NO. 25-___

IN THE
Supreme Court of the United States

CURTIS DEWAYNE MILLER
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 Curtis Dewayne Miller pleaded guilty after a jury could not decide whether he was guilty or not in an initial trial and the Government continued to pursue charges at a second trial. Throughout district court proceedings, Miller's counsel encouraged Miller to plead guilty and warned him that the district court and Government had it out for him. This pressure led Miller to plead guilty after the first day of his second trial. When Miller tried to rescind his plea, the district court erroneously denied his motion and proceeded to impose a 320-month sentence. In addition to erroneously denying Miller's motion, the decision to put Miller behind bars for the next twenty-six years was based on an error in determining Miller's offense level.

When Miller moved to withdraw his guilty plea, the district court interpreted the *Bashara* factors in a way that made it impossible for Miller—or any defendant—to withdraw his plea. The district court hardly considered circumstances leading to the plea and leaned on general conclusions about other factors that mischaracterized Miller's experience, allowed for easy denial of Miller's motion and prevented Miller from presenting his innocence to a jury.

On appeal, Miller challenged the district court's interpretation of the *Bashara* factors and its decision to deny his motion. The Sixth Circuit, however, affirmed the district court's decision. It similarly conflated multiple factors to overcome the small time frame between Miller's plea and his request to withdraw that plea.

Problems inherent in the Sixth Circuit's decision are representative of a wider problem that currently exists across Circuit Courts of Appeal in the United States. No Circuit employs the same standard for reviewing motions to withdraw guilty pleas. Some Circuits provide only three or four factors to consider and even weigh the factors based on importance, but other Circuits—including the Sixth—provide six or seven non-exhaustive factors. Over-complicating this inquiry provides district courts with almost unfettered discretion to deny any withdrawal motion. This sets defendants up for failure. It also leads to conflicting results among circuits and a lack of direction within the criminal justice system.

The questions presented is thus:

> Should a district court grant a pre-sentencing motion to withdraw a guilty plea if that plea was made after an initial trial that ended with a hung jury and after counsel pressured the individual to take a plea?

PARTIES TO PROCEEDINGS

Curtis Dewayne Miller and the United States of America are the only parties to this proceeding.

RELATED PROCEEDINGS

United States v. Miller, No. 23-5270 (6th Cir.)

United States v. Miller, No. 5:21-cr-111 (E.D. Ky.)

Date of Final Opinion: February 11, 2025

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

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PETITION FOR WRIT OF CERTIORARI

Petitioner Curtis Dewayne Miller 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 2025 WL 459648 (6th Cir. Feb. 11, 2025). The district court order denying Miller'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 Miller's motion to withdraw his guilty plea and affirming various decisions regarding Miller's sentence on February 11, 2025. 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 conspiracy to distribute conviction under 21 U.S.C. §§ 841(a)(1) & 846.

———♦———

STATEMENT OF THE CASE

After being indicted for conspiring to distribute controlled substances, possessing controlled substances with the intent to distribute, and conspiring to launder money, Miller asserted his innocence and proceeded to trial. ECF 431, Page ID ##1989–90. Before the trial, the Government dismissed the money laundering conspiracy and possession with the intent to distribute charges against Miller. *See* ECF 368, Page ID #1751.

In October 2022, Miller moved to continue trial. When counsel wrote to inform Miller that the court denied this motion, he wrote:

> The judge honors no one but himself. It's your right to a speedy trial. No one else. If you are willing to waive it in order to better prepare your case, no judge in the country should get in your way. Problem is this is the one judge in America who will. He is intentionally putting you back to the fire and it's absolutely unjust and bullshit.

ECF 421-1, Page ID ##1911–12 (reorganized for clarity). As trial drew near, counsel encouraged Miller to plead guilty. *See* ECF 421-1, Page ID

#1915 (writing "there's enough to convict you of the conspiracy" and that Miller would regret it "if you tell me to pound sand on Monday and move forward with your desire to send this to a jury").

Miller maintained his innocence, and trial proceeded. During trial, the Government presented testimony from co-defendant Brenda Nicole Fugate. She testified that Miller provided her with a pound of meth on two occasions and that she provided Miller with drug proceeds for 4.5 pounds of meth on another occasion. *See, e.g.*, ECF 457, PSR ¶ 64; *see also* ECF 345, Page ID ##1592, 1595–96, 1610. She also testified to receiving cooking pots filled with fifteen to twenty pounds of meth in March and April 2021. *See, e.g.*, ECF 457, PSR ¶ 64. She could not recall, however, whether Miller was present for the March 2021 delivery and did not say whether Miller knew about the April 2021 delivery. *See* ECF 345, Page ID ##1606–07, 1610. The trial went to the jury and ended in a deadlock. ECF 431, Page ID #1990. After failing to find Miller guilty, the Government reinstated the money laundering conspiracy charge before proceeding to a second trial. ECF 368. Miller continued asserting his innocence.

The second trial began on December 13, 2022. Counsel "assured" Miller that he "would be guaranteed life if [he] continued to fight." ECF 407. At one point, counsel "promise[d] that he would not defend [Miller] or prepare for another trial." *Id.* Echoing his statements from before the first trial, counsel told Miller that the district court and the Government had a personal vendetta and would make sure Miller was found guilty. After the Government presented its opening statement, counsel "leaned into [Miller's] ear space and said, see there's a lot I could have objected to but I'm not." *Id.* (capitals edited).

Miller decided to plead guilty before the second day of trial began. After the Rule 11 colloquy, the district court accepted Miller's plea. *See* ECF 424, Page ID #1959. Twenty days later, Miller instructed counsel to file a motion to withdraw the plea; counsel did not file that motion. ECF 407, Page ID #1868. In a letter dated January 11, 2023, Miller explained to the district court that he wished to withdraw his plea, detailing the circumstances that led him to plead guilty. *Id.* at Page ID ##1868–70.

After holding a hearing on Miller's motion, the district court took the motion under advisement and set a sentencing date. ECF 429. The

day after the hearing, the district court denied Miller's motion. *See* ECF 431.

Meanwhile, the probation officer prepared a presentence investigation report. The PSR advised the district court to hold Miller accountable for nearly forty pounds of meth based on Fugate's first trial testimony. ECF 457, PSR ¶ 74. It also recommended a "drug house" enhancement for using an apartment at Steeplechase Apartments—which Miller neither leased nor paid for—to conduct criminal activities. *Id.* ¶ 75; *see also, e.g.*, ECF 493, Page ID #2581. The report calculated a total offense level of thirty-eight, resulting in a recommended prison sentence of 292 to 365 months. ECF 457, PSR ¶¶ 82, 128.

The report also detailed the extensive criminal activities of Miller's co-defendants. ECF 457, PSR pp. 2–22. It also provided the drug quantities attributable to those defendants—ranging from 1,144 pounds to more than 1,000,000 pounds of meth. ECF 457, PSR pp. 15–21.

Twenty days after pleading guilty, Miller requested that his counsel file a motion to withdraw his guilty plea. His counsel refused. About a week later, Miller moved to withdraw his guilty plea by a letter that was filed about a week after that. In this letter, Miller claimed that his

attorney had "coerc[ed] [him] with impermissible pressure." Miller requested new counsel and a hearing to withdraw his guilty plea. The district court denied this motion.

Miller objected to the drug quantity and "drug house" enhancement and asked the district court to apply a two-level decrease based on his minor participation in the criminal activity. ECF 437. The district court rejected each argument. *See generally* ECF 493. It then imposed a 320-month prison sentence—near the top of the Guidelines range—followed by five years of supervised release. ECF 493, Page ID #2601; *see also* ECF 450.

On appeal, Miller challenged the district court's denial of his withdrawal motion and several sentencing decisions. The Sixth Circuit affirmed all of the district court's decisions. It specifically relied on the *Bashara* factors for the denial of the motion to withdraw.

REASONS FOR GRANTING THE PETITION

This Court should grant Miller's petition because the district court, using the Sixth Circuit's seven-factor inquiry, made it nearly impossible to justify granting Miller's motion to withdraw his plea. The Sixth Circuit's test is just one of many tests that muddy the plea withdrawal

inquiry waters. This test, along with complicated tests from several other circuits, contrast simpler tests used by remaining circuits. With this case, this Court can establish a clearer, uniform analysis for all circuits to follow when considering motions to withdraw guilty pleas that thereby facilitates the proper administration of pleas and plea agreements.

1. This Court should resolve circuit inconsistencies by providing a simplified test to help decide whether a defendant can withdraw a plea.

When deciding whether a criminal defendant can withdraw a plea, no clear rubric exists across the Circuit Courts of Appeal. The D.C., Third, Seventh, Eighth, Ninth, and Eleventh Circuits provide no more than four factors for district courts to consider in their plea withdrawal analyses. Some of these circuits—like the D.C. Circuit—even rank factors according to importance. The Fourth, Fifth, Sixth, and Tenth Circuits, however, provide district courts up to seven factors with uncertain weights to consider that complicating plea withdrawal analyses.

a. Prescribing fewer factors to consider helps clarify the plea withdrawal inquiry.

Six circuits have district courts consider three or four factors when deciding whether a defendant can withdraw a plea. Although district courts in these circuits still retain the discretion to reject a request to

withdraw, the existence of limited factors to consider helps prevent capricious denials of those requests.

For example, the D.C. Circuit, employs a three-part inquiry. In order of importance, courts in the D.C. Circuit should consider (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 succinct inquiries. The Third Circuit, like the D.C. Circuit, has a three-part test, but unlike the D.C. Circuit, it does not rank its factors. *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 "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 despite having an opportunity to do so). The Eighth Circuit also provides four factors. That Circuit's analysis diverges because it makes a "fair and just reason" part of the consideration for each factor. *See 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" includes (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. Prescribing more factors to help analyze guilty plea withdrawal motions only increases contradictory outcomes.

Four other circuits, in addition to the Sixth Circuit, further complicate plea withdrawal analyses by providing six or more factors for district courts to consider when assessing motions to withdraw guilty pleas. Supplying so many considerations offers respective district courts

nearly unbridled discretion to reject a motion to withdraw. This understanding, in turn, and moving to withdraw is a Sisyphean task.

Consider the Sixth Circuit's inquiry that denied Miller the opportunity to withdraw his plea. In the Sixth 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). But then the Sixth Circuit heightens confusion by providing that the central component of a plea withdrawal analysis "'is to allow a hastily entered plea made with unsure heart and confused mind to be undone." *Id.* (cleaned up). This focus

places undue emphasis on the need for a small amount of time between the plea and a petitioner's indication of intent to withdraw the plea.

With a supposed main focus existing alongside a lack of clear guardrails and numerous factors, the Sixth Circuit's approach to plea withdrawals is both inflexible and also too flexible. Either way the inquiry goes, withdrawal is impossible. The focus on time frame provides an easy out for courts. And when focusing on the time frame factor is insufficient, courts have an additional six factors to lean on for why withdrawal is inappropriate. These possibilities invite capricious results. One withdrawal request can be rejected because of a defendant's history, while another request can be rejected simply because a court deems that too much time has elapsed between the plea and the request for withdrawal. The possibilities, therefore, make the inquiry inflexible for defendants because they are disadvantaged by the flexibility afforded to district court through a menu of factors.

The Sixth Circuit is not the only circuit suffering from this conundrum. The Fifth and Tenth Circuits similarly have district courts consider 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 invites clarification of a plea withdrawal inquiry to ensure that pleas are "properly administered."

The lack of a clear plea withdrawal standard across circuits disadvantages both individuals who seek withdrawal and the criminal justice system at large. This Court has explained that "the guilty plea and the often concomitant plea bargain are important components of this country's criminal justice system" and that when "properly administered, they can benefit all concerned." *Blackledge v. Allison*, 431 U.S. 63, 71 (1977) (cleaned up). Varied guidance from the Circuit Courts of Appeal to district courts reviewing motions for plea withdrawals is leading to inefficiency and conflicting analyses across this country. At the same

time, conflicting analyses create impenetrable barriers for individuals who have been disadvantaged by the criminal justice system and seek to remedy such disadvantages by withdrawing their guilty pleas.

Miller is a model for how overcomplicated tests promote inconsistency and bury fairness and justice. According to the Sixth Circuit, no one factor is exhaustive during a guilty plea analysis. But the Sixth Circuit's many factors combined to overcome any deficiencies with Miller's plea and surrounding circumstances. Miller's case highlights how simplicity can facilitate the administration of justice and how more factors create more distractions, invite more opportunities for error and frustrate a defendant's ability to withdraw a plea.

a. Many factors kept Miller from successfully withdrawing his plea and highlighted the low chance of plea withdrawal motion success.

Just as applying a laundry list of factors to withdrawal motions has disadvantaged defendants in the minority of circuits that apply overcomplicated tests (i.e., the Fourth, Fifth, Sixth, and Tenth Circuits), so too was Miller disadvantaged by a factor-filled analysis. The Sixth Circuit ultimately held that the first factor (time between the guilty plea and the motion to withdraw) "at most only slightly favors granting

Miller's motion"; that the second (reason for delay), fourth (circumstances underlying the guilty plea), fifth (nature and background) and sixth (prior experience with the criminal justice system) factors did not support Miller's request to withdraw; and that the third factor (maintenance of innocence) was neutral. *See United States v. Miller*, No. 23-5270, 2025 WL 459648 at *9 (6th Cir. Feb. 11, 2025). Based on this combination of conclusions, the Sixth Circuit affirmed the district court's denial of Miller's motion because it held that Miller "sought to withdraw his guilty plea for tactical reasons" instead of for "'fair and just'" reasons. *Id.* The Sixth Circuit's multi-factor analysis allowed deficiencies in Miller's case and plea to be overlooked and buried.

First, these multiple factors provided a way to overcome the concerning circumstances Miller faced with his counsel. The court explained that his counsel's comments were not problematic because "Miller had the confidence to reject [counsel's] advice and proceed to trial both times." *Id.* at *7. It additionally concluded that at Miller's change-of-plea hearing, he affirmed under oath that no one had "'in any way forced [him] to enter a guilty plea in the case.'" *Id.* The Sixth Circuit held Miller's decision to proceed to trial and have his day in court against him.

Rather than considering how a deluge of negative comments from counsel could pressure an individual, the court simply decided that Miller could not have been pressured to plead because he had not previously taken advice from his counsel. This reasoning, however, is cyclical and unsound. The issues with this reasoning, however, were able to be overcome by the Sixth Circuit's combined analyses made for the remaining factors.

Second, the combination of other factors allowed the Sixth Circuit to overlook inherent issues in Miller's case. Despite the fact that Miller asked counsel to file a motion to withdraw his plea twenty days after he entered it, the Court held that the decision was tactical and supported the district court's doubt "that it took Miller that much time to realize that his decision was the product of alleged coercion," even though "a twenty-day delay falls among the shorter delays in [Sixth Circuit] cases." *Id.* at *8.

The Sixth Circuit similarly downplayed Miller's maintenance of innocence and faulted him for not emphasizing multiple times that he was innocent even though he chose to go to trial twice rather than take a guilty plea. *Id.* at *9. It deemed this factor neutral—despite the

maintenance of innocence inherent in Miller's decisions to go to trial and assertions of innocence to his counsel in messages. *Id.* The Sixth Circuit additionally held Miller's nature and background and prior experience with the criminal justice system against him when it determined that these factors weighed in favor of denying Miller's motion. *Id.* This is problematic, however, because Miller's ability to read and write and his criminal history did not impact his actions underlying this case or his withdrawal motion. These factors are also not unique to Miller. If such common factors weigh so heavily in assessing withdrawal motions, it is difficult to see how any defendant could successfully withdraw a guilty plea. This low chance of success is concerning for Miller and other defendants alike.

b. The list of factors allowed the Sixth Circuit to affirm the district court and keep Miller from effectively addressing sentence deficiencies.

The myriad of factors in the plea withdrawal standard allowed the Sixth Circuit to dismiss issues the factors specifically touched upon along with other deficiencies in Miller's case. The pressure Miller's counsel placed on him disadvantaged his case, but Miller also suffered from improper sentence calculation. The Sixth Circuit affirmed the drug

quantity the district court attributed to Miller and held that the district court did not err because "determinations [were] supported by competent evidence in the record." *Miller*, 2025 WL 459648 at *11. This affirmance came back when Miller challenged the district court's refusal of a "mitigating role" reduction that Miller requested for being a minor participant. *Id.* at *12. Miller argued that he was only involved in three drug transactions, but the Sixth Circuit explained that this was an argument it "ha[d] already rejected." *Id.* at *13. Because of this conclusion and the court's explanation that "decision-making authority" is just one of many factors to consider when determining whether an individual is a minor participant, the Sixth Circuit held that the district court did not err in denying the reduction. *Id.* The Sixth Circuit finally held that evidence presented at the district court level supported the drug-house enhancement to Miller's sentence. *Id.* at *12. It repeated evidence and conclusions that the district court heard and then dismissed Miller's main argument about the district court incorrectly focusing on the amount of time he spent at the apartment by explaining that "the district court discussed Miller's length of stay in response to Miller's

argument at sentencing" that he was only at the apartment at issue for a small portion of the overall conspiracy. *Id.*

The Sixth Circuit's examination of deficiencies in Miller's sentence is similar to its conclusory examination of factors for whether Miller should be allowed to withdraw his guilty plea. Such impacts diminish the effectiveness of the criminal justice system and its administration of plea agreements. If this Court provides clearer guidance for plea withdrawal review, this Court will in turn provide the opportunity to clarify sentencing issues that are effectively prohibited by analyses with current plea withdrawal factors.

It was impossible for Miller to withdraw his plea because an overcomplicated standard facilitated a result that was hardly difficult for the district court to reach. When given so many factors to use against Miller, the district court easily found that no "fair and just reason" allowed Miller to withdraw his plea. That conclusion was especially easy to reach because of the manner in which the district court applied the prescribed factors. Fairness and justice are not the clearest of concepts. And sprawling, vague and differing tests prescribed to courts for determining whether something is "fair and just" only further complicate

concepts that are not always clear to begin with. This case provides this Court the opportunity to provide clarity and, in turn, fairness and justice to Miller and other similarly situated individuals.

CONCLUSION

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

Respectfully Submitted,

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The undersigned counsel hereby certifies that on May 12, 2025, the foregoing was served via e-mail upon the following:

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