

No. 25-_____

IN THE
SUPREME COURT OF THE UNITED STATES

Salvador Nolasco Romero,

Petitioner,

v.

United States of America,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

Virginia L. Grady
Federal Public Defender

Jacob Rasch-Chabot
Assistant Federal Public Defender
Counsel of Record
Office of the Federal Public Defender
633 17th Street, Suite 1000
Denver, Colorado 80202
Tel: (303) 294-7002
Email: jacob_rasch-chabot@fd.org

Questions Presented

At a change of plea hearing, Mr. Romero's testimony established every element of his offense. Although Mr. Romero further testified that his motivation for committing the offense was that a family member was threatened, he did not claim he was innocent, did not expressly invoke duress as a legal defense, nor did he satisfy the elements of a duress defense. Indeed, as the district court would later conclude in its order prohibiting him from raising a duress defense at trial, his testimony at the change-of-plea hearing affirmatively disproved one of the elements of a duress defense. Nevertheless, and despite Mr. Romero's repeated requests to accept his guilty plea, the district court rejected it based on his claim that he was threatened. On appeal, Mr. Romero argued the district court legally erred in rejecting the guilty plea. However, the Tenth Circuit held the district court could reject the guilty plea in an exercise of its general discretion.

The question presented is:

Does the district court commit legal error in rejecting a guilty plea based on a legally inadequate defense, as the Seventh Circuit has held, or can the district court reject it in an exercise of its general discretion, as the Tenth Circuit held here?

Related Proceedings

- *United States v. Romero*, No. 2:22-cr-00120-ABJ-1, United States District Court for the District of Kansas (judgment entered August 23, 2023).
- *United States v. Romero*, No. 23-8056, United States Court of Appeals for the Tenth Circuit (judgment entered March 26, 2025).

Table of Contents

	Page
Questions Presented	i
Related Proceedings	ii
Appendix	iv
Table of Authorities	v
Petition for Writ of Certiorari	1
Opinion Below.....	1
Basis for Jurisdiction.....	1
Statement of the Case	2
I. The district court rejects Mr. Romero's guilty plea based on his factual basis.....	2
II. Mr. Romero argues the district court legally erred in determining his factual basis was insufficient; the Tenth Circuit held the district court could reject the guilty plea as an exercise of general discretion.....	6
Reasons for Granting the Petition	8
This Court should grant certiorari to decide whether a district court has discretion to reject a guilty plea notwithstanding that the purported claim of innocence is invalid as a matter of law.	8
Conclusion.....	13

Appendix

District Court Minute Order re Change of Plea Hearing	A1
Transcript of Change of Plea Hearing	A3
District Court Order Granting Motion to Preclude Justification Defense	A63
Tenth Circuit Opinion	A72

Table of Authorities

	Page
Cases	
<i>North Carolina v. Alford</i> , 400 U.S. 25 (1970)	7
<i>United States v. Bahena-Navarro</i> , 678 F.3d 492 (7th Cir. 2012).....	8
<i>United States v. Buonocore</i> , 416 F.3d 1124 (10th Cir. 2005)	7, 12
<i>United States v. Butler</i> , 485 F.3d 569 (10th Cir. 2007).....	5, 11
<i>United States v. Conley</i> , 89 F.4th 815 (10th Cir. 2023).....	8
<i>United States v. Ortiz</i> , 927 F.3d 868 (5th Cir. 2019).....	7
<i>United States v. Rea-Beltran</i> , 457 F.3d 695 (7th Cir. 2006).....	9
<i>United States v. Romero</i> , 132 F.4th 1208 (10th Cir. 2025)	1, 2, 5, 6
<i>United States v. Smith</i> , 160 F.3d 117 (2d Cir. 1998).....	7
Statutes	
18 U.S.C. § 3231.....	2
28 U.S.C. § 1254(1)	1
8 U.S.C. § 1326.....	9, 10
Rules	
Fed. R. Crim. P. 11(b)(3).....	8, 10

Petition for Writ of Certiorari

Opinion Below

The decision of the United States Court of Appeals for the Tenth Circuit is available at *United States v. Romero*, 132 F.4th 1208 (10th Cir. 2025), and can be found in the Appendix at A72.

Basis for Jurisdiction

The Tenth Circuit issued its opinion affirming the district court's judgment on March 26, 2025. (A72.) Mr. Romero did not seek rehearing. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Statement of the Case

I. The district court rejects Mr. Romero's guilty plea based on his factual basis.

Mr. Romero was charged with conspiracy to distribute methamphetamine and possession with intent to distribute methamphetamine. *United States v. Romero*, 132 F.4th 1208, 1211 (10th Cir. 2025).¹ He entered into a plea agreement with the government under which he would plead guilty to the conspiracy count and the government would dismiss the remaining count. *Id.*

At the change of plea hearing, the District Court apprised Mr. Romero of the nature of the offense, including the elements. (A29-31.) Mr. Romero repeatedly affirmed that he was aware of his rights, that he was guilty of the offense, and that he knowingly and voluntarily wished to enter a plea of guilty. (A28, 41-42.) Mr. Romero then entered a plea of guilty and testified to provide a factual basis for the plea. (A41.) It is undisputed that Mr. Romero's testimony established each of the elements of conspiracy to distribute methamphetamine. *Romero*, 132 F.4th at 1216.

However, upon further questioning from the government,² Mr. Romero claimed that he "did it under threat." (A36.) He elaborated, "I did this under threats because,

¹ The district court had jurisdiction over this federal criminal case under 18 U.S.C. § 3231.

² Although Mr. Romero repeatedly affirmed he was guilty of the offense (see, e.g., A28) (affirming that he was "pleading guilty today of [his] own free will and be-

at the time, these agents had told me that they had with them [my niece], and they were threatening me, and I thought I was never going to be able to see her again unless I did it." (A36-37.) "That's the reason that I . . . accepted to pick up the drugs that they told me to go and pick up." (A37.)

After hearing this allegation of threats, the district court immediately rejected the plea: "It sounds to me like there's a defense that's being asserted in this case of compelled violation of the law. I will not accept your plea, Mr. [Romero], in this case." (A37.)

Defense counsel requested a recess to confer with Mr. Romero, which the district court granted. When the hearing resumed, the district court reiterated that "based on his factual basis" it "could not accept the guilty plea." (*Id.*) Nevertheless, the district court gave Mr. Romero an opportunity to clarify the factual basis and potentially enter a guilty plea. The district court explained to Mr. Romero, "It really is up to you entirely whether or not you wish to proceed here today with the plea of guilty or to take your case to trial and to raise a defense of – that you were compelled to do this under threat to a – your wife's family member." (A58.)

In response, Mr. Romero clearly indicated that he wished to plead guilty: "I am willing to accept responsibility . . . for what I did. I did transport these drugs. And if

cause [he is] guilty"), he gave one arguably equivocal answer during his initial colloquy with the district court. That is, at one point when asked whether he was "pleading guilty because [he is], in fact, guilty," Mr. Romero responded, "In part, yes, I am guilty, Your Honor." (42.) This is apparently what prompted the government to want to question Mr. Romero. (*Id.*)

there's a consequence to my actions, I'm willing to face that consequence." (A59.) He further explained, "I don't want to go to trial because I am afraid that if I go to trial I might end up spending the rest of my life in prison. And like I said before. I am willing to accept my responsibility and move along." (A60.)

Defense counsel explained to the district court that Mr. Romero was guilty, that he wished to plead guilty, and that his motivation for committing the offense should be considered in mitigation at sentencing. That is, "as Mr. Romero just indicated, he wants to take advantage of the plea agreement. But in the same sense, he also wants the Court to understand his role in this, which he believes has mitigating and minimizing factors. And I think some of this is, obviously, sentencing arguments – is what I've indicated before – and not so much of a change of plea." (A49.)

The district court continued with its questioning. As to the alleged threats, Mr. Romero stated that someone from the cartel "told me that I did not really have a choice if I ever wanted to see my sister-in-law's daughter brought over here." (A61; *accord* A68 ("[T]hey told me that I had no choice, that either I did what they demanded or I wouldn't be seeing my wife's niece.")) . However, he clarified that he "didn't know at the time whether she was with them or not." (A68.)

Despite Mr. Romero's insistence that he wished to plead guilty notwithstanding that he was allegedly subjected to threats, the district court again rejected the plea agreement: "Well, I'm – I'm terribly sorry that – that is where we are in this matter. I know that you wish to plead guilty, but I cannot accept the plea with the idea that you were compelled to commit the crime by these bad people under threat

to a family member.” (A69; *see also* A1 (minute order not checking box that “Court is satisfied there is a factual basis for plea of guilty” and noting the “Court will not accept the defendant’s guilty plea based upon his factual basis”). The district court set the case for trial (*Id.*)

Before trial, the government filed a motion in limine to preclude Mr. Romero from raising a justification defense. (A63). The district court granted the motion, concluding that Mr. Romero had failed to establish *any* element of a duress defense. (A63, 68-71.) Notably, the district court concluded that Mr. Romero’s statements at the change-of-plea hearing defeated any claim of duress: “In fact, under oath the Defendant has admitted before [the district court] that he did place himself in this situation.” (A69.) “[B]y Defendant’s own admission, he knew that the Cartel was dangerous and engaged in criminal conduct.” *Id.* Thus, the district court found “that by his own admission, Defendant knowingly and willfully placed himself in a situation where it would be ‘probable that he would be forced to choose criminal conduct.’” *Id.* at 328 (quoting *Butler*, 485 F.3d at 572). In other words, the district court found that Mr. Romero’s testimony at the change of plea hearing precluded a duress defense as a matter of law. This despite that the district court rejected Mr. Romero’s guilty plea over his objection based on this very same testimony.

Mr. Romero proceeded to trial. The jury convicted him on both counts. *Romero*, 132 F.4th at 1213. The district court sentenced Mr. Romero to 188 months of imprisonment. *Id.* Mr. Romero appealed. *Id.* at 1211.

II. Mr. Romero argues the district court legally erred in determining his factual basis was insufficient; the Tenth Circuit held the district court could reject the guilty plea as an exercise of general discretion.

On appeal, Mr. Romero argued that the district court erred in determining that the factual basis for the plea was insufficient because it established each of the elements of the offense, and it did not establish a duress defense. *Romero*, 132 F.4th at 1213. Indeed, the government did not appear to dispute that the factual basis was sufficient. *Id.* Notwithstanding the sufficiency of the factual basis, the Tenth Circuit held that the district court did not abuse its discretion in rejecting the guilty plea.

In doing so, the Tenth Circuit did not address the undisputed fact that Mr. Romero's testimony at his change-of-plea hearing not only failed to establish a duress defense but affirmatively disproved it. Instead, it simply assumed without deciding that (1) a duress defense does not negate any element of a drug-trafficking conspiracy, (2) an affirmative defense that does not negate an element of the offense does not undermine the sufficiency of a factual basis, and (3) Mr. Romero's factual basis was therefore sufficient (i.e., regardless of whether he established a valid duress defense). *Id.* at 1216.

Having assumed the sufficiency of the factual basis, the Tenth Circuit turned to a district court's discretion to accept or reject a defendant's guilty plea when faced with a sufficient factual basis. First, the court acknowledged that other circuits "have apparently all agreed that a district court has discretion to accept a defendant's guilty plea, even if the proffered facts support an affirmative defense, so long as the elements of the offense are established." *Id.* (citing *United States v. Ortiz*, 927 F.3d 868,

877-78 (5th Cir. 2019); *United States v. Smith*, 160 F.3d 117, 123 (2d Cir. 1998)). On the other hand, it is certainly true that a district court “has discretion to *reject* a guilty plea when the defendant claims his innocence.” *Id.*³

Based on these general principles, the Tenth Circuit held that the district court did not abuse its discretion in this context. *Id.* at 1218. Characterizing Mr. Romero’s unexpected duress defense as “questionable,” the court opined that “it would have been inadvisable for the district court to test such a defense when counsel was obviously unprepared.” *Id.* at 1219. Speculating that “the same plea bargain likely would have been available” at a later time, the court thought that “[r]ejecting the plea in the circumstances was the prudent course” to allow defense counsel to “research[] the facts and the law and determine[whether] Defendant had no duress defense.” *Id.* Moreover, the court observed there was no authority “suggesting that a court *must* cross-examine a defendant at the guilty-plea stage about the merits of a potential affirmative defense before rejecting a guilty plea.” *Id.* at 1218. Accordingly, the district court did not “err[] by not exploring or ruling on the merits of Defendant’s claim of duress at the plea hearing.” *Id.*⁴

³ A guilty plea where the defendant maintains their innocence is known as an *Alford* plea after the Supreme Court’s decision in *North Carolina v. Alford*, 400 U.S. 25 (1970). It is well established that a district court has discretion to reject such a plea. *See, e.g., United States v. Buonocore*, 416 F.3d 1124, 1131 (10th Cir. 2005).

⁴ To be sure, Mr. Romero did not argue the district court was required to cross-examine Mr. Romero or probe the merits of any potential affirmative defense. It was only that the district court erroneously determined that the factual basis was insufficient because, based on the record before it, the elements of the offense had been established, while an element of duress defense had been disproven.

Reasons for Granting the Petition

This Court should grant certiorari to decide whether a district court has discretion to reject a guilty plea notwithstanding that the purported claim of innocence is invalid as a matter of law.

“To guide the proper use of a district court’s discretion, Federal Rule of Criminal Procedure 11(b) requires that district courts engage the defendant in a plea colloquy.” *United States v. Bahena-Navarro*, 678 F.3d 492, 495 (7th Cir. 2012). “Generally speaking, the plea colloquy is designed to ensure that the guilty plea is made in a knowing and voluntary fashion, and that it has some ‘factual basis.’” *Id.* (quoting Fed. R. Crim. P. 11(b)(3)).

“To determine whether a factual basis exists for the defendant’s plea, the district court must compare the conduct admitted or conceded by the defendant with the elements of the charged offense to ensure the admissions are factually sufficient to constitute the crime charged.” *United States v. Conley*, 89 F.4th 815, 824-25 (10th Cir. 2023). Here, Mr. Romero clearly provided facts sufficient to satisfy each of the elements of the offense of conspiracy to distribute methamphetamine. Meanwhile, he did *not* provide a sufficient basis to support the elements of a duress defense. Indeed, as the district court later concluded, the statements Mr. Romero made at the change of plea hearing proved he did *not* have a viable duress defense. Accordingly, the district court erred as a matter of law in rejecting his guilty plea based on his purported claim of innocence.

However, the Tenth Circuit implicitly rejected Mr. Romero’s framing of the issue. That is, rather than contend with the undisputed fact that Mr. Romero’s plea

colloquy demonstrated he did *not* have a duress defense, the Tenth Circuit simply concluded that a district court has discretion to accept or reject a guilty plea when a fact that could support a potential affirmative defense arises during a plea colloquy—evidently, regardless of whether the defendant wishes to claim the defense, whether the factual basis supports each element of the defense, or even whether the defense is unavailable as a matter of law. Because the Tenth Circuit’s approach squarely conflicts with that taken by the Seventh Circuit, this Court should grant certiorari to resolve the issue.

In *United States v. Rea-Beltran*, 457 F.3d 695 (7th Cir. 2006), the defendant successfully pled guilty to illegally reentering the United States in violation of 8 U.S.C. § 1326. *Id.* at 697-98. However, at sentencing, the defendant claimed he did not know he was violating an order not to return to the United States because he believed the order expired after five years. *Id.* Based on this factual representation, the district court vacated the plea agreement “because the defendant has now expressed his innocence by saying at the time of the offense, he did not know he was violating the law.” *Id.* On appeal, the defendant argued the Seventh Circuit should “reinstate his guilty plea, contending that he indeed admitted a factual basis sufficient for the court to accept his plea.” *Id.* at 701. The court agreed.

The Seventh Circuit recognized that the district court’s decision to vacate the guilty plea “came on the heels of the court’s attempt to find, consistent with Rule 11(b)(3), a factual basis for the plea of guilty.” *Id.* “In a dialogue with the court, Mr. Rea-Beltran had indicated that, when he reentered the country on February 13, 2003,

he believed that he had permission to do so. Understanding this to be an expression of innocence, the court rejected the plea and ordered trial.” *Id.* The Seventh Circuit held that “the district court, in interpreting Mr. Rea-Beltran’s statements to be an expression of innocence, misapprehended the elements of the Government’s burden.” *Id.* at 701-02. That is, the defendant’s “belief that he is reentering” without permission “is not an element of section 1326.” *Id.* at 702 (citation omitted). Thus, “even if a defendant reasonably but mistakenly believes that he is permitted to reenter the United States, he is guilty of violating § 1326.” *Id.* Accordingly, the Seventh Circuit held “the district court’s rejection of Mr. Rea-Beltran’s guilty plea appears to have rested on the legal misapprehension that Mr. Rea-Beltran would be innocent of illegal reentry if he had thought that his reentry was permitted.” *Id.* However, his “mistaken belief would offer him no defense to the charge of violating § 1326(a).” *Id.* Accordingly, the Seventh Circuit found “an abuse of discretion in the court’s refusal to accept Mr. Rea-Beltran’s guilty plea.” *Id.*

The same situation played out here. During the presentation of the factual basis of the plea, Mr. Romero introduced the fact that he committed the offense because his niece was threatened. In response to questioning from the government and the district court, he explained that he reached out to a drug cartel (one that had previously threatened him) for help in smuggling his niece into the United States—in response, the cartel threatened to harm his niece if he did not transport methamphetamine. The district court understood this to be an expression of

innocence and rejected the guilty plea. As in *Rea-Beltran*, this was a legal error, not a valid exercise of discretion.

Mr. Romero's statements, if true, did not mean he was innocent of the crime—of course, not every threat constitutes a legal defense of duress. Rather, there are four elements a defendant has the burden to prove: (1) the threat must be imminent and induce a well-grounded fear of death or serious bodily injury; (2) the defendant cannot have negligently put himself in the situation; (3) there can be no reasonable, legal alternative; and (4) there must be a direct causal relationship between the crime and the avoidance of harm. See *United States v. Butler*, 485 F.3d 569, 572 (10th Cir. 2007). As the district court later concluded, Mr. Romero failed to establish *any* of these elements, and his factual basis even disproved the second element—that is, his testimony showed that he at least negligently put himself in the situation by reaching out to the cartel, whom he knew to be threatening, with help smuggling his niece. Accordingly, under the Seventh Circuit's approach, the district court erred as matter of law in concluding that his statements constituted a claim of innocence and rejecting his factual basis as insufficient.

The Tenth Circuit's approach is irreconcilable with the Seventh Circuit's. Most notably, the Tenth Circuit assumes that any fact potentially implicating a defense constitutes a claim of innocence triggering the district court's discretion to reject the guilty plea. It omits the critical threshold step of determining whether a defendant's statements are indeed claims of innocence undermining the factual basis. As the Seventh Circuit properly recognized, a defendant's assertion of fact is not a claim of

innocence if, as a matter of law, they do not constitute a defense to the crime. In *Rea-Beltran*, the defendant's assertion that he did not know he didn't have permission to reenter was not a claim of innocence because, if true, it did not mean he was innocent. Accordingly, the factual basis was sufficient, and the district court erred in rejecting the guilty plea.

However, the Tenth Circuit's approach would lead to a different result. That is, according to the Tenth Circuit, the validity of the defendant's asserted defense is irrelevant. What matters is that the defendant's plea was accompanied by protestations of innocence, thus invoking the district court's near-absolute discretion to reject an *Alford* plea. *See United States v. Buonocore*, 416 F.3d 1124, 1126 (10th Cir. 2005) (holding district court may adopt policy of rejecting *Alford* pleas). Thus, under the Tenth Circuit's approach, the *Rea-Beltran* judge did not abuse its discretion in rejecting the guilty plea.

Accordingly, the Tenth Circuit's decision below conflicted with the Seventh Circuit's approach, and this Court should grant certiorari to resolve the issue.

Conclusion

The petition for a writ of certiorari should be granted.

Respectfully submitted,

VIRGINIA L. GRADY
Federal Public Defender

/s/ Jacob Rasch-Chabot
JACOB RASCH-CHABOT
Assistant Federal Public Defender
Counsel of Record
633 17th Street, Suite 1000
Denver, Colorado 80202
Tel: (303) 294-7002
Email: jacob_rasch-chabot@fd.org

June 24, 2025