

No. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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FLOYD WYCHE,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

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On Petition for Writ of Certiorari to the  
United States Court of Appeals  
For the Eleventh Circuit

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PETITION FOR WRIT OF CERTIORARI

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## QUESTION PRESENTED

Rule 11(b)(1)(N) of the Federal Rules of Criminal Procedure requires that a district court conducting a plea colloquy inquire into the defendant's knowing and voluntary waiver, or limited waiver, of the right to appeal from the sentencing decision of the district court. In *Class v. United States*, 138 S. Ct. 798 (2018), the Court held that where the guilty plea itself does not operate as a waiver of appeal from the unconstitutionality of the conviction, the defendant maintains the right of appeal in the absence of an express agreement waiving that right. Rule 11 has not been amended to require that the district court address conviction appeal waivers. In petitioner's case, the district court confirmed with petitioner his sentence appeal waiver, but did not address the conviction appeal waiver and made no finding regarding that waiver.

The question presented is:

Is the petitioner's conviction appeal waiver valid absent any indication in the plea colloquy that he understood and voluntarily agreed to the waiver?

## **INTERESTED PARTIES**

The caption contains the names of all of the parties interested in the proceedings.

## **RELATED PROCEEDINGS**

*United States v. Wyche*, No. 21-13832, 2022 WL 17883935 (11th Cir. Dec. 23, 2022)

*United States v. Wyche*, No. 21-cr-20051 (S.D. Fla. Nov. 30, 2021)

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## **PETITION FOR WRIT OF CERTIORARI**

Floyd Wyche respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the decision of the United States Court of Appeals for the Eleventh Circuit, entered in case number No. 21-13832 on December 23, 2022.

### **OPINION BELOW**

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit, unpublished and available at 2022 WL 17883935, is contained in the Appendix (App. 1).

### **JURISDICTION**

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and Part III of the Rules of the Supreme Court of the United States. The petition is timely filed.

### **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

Petitioner relies upon the following constitutional and statutory provisions:

**U.S. Const. amend. V** (due process clause):

No person shall be ... shall ... be deprived of life, liberty, or property, without due process of law.

**Fed. R. Crim. P. 11(b)(1)(N)**

(b) Considering and Accepting a Guilty or Nolo Contendere Plea.

(1) Advising and Questioning the Defendant. Before the court accepts a plea of guilty or nolo contendere, the defendant may be placed under oath, and the court must address the defendant personally in open court. During this address, the court must inform the defendant of, and determine that the defendant understands, the following:

...

(N) the terms of any plea-agreement provision waiving the right to appeal or to collaterally attack the sentence; ... .

## STATEMENT

Appeal waiver provisions in plea agreements have become more expansive and now frequently go beyond mere sentencing appeal waivers, to include waivers of constitutional defects in the statute of conviction rendering the conviction invalid. Because such a waiver may involve imposing a conviction on conduct that is not criminal, there is a heightened importance in assuring that the defendant is aware of the appellate and post-conviction rights being waived, particular in light of the Court's holding in *Class v. United States*, 138 S. Ct. 798, 803 (2018), that certain constitutional challenges to the statute of conviction are not waived simply by a guilty plea.

Petitioner was indicted on charges of, and pleaded guilty, to conspiring to commit Hobbs Act robbery, aiding and abetting three Hobbs Act robberies, and aiding and abetting the brandishing of a firearm in connection with one of the robberies. App. 1–2, 15.

The parties executed a plea agreement that contained two appeal waiver provisions. App. 28–29. The first waiver, paragraph 11 of the plea agreement, pertained to sentencing challenges: petitioner waived all rights conferred by 28 U.S.C. § 1291 and 18 U.S.C. § 3742 to appeal any sentence imposed. App. 28. The second waiver, paragraph 12 of the plea agreement, pertained to challenges to the *convictions*:

petitioner waived all rights conferred by 28 U.S.C. § 1291 to assert any claim that (1) the statutes to which he was pleading guilty are unconstitutional or (2) the admitted conduct does not fall within the scope of the statutes of conviction. App. 28–29.

During petitioner’s guilty plea colloquy, the district court questioned him about the *sentence* appeal waiver in Paragraph 11, as follows:

THE COURT: In *Paragraph 11*, you’re informed that you have the right to appeal your *sentence*. But in exchange for the agreement that you have negotiated with the Government, you’re giving up your right to appeal your *sentence* unless it exceeds the statutory maximum or is the result of an upward departure or variance from the guideline range I establish at sentencing.

Nothing in the agreement affects the Government’s right to appeal. If the Government does file a notice of appeal, then you are released from your waiver of appellate rights.

In Paragraph 13, you acknowledge that you’ve discussed *that* appellate waiver provision with your attorney, and that you are waiving your right to appeal your *sentence* knowingly and voluntarily.

Do you understand and agree?

Plea hearing transcript at 20 (emphasis added). Petitioner answered, “Yes, ma’am.” *Id.*

The district court made no mention of the conviction appeal waiver in Paragraph 12.

The district court ultimately imposed a 147-month sentence of imprisonment, consisting of concurrent 63-month terms for the Hobbs Act conspiracy and substantive offenses, and a consecutive 84-month term for the firearm offense (a violation of 18 U.S.C. § 924(c)). App. 15.



Petitioner appealed the judgment, asserting multiple arguments, including that his § 924(c) conviction was invalid because aiding and abetting a Hobbs Act offense did not qualify as a crime of violence. The Eleventh Circuit affirmed the judgment, without addressing the constitutionality of the conviction, finding the appeal waiver barred review of that claim as well as sentencing claims.

The court of appeals stated, “We will find an appeal waiver knowing and voluntary if either (1) the district court questioned the defendant about the waiver during the plea colloquy, or (2) the record makes clear that the defendant otherwise understood the full significance of the waiver.” App. 10–11. The Eleventh Circuit then addressed the sentence appeal waiver in the plea agreement and stated, “The plea agreement stated that, by signing the agreement, Wyche was acknowledging that he had discussed the appeal waiver with his attorney and that he agreed to request, with the government, that the district court enter a specific finding that he knowingly and voluntarily waived his right to appeal his sentence or conviction.” App. 11. The court of appeals failed to note that this provision of the plea agreement, that the parties request that the district court make a finding as to the validity of the conviction appeal waiver, was not fulfilled and that the district court made no finding or inquiry regarding the waiver of the right to challenge constitutional validity of the statute’s application to petitioner’s case. The Eleventh Circuit determined that the unconstitutionality argument was “foreclosed by the appeal waiver in [the] plea

agreement.” App. at 12. The court of appeals added, “As we have already explained, this waiver was knowing and voluntary.” App. 12-13. The Court therefore affirmed petitioner’s sentence and conviction.

### **REASONS FOR GRANTING THE PETITION**

The purpose of Rule 11 of the Federal Rules of Criminal Procedure is to insure that the waivers effected by the defendant’s guilty plea are knowing and voluntary. In *Class v. United States*, this Court rejected the government’s contention that a guilty plea implies waiver of all constitutional objections to the conviction, and the Court held that even when a district court conveys that understanding to the defendant, such a warning is insufficient and is inconsistent with Fed. R. Crim. P. 11(b)(1)(N):

[T]he Government relies on the fact that during the Rule 11 plea colloquy, the District Court Judge stated that, under the written plea agreement, Class was “giving up [his] right to appeal [his] conviction.” [Pet. App.] at 76. And Class agreed.

We do not see why the District Court Judge’s statement should bar Class’ constitutional claims. It was made to ensure Class understood “the terms of any plea-agreement provision waiving the right to appeal or to collaterally attack the sentence.” Fed. Rule Crim. Proc. 11(b)(1)(N). It does not expressly refer to a waiver of the appeal right here at issue. And if it is interpreted as expressly including that appeal right, it was wrong, as the Government acknowledged at oral argument. *See* Tr. of Oral Arg. 35–36. Under these circumstances, Class’ acquiescence neither expressly nor implicitly waived his right to appeal his constitutional claims.

*Class v. United States*, 138 S. Ct. 798, 807 (2018).

Notably, during the oral argument before this Court in *Class*, Justice Breyer observed that given the anticipated resolution of the case, there would likely be a new policy by the Department of Justice to obtain waivers of constitutional rights not waived by the plea itself. *See Class v. United States*, 2017 WL 4517133 at 20 (U.S. Oral. Arg. 2017) (“And I assume, henceforth, after this one that it somehow got away they will write that into every claim into every agreement, and then the person will not be able to bring his constitutional claim ...”).

In petitioner’s post-*Class* case, the government placed such a waiver in the plea agreement, but the district court’s plea colloquy failed to address this waiver or elicit from petitioner his understanding of it and instead referred only to the sentence appeal waiver. There is no record basis showing petitioner’s or anyone’s understanding of the conviction appeal waiver provision and its scope of application. In this context, the default rule announced in *Class* should apply, notwithstanding the absence of an express requirement in Rule 11 that inquiry and determination be made of the voluntariness of appeal waivers other than sentence appeal waivers.

The circuit courts of appeals are in conflict regarding the fundamental importance of compliance with the letter and spirit of Rule 11(b)(1)(N). Unlike the Eleventh Circuit’s decision in this case, affirming as to a waiver that was not addressed at all in the plea colloquy—and which, by omission in relation to the remaining plea

colloquy discussion of appeal waivers created at a minimum some confusion about the scope of appellate review petitioner was waiving—other circuits have concluded that such waivers cannot be enforced merely because they are included in a written plea agreement.

In the District of Columbia Circuit, if a district court “mischaracterized the meaning of the waiver in a fundamental way,” *United States v. Godoy*, 706 F.3d 493, 495–96 (D.C. Cir. 2013), “the district court’s oral pronouncement controls,” *id.* at 496 (quoting *United States v. Buchanan*, 59 F.3d 914, 918 (9th Cir. 1995)); *see also United States v. Brown*, 892 F.3d 385, 396 (D.C. Cir. 2018) (per curiam) (holding that an appeal waiver is not knowing, voluntary, and intelligent when the court mischaracterizes an appeal waiver). As the D.C. Circuit explained, “when a court mischaracterizes a waiver provision” during a plea colloquy, “a defendant can hardly be taken to comprehend, let alone accept,” the waiver. *Godoy*, 706 F.3d at 495. Similarly, other circuits have concluded that an appeal waiver may be unknowing and involuntary (and thus unenforceable) when the trial court misstates the scope of the waiver at the plea hearing. *See United States v. Saferstein*, 673 F.3d 237, 243 (3d Cir. 2012) (“a plea colloquy that fails to meet the requirements of Rule 11(b)(1)(N) can prevent a defendant from knowingly and voluntarily waiving his appellate rights”); *United States v. Manigan*, 592 F.3d 621, 627-28 (4th Cir. 2010) (“a plea colloquy that

fails to meet the requirements of Rule 11(b)(1)(N) can prevent a defendant from knowingly and voluntarily waiving his appellate rights”); *United States v. Almany*, 598 F.3d 238, 240–41 (6th Cir. 2010) (district court “committed plain error by failing to probe Almany’s understanding of the appellate waiver provision of his plea agreement, and therefore, the waiver provision is unenforceable”), *rev’d on other grounds*, 562 U.S. 1056 (2010); *United States v. Boneshirt*, 662 F.3d 509, 516 (8th Cir. 2011) (recognizing that the Eighth Circuit has “declined to enforce an appeal waiver when the record does not establish that the district court engaged in the colloquy required by Rule 11(b)(1)(N)”; *United States v. Lopez-Armenta*, 400 F.3d 1173, 1177 (9th Cir. 2005) (appeal waiver is invalid when “confusion regarding appellate rights arises contemporaneously with the waiver”); *United States v. Wilken*, 498 F.3d 1160, 1168-1169 (10th Cir. 2007) (appeal waiver was not “knowing and voluntary” because “the written agreement enumerates a broad waiver of ... appellate rights, but the court’s statements during the plea colloquy describe a much narrower waiver”).

The Eleventh Circuit’s decision, finding satisfaction of the appeal waiver inquiry adequate despite the district court’s failure to inquire at all into the conviction appeal waiver provision of the plea agreement, is inconsistent with *Class* and the decisions of other circuits regarding plea colloquy misstatements of appeal waiver provisions. Because it is now the rare case that is not resolved by a plea agreement, making plea

proceedings the core of the federal criminal justice system, the Court should set a standard for plea colloquy inquiries into appeal waivers that is uniform and that insures a knowing and voluntary plea. Any waiver of appellate rights that extends beyond the waiver implicit in the plea itself must be part of the plea colloquy.

The Court should grant certiorari because of the importance of constitutional rights at issue and to hold that in order to void rights guaranteed under *Class*, a voluntariness inquiry for conviction appeal waivers, equivalent to the waiver inquiry for sentence appeal waivers, is required.

### **CONCLUSION**

For the foregoing reasons, the Court should grant the petition.

Respectfully submitted,

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May 2023

# APPENDIX

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Plea agreement, United States District Court, S.D. Fla., <i>United States v. Wyche</i> , No. 21-cr-20051 (Aug. 16, 2021) . . . . .	App. 24



[DO NOT PUBLISH]

In the  
United States Court of Appeals  
For the Eleventh Circuit

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No. 21-13832

Non-Argument Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

*versus*

FLOYD ELLIS WYCHE,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Florida  
D.C. Docket No. 1:21-cr-20051-CMA-1

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No. 21-14301

Non-Argument Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

*versus*

FLOYD ELLIS WYCHE, JR.,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Florida  
D.C. Docket No. 1:21-cr-20051-CMA-1

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Before JORDAN, BRANCH, and BRASHER, Circuit Judges.

PER CURIAM:

Floyd Wyche pleaded guilty to conspiracy to commit Hobbs Act robbery, in violation of 18 U.S.C. § 1951(a); three counts of

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Hobbs Act robbery, in violation of 18 U.S.C. § 1951(a) and 18 U.S.C. § 2; and brandishing a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A)(ii) and 18 U.S.C. § 2. The district court sentenced Wyche to 147 months' imprisonment and ordered him to pay \$4,442 in restitution. Wyche appeals his convictions, and resulting sentence, arguing that (1) his guilty plea was not knowing and voluntary because the district court failed to determine that he understood the nature of aiding and abetting liability; (2) his sentence is procedurally unreasonable because the district court failed to explain why it rejected his arguments in support of a downward variance sentence; and (3) aiding and abetting a Hobbs Act robbery does not qualify as a "crime of violence" under 18 U.S.C. § 924(c). We conclude that his guilty plea was knowing and voluntary, that he waived his right to appeal, and affirm.

### I.

First, Wyche argues that his guilty plea was not knowing and voluntary because the district court violated a "core concern" of Federal Rule of Criminal Procedure 11 by failing to ensure that Wyche understood the nature of aiding and abetting liability for the substantive charges to which he pleaded guilty.

To ensure that a defendant's guilty plea is voluntary and knowing, the district court must address three "core concerns" of Rule 11: (1) whether the defendant entered the guilty plea free from coercion; (2) whether the defendant understands the nature of the charges; and (3) whether the defendant understands the

consequences of the guilty plea. *United States v. Presendieu*, 880 F.3d 1228, 1238 (11th Cir. 2018). Wyche argues that the district court did not satisfy this second core concern.

Because Wyche neither objected to the adequacy of his plea proceedings before the district court, nor moved to withdraw the plea, we review the district court's compliance with Rule 11 only for plain error. *United States v. Moriarty*, 429 F.3d 1012, 1018-19 (11th Cir. 2005) (citations omitted). A "defendant who seeks reversal of his conviction after a guilty plea, on the ground that the district court committed plain error under Rule 11, must show a reasonable probability that, but for the error, he would not have entered the plea." *United States v. Dominguez Benitez*, 542 U.S. 74, 83 (2004).

We review "on a case-by-case basis whether the district court adequately ensured that a defendant understood the nature of the charge." *United States v. James*, 210 F.3d 1342, 1344 (11th Cir. 2000). That assessment considers the entire record, focusing on the complexity of the charges, the defendant's intelligence and sophistication, the contents of the factual proffer and the defendant's assent to that proffer, the defendant's admission to committing the crime, and the court's factual finding that the defendant understood the nature of the charges and entered a voluntary and knowing guilty plea. *See Presendieu*, 880 F.3d at 123841.

According to Wyche, the district court "failed to ensure that [he] understood the nature of aiding and abetting liability for the substantive charges to which he pleaded guilty." Wyche points out

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that aiding and abetting liability was not mentioned in his plea agreement and neither the district court nor the prosecutor explicitly referenced aiding and abetting liability when explaining his substantive charges. And he argues that “nothing in the record shows anyone else ever explained the legal requirements for aiding and abetting liability to” him, even though “[t]he record reflects [his] confusion about abetting and abetting liability.”

We disagree. Upon consideration of the entire record, we affirm the district court’s determination that Wyche understood the nature of the charges against him, including those based on aiding and abetting liability. Wyche’s plea agreement was accompanied by a factual proffer, signed by Wyche, in which Wyche “agree[d] that [he] . . . aided and abetted the commission of the robberies” by serving as the getaway driver and location scout. Wyche confirmed at the plea colloquy that he read this factual proffer and discussed it with his counsel. The district court also provided Wyche a detailed and lengthy summary of the factual proffer during the plea colloquy, recounting Wyche’s role as the getaway driver and location scout during the robberies and Wyche’s agreement that he “aided and abetted the commission of these robberies.” Wyche confirmed that “all of these facts” were “true and correct” and would be sufficient to prove his guilt “beyond a reasonable doubt” at trial.

Wyche also confirmed that he had received “a copy of the indictment containing the written charges against” him, had “fully discussed that indictment and [his] case in general” with his

counsel, and was “fully satisfied with [his legal] representation.” Wyche’s counsel added that he and Wyche had “gone over the indictment in its entirety several times.” And Wyche’s indictment explicitly charged the Hobbs Act robbery counts and the firearm count under 18 U.S.C. § 2—the statute criminalizing aiding or abetting the commission of another crime. Wyche agreed to plead guilty to those aiding-and-abetting counts in his plea agreement. And Wyche’s counsel explained during the plea colloquy that he and Wyche had “go[ne] over the plea agreement in its entirety,” “reviewed all of the Government’s discovery,” “gone over the case law” relating to his charges, and “discussed various defenses.” Wyche confirmed that he had the opportunity to read his plea agreement and discuss it with his counsel.

The district court stated the names of the charges to which Wyche was pleading guilty, and Wyche confirmed that he understood these charges. The government also set forth the elements of these offenses. Wyche’s counsel confirmed that the government’s recitation of the elements was accurate, and clarified that, although Wyche had not himself possessed or brandished a firearm, he had explained to Wyche that the crime “could apply to [Wyche] in the sense that he’s a codefendant who aided and abetted and conspired with Mr. Smith.”

Wyche stated that he agreed with “most of” his counsel’s statements. When asked if there was a statement with which he disagreed, Wyche responded, “No, only that the government, about the brandishing part, about me robbing somebody.”

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Wyche's counsel said Wyche was trying to clarify that he had not himself possessed or brandished a firearm during the robberies, but rather was the getaway driver. Wyche confirmed that he agreed with this characterization of his comment.

As to Wyche's intelligence and sophistication, Wyche testified that he had a twelfth-grade education and no physical or mental conditions that would prevent him from understanding the proceedings. He also confirmed that no one was "putting pressure upon [him], forcing [him], or coercing [him] to plead guilty and agree to the terms contained in the written plea agreement" and that he was pleading guilty of his own free will. Finally, Wyche confirmed that he understood the rights he was giving up by pleading guilty.

These facts support the district court's conclusion that Wyche understood the nature of the charges against him, including those based on aiding and abetting liability. *See United States v. Wiggins*, 131 F.3d 1440, 1442 (11th Cir. 1997) (no plain error, despite that district court did not outline each element of his offense or ask him if he understood those elements, where it told the defendant to listen to the government's recitation of the factual proffer and the defendant then admitted to those facts); *Presendieu*, 880 F.3d at 1239, 1241 ("[E]ven if these crimes are considered to be more complex than the simplest crimes, the detailed nature of the seven-page factual proffer accompanying Presendieu's written plea agreement and his express assent to that proffer show that

Presendieu well understood the nature of the two charges against him.”).

That the district court and prosecutor did not explicitly mention aiding and abetting liability when stating the charges against Wyche and the elements of those charges does not amount to plain error. *See United States v. Camacho*, 233 F.3d 1308, 1317 (11th Cir. 2000) (“Although the district court in this case did not explain the requirements for a conviction under an aiding and abetting theory or discuss directly the significance of the aiding and abetting theory to Appellant, as long as the factual proffer would support Appellant’s conviction under the aiding and abetting theory, the district court’s acceptance of the factual proffer as sufficient was proper.”); *see also Presendieu*, 880 F.3d at 1238 (“Importantly, Rule 11 does not specify that a district court must list the elements of an offense.”).

Indeed, we rejected this precise argument in *United States v. DePace*, 120 F.3d 233 (11th Cir. 1997). There, the government charged the defendant based exclusively on a theory of aiding and abetting liability. *Id.* at 236. Although neither the indictment, the plea agreement, the district court’s explanation of the charge, nor the government’s explanation of the essential elements of the crime explained the aiding and abetting theory, we held that the district court satisfied Rule 11’s second core concern. *Id.* at 23637. We relied upon the fact that the defendant agreed with the factual proffer during the plea colloquy, admitted that he had assisted in the underlying offense, confirmed that he had reviewed the plea



agreement and indictment with his counsel, and never objected or expressed any confusion throughout the proceeding. *Id.* at 238; *see also Wiggins*, 131 F.3d at 1442–43 (upholding district court’s determination that defendant understood nature of charge where district court failed to explain elements of offense but where defendant admitted to robbing banks, pled guilty unequivocally, and stated that he understood the charges against him).

Wyche seeks to distinguish *DePace* on the ground that Wyche, unlike *DePace*, expressed confusion about aiding and abetting liability during the plea colloquy. We disagree. Wyche never stated that he was confused or did not understand the nature of the charges against him. *Camacho*, 233 F.3d at 1316 (“Appellant, who was represented by counsel, never voiced any confusion about the charge to which she was pleading, nor did she object to the district court’s handling of the Rule 11 inquiry.”). Wyche’s statement that he disagreed with the government to the extent it was suggesting that Wyche had himself robbed anyone—as opposed to assisting as the getaway driver—does not evince confusion about the nature of aiding and abetting liability. To the contrary, it suggests that Wyche himself understood that, by virtue of the aiding and abetting statute, he was pleading guilty based on his assistance in the robbery. This interpretation of the interaction at the plea colloquy does not amount to plain error.

At bottom, “the record as a whole establishes that” Wyche “was aware of the charges to which he was pleading guilty,” “was sufficiently intelligent to understand the nature of those charges,”

“understood that the facts set forth in the factual proffer established that he was guilty of those . . . offenses,” “had discussed the . . . charges and the facts in the proffer with his attorney,” and “unequivocally and intelligently pled guilty to [the] charges in the plea agreement.” *Presendieu*, 880 F.3d at 1241–42. His plea was thus knowing and voluntary.

## II.

Second, Wyche challenges two aspects of his sentence and restitution order. First, he argues that his sentence is procedurally unreasonable because the district court failed to explain why it rejected some of his arguments in support of a lower sentence, such as his “extended period of law-abiding conduct, during which he held a stable job and cared for his family,” his “low risk of recidivism,” and “the general deterrence provide[d] by the lengthy mandatory minimum sentence.” Second, he argues that the district court erred in failing to make his restitution judgment joint and several with the overall restitution order entered as to his codefendant. Wyche’s sentence appeal waiver precludes these challenges.

We review the validity of a sentence appeal waiver *de novo*. *United States v. Johnson*, 541 F.3d 1064, 1066 (11th Cir. 2008) (citation omitted). We will enforce such a waiver so long as the defendant entered it knowingly and voluntarily. *United States v. Bushert*, 997 F.2d 1343, 135051 (11th Cir. 1993). We will find an appeal waiver knowing and voluntary if either (1) the district court

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questioned the defendant about the waiver during the plea colloquy, or (2) the record makes clear that the defendant otherwise understood the full significance of the waiver. *Id.* at 1351.

Wyche's plea agreement included a waiver of his right to appeal his sentence, "including any restitution order, or to appeal the manner in which the sentence was imposed, unless the sentence exceeds the maximum permitted by statute or is the result of an upward departure and/or an upward variance from the advisory guideline range." Wyche was sentenced to the bottom of the guideline range, well below the statutory maximum, and the government has not appealed the sentence. Accordingly, none of the provision's exceptions apply. The sentence appeal waiver thus bars Wyche's challenges to his sentence provided it was entered knowingly and voluntarily. We hold that it was.

The plea agreement stated that, by signing the agreement, Wyche was acknowledging that he had discussed the appeal waiver with his attorney and that he agreed to request, with the government, that the district court enter a specific finding that he knowingly and voluntarily waived his right to appeal his sentence or conviction. And the district court specifically questioned Wyche about the appeal waiver during the plea colloquy, during which Wyche confirmed that he discussed the waiver with his attorney and that he was knowingly and voluntarily giving up the right to appeal. These facts suffice to demonstrate that the waiver was knowing and voluntary. *See Bushert*, 997 F.2d at 1351; *United States v. Weaver*, 275 F.3d 1320, 1333 (11th Cir. 2001) ("Here, the waiver

provision was referenced during Weaver’s Rule 11 plea colloquy and Weaver agreed that she understood the provision and that she entered into it freely and voluntarily. Thus, her waiver is valid.”).

### III.

Third, Wyche urges us to vacate his 18 U.S.C. § 924(c) conviction on the ground that aiding and abetting a Hobbs Act robbery is not a “crime of violence.” In relevant part, Section 934(c) says that a crime of violence is a felony that “has as an element the use, attempted use, or threatened use of physical force against the person or property of another.” 18 U.S.C. § 924(c)(3)(A). We held that the crime of aiding and abetting a Hobbs Act robbery meets this definition in *In re Colton*, 826 F.3d 1301, 1305 (11th Cir. 2016). Wyche acknowledges that our decision in *Colton* conflicts with his position, but he argues that the Supreme Court’s recent decision in *United States v. Taylor*, 142 S. Ct. 2015 (2022) “overrules” *Colton*.

Wyche’s argument is foreclosed by the appeal waiver in his plea agreement. Wyche agreed in his plea agreement that he would not appeal on the ground that “the admitted conduct does not fall within the scope of the statutes of conviction.” *See United States v. DiFalco*, 837 F.3d 1207, 1215 (11th Cir. 2016) (“[A] waiver of appellate rights applies not only to frivolous claims, but also to difficult and debatable legal issues.”) (citations omitted); *King v. United States*, 41 F.4th 1363, 1370 (11th Cir. 2022) (holding that we will “enforc[e] appeal waivers against claims based on new constitutional rules”). As we have already explained, this waiver was

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Opinion of the Court

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knowing and voluntary. For these reasons, we do not address the merits of Wyche's argument about whether aiding and abetting a Hobbs Act robbery meets the definition of a crime of violence under Section 924(c).

#### IV.

For the foregoing reasons, we **AFFIRM** Wyche's sentence and conviction.

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 21-13832-GG

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

FLOYD ELLIS WYCHE,

Defendant - Appellant.

---

No. 21-14301-GG

---

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

FLOYD ELLIS WYCHE, JR.,

Defendant - Appellant.

---

Appeals from the United States District Court  
for the Southern District of Florida

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Before: JORDAN, BRANCH, and BRASHER, Circuit Judges.

PER CURIAM:

The Petition for Panel Rehearing filed by the Appellant is DENIED.

ORD-41

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF FLORIDA**  
**MIAMI DIVISION**

UNITED STATES OF AMERICA

§ **AMENDED JUDGMENT**  
IN A CRIMINAL CASE

v.

§

§

§

Case Number: **1:21-CR-20051-CMA(1)****FLOYD ELLIS WYCHE, JR.**

§

USM Number: **12486-509**

§

§

Counsel for Defendant: **Jonathan S. Friedman**

§

Counsel for United States: **Elena Smukler**

Date of Original Judgment: October 25, 2021

Reason for Amendment: Modification of Restitution Order (18 U.S.C. §3664)

**THE DEFENDANT:**

<input checked="" type="checkbox"/>	pleaded guilty to Counts	<b>1, 2, 3, 5, and 6 of the Indictment</b>
<input type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

**Title & Section / Nature of Offense****Offense Ended****Count**

18 U.S.C. § 1951(a)	Conspiracy To Commit Hobbs Act Robbery	10/13/2020	1
18 U.S.C. § 1951(a)	Hobbs Act Robbery	8/29/2020	2
18 U.S.C. § 1951(a)	Hobbs Act Robbery	9/12/2020	3
18 U.S.C. § 1951(a)	Hobbs Act Robbery	10/13/2020	5
18 U.S.C. § 924(c)(1)(A)	Brandishing A Firearm In Furtherance Of A Crime Of Violence	10/13/2020	6

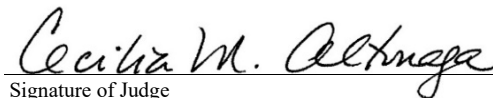
The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s)
- ☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

**October 25, 2021**

Date of Imposition of Judgment



Signature of Judge

**CECILIA M. ALTONAGA**  
**CHIEF UNITED STATES DISTRICT JUDGE**

Name and Title of Judge

**November 30, 2021**

Date  
 App. 15

DEFENDANT: FLOYD ELLIS WYCHE, JR.  
CASE NUMBER: 1:21-CR-20051-CMA(1)

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **one hundred forty-seven (147) months**, consisting of 63 months as to Counts 1, 2, 3, and 5, which shall run concurrently with each other; and 84 months as to Count 6, which shall run consecutively to the terms imposed as to Counts 1, 2, 3, and 5.

☒ The court makes the following recommendations to the Bureau of Prisons:

- (1) Designation as near as possible to South Florida; and
- (2) Participation in the 500-hour RDAP program.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at ☐ a.m. ☐ p.m. on

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

- ☐ before 2 p.m. on
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to

at \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By  
DEPUTY UNITED STATES MARSHAL



DEFENDANT: FLOYD ELLIS WYCHE, JR.  
CASE NUMBER: 1:21-CR-20051-CMA(1)

## **SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **three (3) years**.

## **MANDATORY CONDITIONS**

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
  - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☒ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

DEFENDANT: FLOYD ELLIS WYCHE, JR.  
CASE NUMBER: 1:21-CR-20051-CMA(1)

## STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

## U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at [www.flsp.uscourts.gov](http://www.flsp.uscourts.gov).

Defendant's Signature \_\_\_\_\_

Date \_\_\_\_\_

DEFENDANT: FLOYD ELLIS WYCHE, JR.  
CASE NUMBER: 1:21-CR-20051-CMA(1)

### **SPECIAL CONDITIONS OF SUPERVISION**

**Employment Requirement:** The defendant shall maintain full-time, legitimate employment and not be unemployed for a term of more than 30 days unless excused for schooling, training or other acceptable reasons. Further, the defendant shall provide documentation including, but not limited to pay stubs, contractual agreements, W-2 Wage and Earnings Statements, and other documentation requested by the U.S. Probation Officer.

**No New Debt Restriction:** The defendant shall not apply for, solicit or incur any further debt, included but not limited to loans, lines of credit or credit card charges, either as a principal or cosigner, as an individual or through any corporate entity, without first obtaining permission from the United States Probation Officer.

**Permissible Search:** The defendant shall submit to a search of his/her person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.

**Travel:** The defendant may not travel outside the Southern District of Florida until the restitution has been paid in full.

**Unpaid Restitution, Fines, or Special Assessments:** If the defendant has any unpaid amount of restitution, fines, or special assessments, the defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay.

DEFENDANT: FLOYD ELLIS WYCHE, JR.  
CASE NUMBER: 1:21-CR-20051-CMA(1)

## CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments page.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
<b>TOTALS</b>	\$500.00	4,442.00	0		

- ☐ The determination of restitution is deferred until **November 30, 2021 at 8:30 a.m.** An Amended Judgment in a Criminal Case (AO245C) will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

- ☐ Restitution amount ordered pursuant to plea agreement \$
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the schedule of payments page may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- |  |                               |  |
|--|-------------------------------|--|
| <input checked="" type="checkbox"/> the interest requirement is waived for the | <input type="checkbox"/> fine | <input checked="" type="checkbox"/> restitution              |
| <input type="checkbox"/> the interest requirement for the                      | <input type="checkbox"/> fine | <input type="checkbox"/> restitution is modified as follows: |

**Restitution with Imprisonment** - It is further ordered that the defendant shall pay restitution in the amount **4,442.00**. During the period of incarceration, payment shall be made as follows: (1) if the defendant earns wages in a Federal Prison Industries (UNICOR) job, then the defendant must pay 50% of wages earned toward the financial obligations imposed by this Judgment in a Criminal Case; (2) if the defendant does not work in a UNICOR job, then the defendant must pay a minimum of \$50.00 per quarter toward the financial obligations imposed in this order.

Upon release of incarceration, the defendant shall pay restitution at the rate of 15% of monthly gross earnings, until such time as the court may alter that payment schedule in the interests of justice. The U.S. Bureau of Prisons, U.S. Probation Office and U.S. Attorney's Office shall monitor the payment of restitution and report to the court any material change in the defendant's ability to pay. These payments do not preclude the government from using other assets or income of the defendant to satisfy the restitution obligations.

\* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, 18 U.S.C. §2259.

\*\* Justice for Victims of Trafficking Act of 2015, 18 U.S.C. §3014.

\*\*\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: FLOYD ELLIS WYCHE, JR.  
CASE NUMBER: 1:21-CR-20051-CMA(1)

## SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☒ Lump sum payments of \$500.00 due immediately.

**It is ordered that the Defendant shall pay to the United States a special assessment of \$500.00 for Counts 1, 2, 3, 5 and 6 , which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court. Payment is to be addressed to:**

**U.S. CLERK'S OFFICE  
ATTN: FINANCIAL SECTION  
400 NORTH MIAMI AVENUE, ROOM 8N09  
MIAMI, FLORIDA 33128-7716**

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several  
See above for Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☒ The defendant shall forfeit the defendant's interest in the following property to the United States:  
**FORFEITURE of the defendant's right, title and interest in certain property is hereby ordered consistent with the plea agreement. The United States shall submit a proposed Order of Forfeiture within three days of this proceeding.**

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTa assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

DEFENDANT: FLOYD ELLIS WYCHE, JR.  
CASE NUMBER: 1:21-CR-20051-CMA(1)

**ADDITIONAL FORFEITED PROPERTY**

DEFENDANT: FLOYD ELLIS WYCHE, JR.  
CASE NUMBER: 1:21-CR-20051-CMA(1)

**DENIAL OF FEDERAL BENEFITS**  
*(For Offenses Committed On or After November 18, 1988)*

**FOR DRUG TRAFFICKERS PURSUANT TO 21 U.S.C. § 862**

IT IS ORDERED that the defendant shall be:

- ☐ ineligible for all federal benefits for a period of
- ☐ ineligible for the following federal benefits for a period of  
*(specify benefit(s))*

**OR**

- ☐ Having determined that this is the defendant's third or subsequent conviction for distribution of controlled substances, IT IS ORDERED that the defendant shall be permanently ineligible for all federal benefits.

**FOR DRUG POSSESSORS PURSUANT TO 21 U.S.C. § 862(b)**

IT IS ORDERED that the defendant shall:

- ☐ be ineligible for all federal benefits for a period of
- ☐ be ineligible for the following federal benefits for a period of  
*(specify benefit(s))*

- ☐ successfully complete a drug testing and treatment program.
- ☐ perform community service, as specified in the probation and supervised release portion of this judgment.

IS FURTHER ORDERED that the defendant shall complete any drug treatment program and community service specified in this judgment as a requirement for the reinstatement of eligibility for federal benefits.

**Pursuant to 21 U.S.C. § 862(d), this denial of federal benefits does not include any retirement, welfare, Social Security, health, disability, veterans benefit, public housing, or other similar benefit, or any other benefit for which payments or services are required for eligibility. The clerk is responsible for sending a copy of this page and the first page of this judgment to:**

**U.S. Department of Justice, Office of Justice Programs, Washington, DC 20531**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. ~~19-CR-20818-GAYLES~~  
21-CR-20051-ALTONAGA

UNITED STATES OF AMERICA

v.

FLOYD ELLIS WYCHE, JR.,

Defendant.

---

**PLEA AGREEMENT**

The United States Attorney's Office for the Southern District of Florida ("this Office") and Floyd Ellis Wyche, Jr. (hereinafter referred to as the "Defendant") enter into the following agreement:

1. The Defendant agrees to plead guilty to the Indictment, which charges the Defendant with one count of conspiracy to commit Hobbs Act Robbery, in violation of 18 U.S.C. § 1951(a) (Count 1), three counts of Hobbs Act Robbery, in violation of Hobbs Act Robbery, in violation of 18 U.S.C. § 1951(a) (Counts 2, 3, and 5), and one count of Brandishing a Firearm in Furtherance of a Crime of Violence, in violation of 18 U.S.C. § 924(c)(1)(A) (Count 6).

2. The Defendant is aware that the sentence will be imposed by the Court after considering the advisory Federal Sentencing Guidelines and Policy Statements (hereinafter "Sentencing Guidelines"). The Defendant acknowledges and understands that the Court will compute an advisory sentence under the Sentencing Guidelines and that the applicable guidelines will be determined by the Court relying in part on the results of a pre-sentence investigation by the Court's probation office, which investigation will commence after the guilty plea has been entered. The Defendant is also aware that, under certain circumstances, the Court may depart from the advisory



sentencing guideline range that it has computed, and may raise or lower that advisory sentence under the Sentencing Guidelines. The Defendant is further aware and understands that the Court is required to consider the advisory guideline range determined under the Sentencing Guidelines, but is not bound to impose a sentence within that advisory range; the Court is permitted to tailor the ultimate sentence in light of other statutory concerns, and such sentence may be either more severe or less severe than the Sentencing Guidelines' advisory range. The Defendant has advised this Office that he intends on requesting a downward variance from the advisory guideline range. The Defendant understands and acknowledges that the Court is under no obligation to grant the Defendant's request for a downward variance from the advisory guidelines range. The Defendant also understands and acknowledges that this Office may oppose such a request, or even request an upward variance from the advisory guideline range. Knowing these facts, the Defendant understands and acknowledges that the Court has the authority to impose any sentence within and up to the statutory maximum authorized by law for the offense identified in paragraph 1 and that the Defendant may not withdraw the plea solely as a result of the sentence imposed.

3. The Defendant also understands and acknowledges that, as to Counts 1, 2, 3, and 5, the Court may impose a statutory maximum term of imprisonment of up to twenty (20) years for each count, followed by a term of supervised release of up to three (3) years for each count. The Defendant also understands and acknowledges that, as to Count 6, the Court must impose a statutory minimum term of imprisonment of seven (7) years, which must run consecutively to any other term of imprisonment, and may impose a statutory maximum term of imprisonment of up to life imprisonment. In addition to a term of imprisonment and supervised release, the Court may impose a fine of up to \$250,000 and may order forfeiture and restitution. The Defendant further understands and acknowledges a special assessment of \$100 will be imposed on the Defendant as

to each count. The Defendant agrees that any special assessment imposed shall be paid at the time of sentencing.

4. This Office reserves the right to inform the Court and the probation office of all facts pertinent to the sentencing process, including all relevant information concerning the offenses committed, whether charged or not, as well as concerning the Defendant and the Defendant's background. Subject only to the express terms of any agreed-upon sentencing recommendations contained in this agreement, this Office further reserves the right to make any recommendation as to the quality and quantity of punishment.

5. This Office agrees that it will recommend at sentencing that the Court reduce by two levels the sentencing guideline level applicable to the Defendant's offense, pursuant to Section 3E1.1(a) of the Sentencing Guidelines, based upon the Defendant's recognition and affirmative and timely acceptance of personal responsibility. If at the time of sentencing the Defendant's offense level is determined to be 16 or greater, this Office will file a motion requesting an additional one level decrease pursuant to Section 3E1.1(b) of the Sentencing Guidelines, stating that the Defendant has assisted authorities in the investigation or prosecution of the Defendant's own misconduct by timely notifying authorities of the Defendant's intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the Court to allocate their resources efficiently.

6. The Defendant is aware that the sentence has not yet been determined by the Court. The Defendant also is aware that any estimate of the probable sentencing range or sentence that the Defendant may receive, whether that estimate comes from the Defendant's attorney, this Office, or the probation office, is a prediction, not a promise, and is not binding on this Office, the probation office or the Court. The Defendant understands and acknowledges, as previously

acknowledged in paragraph 2 above, that the Defendant may not withdraw his plea based upon the Court's decision not to accept a sentencing request or recommendation made by the Defendant, this Office, or a recommendation made jointly by the Defendant and this Office.

7. This Office, however, will not be required to make any motion or the recommendations under paragraph 5 if the defendant: (1) fails or refuses to make a full, accurate and complete disclosure to the probation office of the circumstances surrounding the relevant offense conduct; (2) is found to have misrepresented facts to the government prior to entering into this plea agreement; or (3) commits any misconduct after entering into this plea agreement, including but not limited to committing a state or federal offense, violating any term of release, or making false statements or misrepresentations to any governmental entity or official.

8. The Defendant agrees, in an individual and any other capacity, to forfeit to the United States, voluntarily and immediately, any right, title, and interest to any property, real or personal, which constitutes or is derived from proceeds traceable to the commission of the offense, in violation of 18 U.S.C. § 1951(a), pursuant to 18 U.S.C. § 981(a)(1)(C), as incorporated by 28 U.S.C. § 2461(c), and the provisions of 21 U.S.C. § 853. In addition, the Defendant agrees to forfeiture of substitute property pursuant to 21 U.S.C. § 853(p).

9. The Defendant further agrees that forfeiture is independent of any assessment, fine, cost, restitution, or penalty that may be imposed by the Court. The Defendant knowingly and voluntarily agrees to waive all constitutional, legal, and equitable defenses to the forfeiture, including excessive fines under the Eighth Amendment to the United States Constitution. In addition, the Defendant agrees to waive: any applicable time limits for administrative or judicial forfeiture proceedings, the requirements of Fed. Rs. Crim. P. 32.2 and 43(a), and any appeal of the forfeiture.

10. The Defendant also agrees to fully and truthfully disclose the existence, nature and location of all assets in which the defendant has or had any direct or indirect financial interest or control, and any assets involved in the offense of conviction. The Defendant agrees to take all steps requested by the United States for the recovery and forfeiture of all assets identified by the United States as subject to forfeiture. This includes, but is not limited to, the timely delivery upon request of all necessary and appropriate documentation to deliver good and marketable title, consenting to all orders of forfeiture, and not contesting or impeding in any way with any criminal, civil or administrative forfeiture proceeding concerning the forfeiture.

11. The Defendant is aware that Title 28, United States Code, Section 1291 and Title 18, United States Code, Section 3742 afford the Defendant the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the undertakings made by the United States in this plea agreement, the Defendant hereby waives all rights conferred by Sections 1291 and 3742 to appeal any sentence imposed, including any restitution order, or to appeal the manner in which the sentence was imposed, unless the sentence exceeds the maximum permitted by statute or is the result of an upward departure and/or an upward variance from the advisory guideline range that the Court establishes at sentencing. The Defendant further understands that nothing in this agreement shall affect the government's right and/or duty to appeal as set forth in Title 18, United States Code, Section 3742(b) and Title 28, United States Code, Section 1291. However, if the United States appeals the Defendant's sentence pursuant to Sections 3742(b) and 1291, the defendant shall be released from the above waiver of his right to appeal his sentence.

12. The Defendant further hereby waives all rights conferred by Title 28, United States Code, Section 1291 to assert any claim that (1) the statutes to which the Defendant is pleading

guilty is/are unconstitutional; and/or (2) the admitted conduct does not fall within the scope of the statutes of conviction.

13. By signing this agreement, the Defendant acknowledges that the defendant has discussed the appeal waiver set forth in this agreement with the Defendant's attorney. The defendant further agrees, together with this Office, to request that the Court enter a specific finding that the Defendant's waiver of his right to appeal the sentence imposed in this case and his right to appeal his conviction in the manner described above was knowing and voluntary.

14. This is the entire agreement and understanding between this Office and the Defendant. There are no other agreements, promises, representations, or understandings.

JUAN ANTONIO GONZALEZ  
ACTING UNITED STATES ATTORNEY

Date:

8/16/21

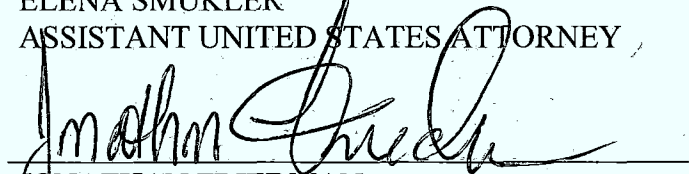
By:

  
ELENA SMUKLER  
ASSISTANT UNITED STATES ATTORNEY

Date:

8/16/21

By:

  
JONATHAN FRIEDMAN  
COUNSEL FOR DEFENDANT

Date:

8/16/21

By:

  
FLOYD ELLIS WYCHE  
DEFENDANT