No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

CHRISTOPHER DANIEL TAYLOR,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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Public Copy—Sealed Materials Redacted

QUESTION PRESENTED

I. Whether the Fifth Amendment's Due Process Clause permits courts to find a plea agreement waiver that is silent as to *Brady v. Maryland*, 373 U.S. 83 (1963), constitutes a knowing and intelligent waiver of *Brady* claims on direct appeal, thereby removing *Brady's* due process protections from the sentencing phase of criminal proceedings.

LIST OF RELATED PROCEEDINGS

- *United States v. Taylor*, No. 23-1401 (8th Cir. Jul. 24, 2023)
- *United States v. Taylor*, No. 1:21-cr-00016-CJW-1 (N.D. Iowa Feb. 16, 2023)

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Petitioner, Christopher Daniel Taylor, prays that this Court grant a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit. Most federal criminal defendants plead guilty. When they do, they waive certain rights. For those waivers to be knowing and intelligent, the defendants must have notice of the rights they are waiving. This case provides an opportunity for the Court to articulate the notice required when the right allegedly waived is the defendant's Fifth Amendment right to *Brady* protections during the sentencing phase of a criminal proceeding.

OPINIONS BELOW

The July 24, 2023 judgment of the court of appeals, which appears at Appendix A to this petition, is unreported. The September 12, 2023 order of the court of appeals denying Petitioner's timely petition for rehearing and rehearing en banc, which appears at Appendix B to this petition, is unreported.

JURISDICTION

The judgment of the court of appeals was entered on July 24, 2023. The court of appeals denied petitioner's timely petition for rehearing and rehearing en banc on September 12, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The due process clause of the Fifth Amendment to the U.S. Constitution provides:

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

Federal Rule of Criminal Procedure 11(b)(1)(N) provides:

> 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 terms of any plea-agreement provision waiving the right to appeal or to collaterally attack the sentence.

STATEMENT OF THE CASE

Petitioner Christopher Taylor pled guilty to attempted carjacking, use of a firearm, and attempted witness tampering. (R. Doc. 82).[1] Mr. Taylor's [redacted] plea agreement contained an appeal waiver provision that was silent regarding claims under *Brady v. Maryland*, 373 U.S. 83 (1963). (R. Doc. 84, at 18-19).

Mr. Taylor [redacted]

[1] In this petition, the following abbreviations will be used:
"R. Doc." – district court docket in Northern District of Iowa case number 21-cr-16, followed by docket entry and page number
"PSR" – Final Presentence Investigation Report
"Sent. TR." – Sentencing transcript in the district court
"S. Sent. TR." – Sealed portion of sentencing transcript in the district court

During the sentencing phase, the Government refused multiple defense requests for discovery [redacted] After business hours on the day before sentencing, the Government advised [redacted] Mr. Taylor filed a motion to compel discovery under *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny. (R. Doc. 125, 125-1), which the district court denied at the sentencing hearing.

During sentencing, the Government advised the district court—and Mr. Taylor learned for the first time—[redacted] The Government also advised the district court—and Mr. Taylor learned for the first time—[redacted] granted the Government's motion for

upward departure, (Sent. TR., at 71), and granted the Government's motion for upward variance, sentencing Mr. Taylor to 300 months' imprisonment. (Sent. TR., at 74; R. Doc. 126, 127). The district court filed a sealed sentencing order to [redacted]

Mr. Taylor appealed, raising three separate claims. First, Mr. Taylor raised a claim of prosecutorial misconduct under *Brady* for failure to disclose information favorable to the defense and material to punishment. Second, Mr. Taylor raised a claim of prosecutorial misconduct for improperly crafting a sentence through the [redacted]

Third, Mr. Taylor raised a claim of substantive unreasonableness. The Government filed a motion to dismiss the appeal under the waiver in the plea agreement. Mr. Taylor resisted. The Eighth Circuit summarily dismissed the appeal under the waiver without written opinion.

REASONS FOR GRANTING THE PETITION

I. The Eighth Circuit's Finding That An Appeal Waiver That Was Silent As to *Brady* Explicitly Waived *Brady* Claims On Direct Appeal Cannot Be Reconciled With Precedent In The Circuits Or This Court

"Although the analogy may not hold in all respects, plea bargains are essentially contracts." *Puckett v. United States*, 556 U.S. 129, 137 (2009) (citing *Mabry v. Johnson*, 467 U.S. 504, 508 (1984)). Accordingly, "a valid and enforceable appeal waiver ... only precludes challenges that fall within its scope." *Garza v. Idaho*, 139 S. Ct. 738, 744 (2019) (citing *United States v. Hardman*, 778 F.3d 896,

899 & n.2 (11th Cir. 2014) (collecting cases from the other federal circuits). It is true that plea agreements often waive appellate rights. But they must do so explicitly. The Court has held that mere entry of a plea is insufficient, without more, to waive a defendant's statutory right to appeal. *See Class v. United States*, 583 U.S. 174, 178 (2018) (appeal waiver silent on the issue does not bar a criminal defendant from challenging the constitutionality of the statute of conviction on direct appeal). Indeed, the Court has noted that "all jurisdictions appear to treat at least some claims as unwaiveable. Most fundamentally, courts agree that defendants retain the right to challenge whether the waiver itself is valid and enforceable." *Garza*, 139 S. Ct. at 745.

Just as in *Class*, the waiver in Petitioner' written plea agreement was silent as to the claim the Eighth Circuit found waived. There was no waiver of *Brady* rights at all, much less a knowing and intelligent one. Yet the Eighth Circuit's construction of the plea's waiver provision read into its terms a prospective waiver of *Brady* claims, precluding appellate review of whether Petitioner had notice that such a waiver was contemplated by the Government. The Court has made clear that is impermissible. *Garza*, 139 S. Ct. at 745 ("Consequently, while signing an appeal waiver means giving up some, many, or even most appellate claims, some claims nevertheless remain."). At a minimum, the Eighth Circuit should have permitted briefing on the merits of Petitioner's *Brady* claim to determine whether the claim was waived under the plain terms of the waiver. *Id.* Both this Court's precedent and the Fifth Amendment compel a different result than summary

dismissal—without opinion or analysis—under a waiver that was silent as to the claim waived.

Because guilty pleas waive certain constitutional rights by their nature, a knowing and intelligent plea requires "real notice of the true nature of the charge." *Marshall v. Lonberger*, 459 U.S. 422, 436 (1976). Thus, any putative waiver of *Brady's* constitutional due process protections should require that same real notice. *Id*; *see also Henderson v. Morgan*, 426 U.S. 637, 645 & n.13 (1976) (plea not knowing and intelligent if defendant does not understand the nature of the constitutional protections waived by its entry). The Government knows how to secure explicit *Brady* waivers in its plea agreements, and it often does so. *See, e.g., United States v. Ruiz*, 536 U.S. 622, 625 (2002). It could have sought to obtain such a waiver here. It did not. The Eighth Circuit's finding of a *Brady* waiver of without any notice violates the Due Process Clause, as well as basic concepts of fundamental fairness that underpin the American criminal justice system.

The decision below flatly conflicts with the Eighth Circuit's own precedent, which makes clear that appeal waivers are only enforceable when "a given appeal is clearly and unambiguously within [the waiver's] scope." *United States v. Binkholder*, 832 F.3d 923, 926 (8th Cir. 2016); *see also United States v. Andis*, 333 F.3d 866, 890 (8th Cir. 2003) *United States v. Aronja-Inda*, 422 F.3d 734, 737 (8th Cir. 2005) ("Plea agreements will be strictly construed and any ambiguities in these agreements will be read against the Government and in favor of a defendant's

appellate rights.") (citing *Andis*, 333 F.3d at 890). The Eighth Circuit's summary treatment below of this critical issue requires the intervention of the Court.

II. The Decision Below Renders *Brady* Inapplicable To The Sentencing Phase Of Federal Criminal Proceedings, And Is In Direct Conflict With Other Circuits And This Court.

The decision below relies upon the premise that *Brady* does not extend to sentencing. It permits the Government to insulate itself from discharging its constitutional obligations at the sentencing phase by obtaining an appeal waiver that is silent as to *Brady*. The Eighth Circuit's construction of that plea waiver absolves the Government of its *Brady* obligations at sentencing. Under this approach, all plea waivers are *de facto* waivers of the entitlement to exculpatory materials at sentencing. The decision is in direct conflict with the Fifth and Seventh Circuits, as well as its own precedent, and it highlights the need for the Court to provide explicit guidance concerning the scope of the Government's *Brady* obligations.

The Fifth Circuit has applied *Brady* to sentencing. *See United States v. Weintraub*, 871 F.2d 1257, 1265 (5th Cir. 1989) (finding *Brady* violation when Government withheld impeachment information at sentencing). The Seventh Circuit has also made clear that *Brady* is applicable at the sentencing phase. *See United States v. Severson*, 3 F.3d 1005, 1013 (7th Cir. 1993) ("The amount of 'process' required in the sentencing hearing is not as great as that required in the trial itself. Nonetheless, *Brady* applies to sentencing.") (citation omitted); *see also United States v. Bicknell*, 74 F.4th 474, 477 (7th Cir. 2023) ("[I]t is well established

that '*Brady* applies to sentencing.'") (quoting *Severson*, 3 F.3d at 1013). The Eighth Circuit itself has applied *Brady* to claims that due process was violated at sentencing. *See, e.g., United States v. Boyce*, 564 F.3d 911, 918-19 (8th Cir. 2009).

The Court has noted the import of *Brady's* scope by considering issues related to—but distinct from—the question presented. *See Dist. Atty's Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52, 68-69 (2009) (*Brady* does not extend to post-conviction relief proceedings); *Ruiz*, 536 U.S. at 633 (*Brady* does not require government disclosure of witness impeachment information before entry of a guilty plea). But neither of these cases addressed the issue raised here. Based on the Government's conduct below, and the Eighth Circuit's condonement of it, further guidance is required to make explicit that which a close reading of *Brady* makes plain.

The applicability of *Brady* to the sentencing phase of federal criminal proceedings flows from the *Brady* opinion itself. *Brady* was a sentencing case, and the Court analyzed it as such. *Brady*, 373 U.S. at 88 ("The appellant's sole claim of prejudice goes to the punishment imposed."). The Court's analysis made clear that the constitutional protections articulated in *Brady* included the right to material and favorable discovery that would impact a defendant's sentence. After all, *Brady* made explicit that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt *or to punishment*." *Brady*, 373 U.S. at 87 (emphasis added). Members of the Court have noted *Brady's* evident application to sentencing. *See, e.g., Cone v. Bell*,

556 U.S. 449, 484 (2009) (Alito, J., concurring); *Brown v. Louisiana*, 598 U.S. ___ (2023) (Jackson, J., dissenting from denial of certiorari) (citing *Cone*, 556 U.S. at 449). As the Eighth Circuit's approach shows, it is necessary for the Court to make clear that *Brady* means what it says, even in non-capital cases that proceed to sentencing following entry of a guilty plea. The Fifth Amendment does not cease its operation simply because a defendant has pled guilty. Yet, if the Eighth Circuit's approach is accepted by this Court, each time a defendant pleads guilty with a general appeal waiver of any sort, cease it will.

III. The Question Presented Has Exceptionally Far-Reaching Impact, And This Is An Excellent Vehicle to Resolve It

The overwhelming majority of federal criminal cases dispose by guilty plea. Of nearly 80,000 defendants facing federal criminal charges in fiscal year 2018, less than two percent of them went to trial. *See* John Gramlich, *Only 2% Of Federal Criminal Defendants Go To Trial, And Most Who Do Are Found Guilty*, THE PEW RESEARCH CENTER, June 11, 2019. This is an increase from a 96% guilty-plea rate for federal criminal defendants in 2004. *Bureau of Justice Statistics*, COMPENDIUM OF FEDERAL JUSTICE STATISTICS 59 (2004). Appeal waivers are common within written plea agreements, and broad waiver language is standard in most U.S. Attorney's Offices. Therefore, the overwhelming majority of all federal criminal cases in the United States face the very question presented in this petition. This case presents an excellent vehicle for this Court to focus on this crucial legal issue without having to address the merits of the underlying appeal.

The due process guarantee that animates *Brady* is a fundamental part of our criminal justice system. *See Brady*, 373 U.S. at 87 ("[O]ur system of the administration of justice suffers when any accused is treated unfairly."). The Court has repeatedly made clear that prosecutors are not mere advocates. They play a "special role ... in the search for truth in criminal trials." *Banks v. Dretke*, 540 U.S. 668, 696 (2004) (collecting cases). That protection should not be waived without an explicit colloquy with a defendant to ensure it is done so knowingly and intelligently. Indeed, Rule 11 of the Federal Rules of Criminal Procedure explicitly requires that before a court accepts a guilty plea, it must "inform the defendant of, and determine that the defendant understands, ... the terms of any plea-agreement provision waiving the right to appeal ... the sentence." Fed. R. Crim. P. 11(b)(1)(N); *Class*, 583 U.S. at 185. The Eighth Circuit's approach below interprets a general appeal waiver to necessarily include a prospective waiver of all *Brady* claims subsequent to entry of a guilty plea. This approach flies in the face of the Court's admonition that "the prudence of the careful prosecutor should not ... be discouraged." *Kyles v. Whitley*, 514 U.S. 419, 440 (1995). Instead, the approach below incentivizes the Government to obtain an appeal waiver silent as to *Brady*, suppress exculpatory materials during sentencing, and use that waiver to insulate itself from meaningful appellate review of its conduct.

This case is an excellent vehicle to resolve this issue. Both its procedural posture and underlying facts are clearly set forth in the record. The appeal waiver speaks for itself. The material suppressed by the Government is demonstrably

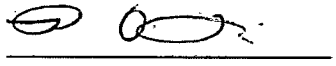
favorable and material to punishment. No factual analysis must occur in this Court. The purely legal question presented will recur each time a federal criminal defendant signs a plea agreement containing an appeal waiver. The Eighth Circuit's approach is untenable. It found waiver without notice, rendering *Brady* inapplicable to sentencing. Courts and prosecutors alike need clear guidance on this critical and recurring issue, and only this Court can provide it.

CONCLUSION

The petition for a writ of certiorari should be granted.

Date: December 7, 2023

Respectfully submitted,



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