic, withholding exculpatory evidence during plea negotiations gives prosecutors an additional unwarranted advantage. For both the prosecution and the defense, pleas are negotiated with an eye toward what will happen at trial. But

withholding exculpatory evidence necessarily skews plea deals higher because the defendant is only aware of evidence in the government's hands that makes a conviction more likely, not less. As a result, when the government has doubts about the defendant's guilt, it will offer to plead out to a lower charge or a lower sentence. *See* Bibas at 2473 (explaining that prosecutors have an incentive to "make irresistible offers in weak cases," particularly where defendants "have imperfect information about the cases' weaknesses"). But that offer—with all the attendant collateral effects that a criminal conviction brings—may not be nearly as favorable to the defendant as it seems. A defendant facing the frightening prospect of an enhanced charge with a more significant sentence will nevertheless often take the deal.

4. The incentive to plead guilty is perhaps greatest for innocent defendants, "who are on average more risk averse than guilty defendants." Bibas at 2495. Courts and scholars alike have noted "the troubling number of eventual exonerations of defendants who originally pleaded guilty." Jenia I. Turner & Allison D. Redlich, *Two Models of Pre-Plea Discovery in Criminal Cases: An Empirical Comparison*, 73 Wash. & Lee L. Rev. 285, 289 (2016) [hereinafter "Turner & Redlich"]; *see also Alvarez v. City of Brownsville*, 904 F.3d 382, 416 (5th Cir. 2018) (Costa, J., dissenting). Sadly, but not surprisingly, "a key factor contributing to such wrongful convictions is the withholding of exculpatory evidence." Turner & Redlich at 289. In fact, according to the National Registry of Exoneration, at least 10% of the "plea-based wrongful conviction cases . . . involved failure to disclose exculpatory evidence." *Id.* at 289 n.11.

Once again, absent application of *Brady* at the plea stage, a judge's ability to protect innocent defendants is constrained. It is not enough to rely on the effective assistance of counsel because 47 states and the District of Columbia allow defendants to plead guilty without admitting their guilt (so-called "*Alford* pleas"), and effective legal representation would generally not prevent an innocent defendant from taking a plea deal under those circumstances. *See* Albert W. Alschuler, *A Nearly Perfect System for Convicting the Innocent*, 79 Alb. L. Rev. 919, 936 (2016) (arguing "it would be unconscionable for a lawyer to block his client from" accepting a "guilty but not guilty" plea deal). And even in the federal system, where *Alford* pleas are less common, *see* Gregory M. Gilchrist, *Trial Bargaining*, 101 Iowa L. Rev. 609, 637 (2016), an innocent defendant who is committed to avoiding the risks of a trial can shade the truth in his allocution to convince a court that "there is a factual basis for the [guilty] plea." *See* Fed. R. Crim. P. 11(b)(3). As stewards of the fair and efficient administration of justice, judges are handicapped by a system that allows prosecutors to withhold material, exculpatory information from a defendant before making the defendant an offer he cannot refuse.

5. The current state of affairs undermines fairness in other ways, as well. As it now stands, a defendant's constitutional right to receive exculpatory materials at the plea stage turns on the fortuity of where he is tried—as the facts of Petitioner's case make plain. (*See* Pet. Br. at 13-14.) The Constitution is not meant to apply differently in different jurisdictions, and it certainly is not meant to apply differently to the same defendant depending on

whether he is tried in state or federal court. This alone is grounds to grant Petitioner's request for a writ of certiorari.

II. Extending *Brady* Protections to the Plea Stage Will Not Raise Administrability Concerns.

One concern that has been voiced with extending *Brady* to the plea stage relates to the purported costs to the criminal justice system of enforcing such a rule. *See, e.g.*, *Alvarez*, 904 F.3d at 395-96 (Higginson, J. concurring). As discussed above, this Court concluded 10 years ago that prosecutors need not disclose "impeachment information relating to any informants or other witnesses" before entering into a plea agreement. *Ruiz*, 536 U.S. at 625. This decision turned, in part, on the fear that such a rule would require prosecutors "to devote substantially more resources to trial preparation prior to plea bargaining" in order to unearth the impeachment or credibility issues that might come to light at trial, which would "depriv[e] the plea-bargaining process of its main resource-saving advantages." *Id.* at 632. Alternatively, the government might instead "abandon its heavy reliance upon plea bargaining in a vast number . . . of federal criminal cases," thereby "seriously interfer[ing] with the Government's interest in securing those guilty pleas that are factually justified, desired by defendants, and help to secure the efficient administration of justice." *Id.* at 631-32. Ultimately, the Court concluded that the benefits to a defendant of receiving impeachment information at the plea stage did not outweigh those costs.

Those who oppose requiring prosecutors to disclose exculpatory evidence at the plea-bargaining stage often cite the same administrability concerns that animated this Court's decision in *Ruiz*. *See, e.g.*, *Friedman v. Rehal*, 618 F.3d 142, 154 (2d Cir. 2010) ("[T]he reasoning underlying *Ruiz* could support a similar ruling for a prosecutor's obligations [to provide exculpatory material] prior to a guilty plea."). The rationale set forth in *Ruiz*, however, does not carry the same weight here, for at least two reasons.

1. The burden on prosecutors associated with the early disclosure of impeachment information—and the potential suppressive effect this might have on "the Government's interest in securing those guilty pleas that are factually justified, desired by defendants, and help to secure the efficient administration of justice"—stems in large part from fears that prematurely disclosing "Government witness information . . . could 'disrupt ongoing investigations' and expose prospective witnesses to serious harm," *Ruiz*, 536 U.S. at 631-32, and would require the Government to devote energy to uncovering impeachment information, much of which would not otherwise "occur until it is apparent that the defendant intends to contest his guilt," Petition for Writ of Certiorari, *Ruiz*, 536 U.S. 622 (No. 01-595), available at https://www.justice.gov/osg/brief/united-states-v-ruiz-petition. But those concerns are simply not at play with respect to exculpatory evidence. The early disclosure of evidence related to actual innocence could not lead to witness intimidation, would not risk revealing the identities of informants or undercover agents and would not require the government to spend time and money identifying

potential trial witnesses and assessing their credibility risks. In short, sharing exculpatory evidence—of which "prosecutors generally are aware . . . by the time they enter into plea negotiations if not earlier when they bring charges"—does not impose the same costs or risks on prosecutors as revealing impeachment information might. *Alvarez*, 904 F.3d at 413 (Costa, J., dissenting).

2. When deciding *Ruiz*, this Court was forced to undertake a theoretical analysis of costs and burdens, without the benefit of real-world data. No other circuit had adopted the broad disclosure requirements set forth in the Ninth Circuit's ruling, *see Ruiz*, 536 U.S. at 630,[3] and it was, at that time, expressly "not the practice of federal prosecutors to disclose impeachment information before a defendant pleads guilty," Petition for Writ of Certiorari, *Ruiz*, 536 U.S. 622 (No. 01-595), available at https://www.justice.gov/osg/brief/united-states-v-ruiz-petition. Here, by contrast, there is ample real-world experience with Petitioner's requested relief. And, in light of that experience, there is simply no basis to suggest that requiring prosecutors to disclose exculpatory material at the plea stage would impose undue burdens on the government or lead to appreciably fewer guilty pleas.

---

[3] In reversing the Ninth Circuit, this Court noted there was "no legal authority . . . in cases from other circuits . . . provid[ing] significant support for the Ninth Circuit's decision," *Ruiz*, 536 U.S. at 630, and the government's petition for a writ of certiorari in *Ruiz* noted that the Ninth Circuit's "application of *Brady* to guilty pleas [was] unique," Petition for Writ of Certiorari, *Ruiz*, 536 U.S. 622 (No. 01-595), available at https://www.justice.gov/osg/brief/united-states-v-ruiz-petition.

Prosecutors in much of the country are already required to turn over exculpatory material at the plea stage. As Petitioner notes, five states and five federal circuits encompassing more than half of the states in the country have already determined that such disclosure is required as a matter of constitutional law. (*See* Pet. Br. at 14.) And the ethics and criminal-procedure rules in a host of jurisdictions likewise mandate pre-plea disclosure. *See, e.g.*, *Matter of Larsen*, 379 P.3d 1209, 1215 (Utah 2016); *State* v. *Harris*, 680 N.W.2d 737, 751 (Wis. 2004); *In re Att'y C*, 47 P.3d 1167, 1168 (Colo. 2002) (en banc).

The American Bar Association ("ABA") similarly directs prosecutors, "[b]efore entering into a disposition agreement," to "disclose to the defense a factual basis sufficient to support the charges in the proposed agreement, and information currently known to the prosecutor that tends to negate guilt, mitigates the offense or is likely to reduce punishment." Criminal Justice Standards for the Prosecution Function, Standard 3-5.6(f) (Am. Bar Ass'n 2017). And Rule 3.8(d) of the Model Rules of Professional Conduct requires prosecutors to "make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense." Model Rules of Pro. Conduct r. 3.8 (Am. Bar. Ass'n 2020). Every state in the country has adopted Model Rule 3.8(d) or a similar standard. *See* Marc Allen, *Non-Brady Legal and Ethical Obligations on Prosecutors to Disclose Exculpatory Evidence*, The Nat'l Registry of Exonerations (July 2018), https://www.law.umich.edu/special/exoneration/Documents/NRE_Exculpatory_Evidence_Obligations_for_

Prosecutors.pdf; *see also* ABA CPR Policy Implementation Comm., Variations of the ABA Model Rules of Professional Conduct, (November 2017), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mrpc-3-8.pdf. As several states have made clear, this ethical obligation requires earlier disclosure than the law may currently require. *See, e.g.*, Va. State Bar Comm. on Legal Ethics, Op. 1862 (July 23, 2012), https://www.vsb.org/docs/LEO/1862.pdf; Ass'n of the Bar of the City of N.Y. Comm. on Pro. Ethics, Formal Opinion 2016-3, 9 (August 29, 2016), https://www.nycbar.org/pdf/report/uploads/20073140-2016-3_Prosecutors_Ethical_Obligations_PROFETH_8.22.16.pdf.

Separate from any substantive law or ethical obligation, prosecutors in many jurisdictions are required by governmental policy or court order to disclose exculpatory materials early in the criminal proceedings. For instance, since at least 2010, Department of Justice policy has required the disclosure of exculpatory information "reasonably promptly after it is discovered." U.S. Dep't of Just., Just. Manual § 9-5.001.D.1 (2010). And at least 20 federal district courts have imposed an even firmer deadline, requiring disclosure within 28 days of arraignment. Laurel Hooper & Sheila Thorpe, *Brady v. Maryland Material in the United States District Courts: Rules, Orders, and Policies* 16 (Fed. Jud. Ctr. 2007). Indeed, even in the Second Circuit, where the court of appeals has questioned the applicability of *Brady* to pre-trial proceedings, *see Friedman*, 618 F.3d at 154, district courts require prosecutors to disclose exculpatory material "promptly after its existence becomes known to the Government" and

caution that the failure to comply with such an order could result in vacatur of a conviction after a guilty plea is accepted. *See, e.g.*, *In re Fed. Rule of Crim. Proc. 5(f)*, No. 1:12-CR-00862, 2021 WL 260408, at *1 (S.D.N.Y. Jan. 25, 2021); *see also* Disclosure Order at 2, *United States v. Russo*, No. 20-CR-023 (E.D.N.Y. Jan. 12, 2021), ECF No. 35.

This nationwide experiment with pre-plea disclosures of *Brady* evidence has imposed no appreciable costs to the criminal justice system. Certainly, there has been no meaningful decline in the percentage of cases being resolved through guilty pleas. *See* Nat'l Ass'n of Crim. Def. Lawyers, *The Trial Penalty: The Sixth Amendment Right to Trial on the Verge of Extinction and How to Save It*, 14 (2018), https://www.nacdl.org/getattachment/95b7f0f5-90df-4f9f-9115-520b3f58036a/the-trial-penalty-the-sixth-amendment-right-to-trial-on-the-verge-of-extinction-and-how-to-save-it.pdf (noting that in 2016, 97.3% of defendants in the federal criminal justice system pleaded guilty, with 97.2% pleading guilty in 2017). Any administrability concerns raised with respect to extending *Brady*'s protections to plea bargaining are thus unwarranted.

CONCLUSION

For the foregoing reasons, and those stated by Petitioner, the Court should grant the petition.

September 29, 2022

Respectfully submitted,

BENJAMIN GRUENSTEIN
Counsel of Record
REBECCA J. SCHINDEL
ALLISON N. KEMPF
RAVI SINGH

CRAVATH, SWAINE & MOORE LLP
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019-7475
(212) 474-1000
bgruenstein@cravath.com

APPENDIX

APPENDIX

COMPLETE LIST OF *AMICI CURIAE*

The Honorable Elsa Alcala
Former Judge, Texas Court of Criminal Appeals

The Honorable Charles F. Baird
Former Judge, Texas Court of Criminals Appeals and 299th District Court of Travis County

The Honorable Mark W. Bennett
Former Judge, U.S. District Court for the Northern District of Iowa

The Honorable LaDoris Hazzard Cordell
Former Judge, Superior Court of California

The Honorable Christopher F. Droney
Former Judge, U.S. Court of Appeals for the Second Circuit and U.S. District Court for the District of Connecticut

The Honorable Jeremy D. Fogel
Former Judge, U.S. District Court for the Northern District of California

The Honorable W. Royal Furgeson
Former Judge, U.S. District Court for the Western District of Texas

The Honorable Barbara S. Jones
Former Judge, U.S. District Court for the Southern District of New York

The Honorable Beverly B. Martin
Former Judge, U.S. Court of Appeals for the Eleventh Circuit and U.S. District Court for the Northern District of Georgia

The Honorable A. Howard Matz
Former Judge, U.S. District Court for the Central District of California

The Honorable Stephen Orlofsky
Former Judge, U.S. District Court for the District of New Jersey and U.S. Magistrate Judge for the District of New Jersey

The Honorable Ronald Reinstein
Former Judge, Superior Court of Arizona

The Honorable Thomas I. Vanaskie
Former Judge, U.S. Court of Appeals for the Third Circuit and U.S. District Court for the Middle District of Pennsylvania

The Honorable T. John Ward
Former Judge, U.S. District Court for the Eastern District of Texas

The Honorable James Yates
Former Justice, New York State Supreme Court and Former Judge, New York State Court of Claims