NO. 24-___

IN THE
Supreme Court of the United States

KEON LEE
Petitioner

v.

UNITED STATES OF AMERICA
Respondent

On Petition for Writ of Certiorari from the United States Court of Appeals for the Sixth Circuit

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Petitioner Keon Lee pled guilty to offenses relating to a fentanyl-related death involving what Lee believed was cocaine. When he pled guilty during the second day of his trial, Lee did not know that he was giving up his appellate rights. Once he learned that he had lost those rights, Lee attempted to withdraw his plea. Applying the Sixth Circuit's seven-part inquiry for determining whether there was a "fair and just reason" to permit withdrawal—and doing so in a way that made it impossible for Lee to succeed—the district court denied Lee's request and sentenced him to four decades in prison. The Sixth Circuit affirmed.

The questions presented is thus:

> Should a district court grant a pre-sentencing motion to withdraw a guilty plea if that plea was made without full knowledge of its consequences?

PARTIES TO PROCEEDINGS

Keon Lee and the United States of America are the only parties to this proceeding and the proceedings before the United States Court of Appeals for the Sixth Circuit.

RELATED PROCEEDINGS

United States v. Lee, No. 23-5584 (6th Cir.)
United States v. Lee, No. 5:22-cr-00026 (E.D. Ky.)

Date of Final Opinion: March 7, 2024

TABLE OF CONTENTS

QUESTIONS PRESENTED 1

PARTIES TO PROCEEDINGS 2

RELATED PROCEEDINGS 2

INDEX OF APPENDICES 4

TABLE OF AUTHORITIES 5

PETITION FOR WRIT OF CERTIORARI 6

OPINIONS BELOW 6

JURISDICTION 6

STATUTORY PROVISIONS INVOLVED 6

STATEMENT OF THE CASE 7

REASONS FOR GRANTING THE PETITION 9

1. **This Court should grant the petition to resolve circuit inconsistencies and provide a single test for deciding whether to permit a defendant to withdraw a plea.** 9

   a. **The D.C., Third, Seventh, Eighth, Ninth, and Eleventh Circuits prescribe fewer factors than others, clarifying the withdrawal inquiry.** 10

   b. **The Fourth, Fifth, Sixth, and Tenth Circuits muddy the withdrawal inquiry by heaping factor upon factor onto district courts.** 13

2. **This Court should grant the petition because this case is an ideal vehicle to clarify the withdrawal inquiry, considering the "impossible to satisfy" standard employed.** 16

CONCLUSION 18

CERTIFICATE OF WORD COUNT 19

INDEX OF APPENDICES

The Sixth Circuit opinion affirming the district court's judgment is attached as Appendix 1. The district court order denying Lee's motion to withdraw his guilty plea is attached as Appendix 2. The district court's Final Judgment is attached as Appendix 3.

TABLE OF AUTHORITIES

Cases

United States v. Bashara,
27 F.3d 1174 (6th Cir. 1994) 13
United States v. Brehm,
442 F.3d 1291 (11th Cir. 2006) 12, 13
United States v. Chavers,
515 F.3d 722 (7th Cir. 2008) 11
United States v. Dominguez,
998 F.3d 1094 (10th Cir. 2021) 14
United States v. Ensminger,
567 F.3d 587 (9th Cir. 2009) 12
United States v. Jones,
336 F.3d 245 (3d Cir. 2003) 11
United States v. Jones,
642 F.3d 1151 (D.C. Cir. 2011) 10
United States v. Landreneau,
967 F.3d 443 (5th Cir. 2020) 14, 15
United States v. Sparks,
67 F.3d 1145 (4th Cir. 1995) 15
United States v. Vest,
125 F.3d 676 (8th Cir. 1997) 12

Statutes

18 U.S.C. § 841(a)(1) 6
18 U.S.C. § 841(b)(1)(C) 6
28 U.S.C. § 1254(1) 6

PETITION FOR WRIT OF CERTIORARI

Petitioner Keon Lee requests a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

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OPINIONS BELOW

The Sixth Circuit opinion affirming the district court's judgment is unpublished but electronically reported and available at 2024 WL 991870 (6th Cir. Mar. 7, 2024). The district court order denying Lee's request to withdraw his plea *and* final judgment are neither reported nor available electronically. Each is reproduced in the Appendix.

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JURISDICTION

The Sixth Circuit issued its decision affirming the district court's denial of Lee's motion to withdraw his guilty plea on March 7, 2024. This Court's jurisdiction is thus timely invoked under 28 U.S.C. § 1254(1).

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STATUTORY PROVISIONS INVOLVED

This case involves a distribution resulting in death conviction under 18 U.S.C. § 841(a)(1) and 18 U.S.C. § 841(b)(1)(C) of the U.S. Sentencing Guidelines.

STATEMENT OF THE CASE

Petitioner Keon Lee was charged with six drug-related counts, including one count of distribution of a substance containing fentanyl resulting in death. *See* ECF. No. 1. At his arraignment, Lee pleaded not guilty and maintained his innocence. *See* ECF No. 10.

Lee's trial began on January 17, 2023, and continued to the next day. During the second day, in the midst of the Government's case, the district court recessed at 10:44 am. ECF No. 72, PageID # 483. Upon returning from recess at 11:09 am, Lee's attorney indicated that he wanted to change his plea. *Id.*, PageID ## 483–84.

Lee then pled guilty to the fentanyl-related count, and the Government dismissed the remaining counts. *Id.*, PageID # 484. The rearraignment proceedings began at 11:13 am. ECF No. 73, PageID # 489. During the Rule 11 colloquy, the district court explained that Lee was not giving up any appellate rights:

> Now, in this particular case, because you are entering a plea without a written plea agreement, you would be able to take an appeal to challenge the guilty plea, the conviction, or the sentence that would ultimately be imposed by the Court.

Id., PageID # 497. The district court then accepted Lee's plea. *Id.*, PageID # 506.

When pleading guilty—based in part on the district court's explanation—Lee believed he retained the right to appeal his guilt. ECF No. 85, PageID # 561. He later learned, however, that this was not true and asked his counsel to move to withdraw the plea. *Id.*, PageID # 561; *see also* ECF No. 60, PageID # 186. Rather than filing a motion to withdraw the plea, counsel moved to withdraw as counsel on March 24, 2023. ECF No. 60, PageID # 186. The district court allowed counsel to withdraw and then provided new counsel to Lee. *See* ECF No. 85, PageID # 201.

With the assistance of his new counsel, Lee moved to withdraw his plea on May 19, 2023. *See* ECF No. 74. The district court heard and denied Lee's motion during Lee's sentencing hearing. ECF. No. 85, PageID # 578. The district court then imposed a 480-month sentence followed by four years of supervised release. *See* ECF No. 79.

Lee timely appealed the district court's denial of his motion to withdraw on June 22, 2023. ECF No. 80. The United States Court of Appeals for the Sixth Circuit found that the district court did not abuse

its discretion in denying Lee's motion and thus affirmed. ECF No. 20-2, PageID # 1.

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REASONS FOR GRANTING THE PETITION

This Court should grant Lee's petition because the district court, using the Sixth Circuit's seven-factor inquiry, made it nearly impossible to justify granting Lee's motion to withdraw his plea. That overcomplicated Sixth Circuit test is just one of several across the circuits that muddies the inquiry *and* stands in contrast to clearer tests employed by other circuits. This case thus provides an ideal vehicle for this Court to clarify what a district court should consider when reviewing a motion to withdraw a plea.

1. This Court should grant the petition to resolve circuit inconsistencies and provide a single test for deciding whether to permit a defendant to withdraw a plea.

When deciding whether a criminal defendant can withdraw a plea, the several circuits employ different rubrics. On one end of the spectrum, the D.C., Third, Seventh, Eighth, Ninth, and Eleventh Circuits provide only a few (and no more than four) factors for district courts to consider. Some—like the D.C. Circuit—even rank those factors by their importance. On the other end, the Fourth, Fifth, Sixth, and Tenth

Circuits give district courts up to seven factors with uncertain weights to sift through, complicating the withdrawal inquiry.

a. The D.C., Third, Seventh, Eighth, Ninth, and Eleventh Circuits prescribe fewer factors than others, clarifying the withdrawal inquiry.

Six circuits have district courts consider three to four factors when deciding whether to permit a defendant to withdraw a plea. District courts in those circuits retain their discretion to reject a request to withdraw, but the limited factors help prevent capricious denials of those requests.

Take, for example, the D.C. Circuit, which uses a three-part inquiry. In that circuit, a court considers, in order of importance, (1) "whether the guilty plea was somehow tainted," (2) "whether the defendant has asserted a viable claim of innocence," and (3) "whether the delay between the guilty plea and the motion to withdraw has substantially prejudiced the government's ability to prosecute the case." *United States v. Jones*, 642 F.3d 1151, 1156 (D.C. Cir. 2011). This minimalist approach directs a district court to focus on the most important facet (i.e., taint), accounts for additional considerations, and avoids overcomplicating the inquiry. Even more, its simplicity makes it

easier for a criminal defendant to understand the hurdles to withdrawal and the respective importance of each hurdle.

Several other circuits have similarly stripped-down inquiries. The Third Circuit, like the D.C. Circuit, has a three-part test, but unlike the D.C. Circuit, it does not rank those considerations. *See, e.g.*, *United States v. Jones*, 336 F.3d 245, 252 (3d Cir. 2003) (having district courts consider "(1) whether the defendant asserts his innocence; (2) the strength of the defendant's reasons for withdrawing the plea; and (3) whether the government would be prejudiced by the withdrawal"). The Seventh Circuit prescribes four—and only four—"precise factors" for consideration. *See, e.g.*, *United States v. Chavers*, 515 F.3d 722, 726 (7th Cir. 2008) (approving district court's consideration of (1) whether defendant was competent at the time of his plea; (2) was ably represented by counsel; (3) understood the charge against him and that he knowingly waived his rights in pleading guilty; and (4) did not object to the factual basis for his plea at the Rule 11 colloquy although he was given the opportunity to do so). So, too, does the Eighth Circuit, but it diverges; in that circuit, whether a "fair and just reason" exists is inherent in several dispositive factors. *United States v. Vest*, 125 F.3d 676, 679 (8th Cir.

1997) (directing courts to consider (1) whether defendant established a fair and just reason to withdraw his plea; (2) whether defendant asserts his legal innocence of the charge; (3) the length of time between the guilty plea and the motion to withdraw; and (4) if the defendant established a fair and just reason for withdrawal, whether the government will be prejudiced). The Ninth Circuit also uses four factors, but they are not exhaustive. *United States v. Ensminger*, 567 F.3d 587, 590–91 (9th Cir. 2009) (explaining that "fair and just reasons for withdrawal" include (1) inadequate Rule 11 plea colloquies; (2) newly discovered evidence; (3) intervening circumstances; (4) or any other reason for withdrawing the plea that did not exist when the defendant entered his plea). The Eleventh Circuit provides four factors as well. *United States v. Brehm*, 442 F.3d 1291, 1298 (11th Cir. 2006) (explaining courts should consider (1) whether close assistance of counsel was available; (2) whether the plea was knowing and voluntary; (3) whether judicial resources would be conserved; and (4) whether the government would be prejudiced if the defendant were allowed to withdraw his plea). However, the Eleventh Circuit offers a bit more guidance than the Ninth Circuit because it provides that the "longer the delay between the entry of the plea and the

motion to withdraw it, the more substantial the reasons must be as to why the defendant seeks withdrawal." *Id.*

b. The Fourth, Fifth, Sixth, and Tenth Circuits muddy the withdrawal inquiry by heaping factor upon factor onto district courts.

Four other circuits, however, overcomplicate things with six or more factors for district courts to consider. By doing so, district courts in those circuits have nearly unbridled discretion to reject a motion to withdraw, and moving to withdraw is a Sisyphean task.

Consider the inquiry concocted by the Sixth Circuit, which prevented Lee from withdrawing his plea. In that circuit, a district court can consider seven different factors:

> (1) the amount of time that elapsed between the plea and the motion to withdraw it; (2) the presence (or absence) of a valid reason for the failure to move for withdrawal earlier in the proceedings; (3) whether the defendant has asserted or maintained his innocence; (4) the circumstances underlying the entry of the guilty plea; (5) the defendant's nature and background; (6) the degree to which the defendant has had prior experience with the criminal justice system; and (7) potential prejudice to the government if the motion to withdraw is granted.

United States v. Bashara, 27 F.3d 1174, 1181 (6th Cir. 1994). Complicating matters, the Sixth Circuit does not assign weight to any

factors (like the D.C. Circuit), nor does it confine the inquiry to the prescribed factors (like the Seventh Circuit). Without guardrails and with so many factors, this approach is so flexible that it invites capricious results—one judge can reject a request because a defendant has a high school education and a prior conviction, while another can ignore those facts and grant the motion just because little time elapsed.

The Sixth Circuit is not alone. Like it, the Fifth and Tenth Circuits have district courts look at seven factors. *See, e.g.*, *United States v. Landreneau*, 967 F.3d 443, 449 (5th Cir. 2020) (having courts analyze (1) whether the defendant asserted his actual innocence; (2) whether withdrawal would prejudice the Government; (3) the extent of the delay, if any, in filing the motion to withdraw; (4) whether withdrawal would substantially inconvenience the court; (5) whether the defendant had the benefit of close assistance of counsel; (6) whether the guilty plea was knowing and voluntary; and (7) the extent to which withdrawal would waste judicial resources); *United States v. Dominguez*, 998 F.3d 1094, 1103–04 (10th Cir. 2021) (providing typically considered factors are (1) whether the defendant has asserted his innocence; (2) whether withdrawal would prejudice the government; (3) whether he delayed in

filing his motion, and if so, the reason for the delay; (4) whether withdrawal would substantially inconvenience the court; (5) whether close assistance of counsel was available to him; (6) whether his plea was knowing and voluntary; and (7) whether the withdrawal would waste judicial resources). However, in addition to giving a laundry list of factors to review, the Fifth Circuit confusingly advises district courts to consider the "totality of the circumstances" while adding that they are "not required to make explicit findings as to each" of the factors. *Landreneau*, 967 F.3d at 449. The Fourth Circuit gives district courts a half dozen factors to sift through. *See, e.g.*, *United States v. Sparks*, 67 F.3d 1145, 1150 (4th Cir. 1995) (instructing courts to analyze (1) whether the defendant has offered credible evidence that his plea was not knowing or not voluntary, (2) whether the defendant has credibly asserted his legal innocence, (3) whether there has been a delay between the entering of the plea and the filing of the motion, (4) whether defendant has had close assistance of competent counsel, (5) whether withdrawal will cause prejudice to the government, and (6) whether it will inconvenience the court and waste judicial resources).

2. This Court should grant the petition because this case is an ideal vehicle to clarify the withdrawal inquiry, considering the "impossible to satisfy" standard employed.

A defendant can withdraw a plea for a "fair and just reason" but fairness and justice are harder to find in waters muddied by overcomplicated tests. Simplicity thus aides in the administration of justice, as more factors create more distractions, invite more opportunities for error, and frustrate a defendant's ability to withdraw a plea. The application of a laundry list of factors to Lee's motion reveals the problem with the tests employed by the circuits in the minority (i.e., the Fourth, Fifth, Sixth, and Tenth Circuits).

It was, simply put, impossible for Lee to withdraw his plea because it was hardly difficult for the district court to find against him. For example, the district court decided that Lee had not maintained his innocence because he had pleaded guilty. ECF No. 85, PageID # 561. But that is true of every defendant who desires to withdraw a plea; in fact, pleading guilty is a condition precedent to withdrawing a guilty plea. The district court also decided that Lee's background (i.e., high school education) and experience (i.e., a few prior convictions) counseled against granting the motion. *Id.*, PageID # 572. While many people may not have

prior convictions to hold against them, many do have a high school education and thus little chance at succeeding to withdraw a guilty plea. Additionally, when considering the length and reason for Lee's delay, the district court ignored the context and found against Lee because, in its view, a two-month delay partly due to prior counsel was simply too long. *See* ECF No. 85, PageID # 579.

Given so many factors to use against Lee, the district court easily found no "fair and just reason" for allowing Lee to withdraw his plea. That is especially true considering the way in which the district court applied those factors. Fairness and justice are not the clearest of concepts. And sprawling, vague, and differing tests for whether something is "fair and just" only muddy waters that are not clear to begin with. This case provides this Court the opportunity to provide some clarity and, in turn, fairness and justice.

CONCLUSION

This Court should grant the petition for a writ of certiorari and reverse the denial of Lee's motion for withdrawal of his guilty plea.

Respectfully Submitted,

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CERTIFICATE OF WORD COUNT

Pursuant to Supreme Court Rule 33.1(h), I certify that the foregoing Petition for Writ of Certiorari contains 2,689 words, excluding the Cover Page, the Table of Contents, the Table of Authorities and the Certificate of Service.

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on June 5, 2024, the foregoing was served via e-mail upon the following:

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