

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

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IN THE SUPREME COURT OF THE UNITED STATES

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DERRICK KELLEN MITCHELL, 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 Sixth Circuit

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PETITION FOR WRIT OF CERTIORARI

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Kenneth P. Tableman P27890  
Kenneth P. Tableman, P.C.  
Attorney for Petitioner  
71 Maryland Avenue, SE  
Grand Rapids, MI 49506-1819  
(616) 233-0455  
tablemank@sbcglobal.net

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## QUESTION PRESENTED

- I. Should the Court grant certiorari to consider if the Sixth Circuit has improperly deviated from this Court's requirement, grounded in the Due Process clause, that when taking a guilty plea the district court makes sure that the defendant understands the consequences of the guilty plea?

## STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings in the United States District Court for the Western District of Michigan (Southern Division) and the United States Court of Appeals for the Sixth Circuit:

- United States of America v. Derrick Kellen Mitchell, E.D. Tenn. Case No.3:20-cr-487-2, judgment of sentence entered August 11, 2023
- United States of America v. Derrick Kellen Mitchell, 135 F.4th 507 (6th Cir. 2025)

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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## PETITION FOR WRIT OF CERTIORARI

Derrick Kellen Mitchell respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

## OPINION BELOW

The United States Court of Appeals for the Sixth Circuit affirmed Mitchell's convictions and sentence in a published opinion. *United States v. Derrick Kellen Mitchell*, 135 F.4th 507 (6th Cir. 2025). (Pet. App. 1a).

## JURISDICTION

The Sixth Circuit's opinion was filed on April 28, 2025. Mitchell's petition for rehearing was denied on June 16, 2025. The mandate issued on June 24, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Due Process Clause of the Fifth Amendment which provides in part that, "No person shall be . . . deprived of life, liberty, or property, without due process of law. . . ." U.S. Const. amend. V.

## STATEMENT OF THE CASE

As part of a methamphetamine trafficking investigation officers executed a search warrant at Mitchell's residence in Knoxville, Tennessee. They found about 14 grams of methamphetamine and five firearms, among

other things. (Plea Agreement, R. 397, Page ID # 1519–20, Presentence Investigation Report (“PSR”), R. 500. ¶¶ 27, 31, Page ID # 2535–36).

The government charged Mitchell and others with various drug trafficking and firearms offenses. (Superceding Indictment, R. 57, Page ID # 151–61). Mitchell agreed to plead guilty to conspiracy to distribute 50 grams or more of methamphetamine and conspiracy to commit money laundering. (Plea Agreement, R. 397, Page ID # 1518–27).

In a written plea agreement, Mitchell and the government made two sentencing agreements. First they agreed that only a two-offense level increase for money laundering applied to him under the Sentencing Guidelines; second that if his offense level was 16 or greater, the government would move to lower the level by one level.

The plea agreement did not say if the sentencing agreements bound the court, although the paragraph about the money laundering enhancement referred to Fed. R. Crim. P. 11(c)(1)(B). (Plea Agreement, Page ID # 1520). Mitchell also waived his right to appeal his convictions and sentence, subject to conditions not relevant here. (Plea Agreement, Page ID # 1525).

When Mitchell pled guilty the district court told him that the sentencing agreements were recommendations and did not bind the court. The court did not confirm that Mitchell understood and agreed that the

sentencing agreements were not binding. (Guilty Plea Transcript, R. 589, Page ID # 3624–25).

The PSR recommended that the court impose an enhancement of two levels for possessing a dangerous weapon in connection with the drug offense, plus the two-level enhancement for money laundering. (PSR, R. 500, ¶¶ 41, 42, Page ID #2537).

At sentencing, Mitchell did not object at first to the firearm enhancement. (Sentencing Transcript, R. 590, Page ID # 3642). But when the court imposed both enhancements, Mitchell’s lawyer protested. He said that he and Mitchell thought the plea agreement bound the court not to apply the enhancement for possessing firearms, once the court accepted the plea agreement. The court said it was not bound by and did not accept the parties’ agreement. (Id., Page ID # 3651–54).

The district court sentenced Mitchell to concurrent prison terms of 233 months. (Id., Page ID # 3660).<sup>1</sup>

Mitchell appealed. His lawyer filed a motion to withdraw based on the appeal waiver. (Motion to Withdraw, Brief in Support, Sixth Circuit. Documents 20 and 21, pp. 1–3). Mitchell disagreed. (Letter, Sixth Circuit

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<sup>1</sup>The sentence was below the Guidelines range of 292 to 365 months. The court granted the government’s motion for a lower sentence. (Sentencing Transcript, R. 590, Page ID # 3642–43).



Document 22, pp. 1–2). The Sixth Circuit denied the motion to withdraw and directed counsel to “address whether Mitchell’s guilty plea was valid and entered with full understanding of the implications of the Rule 11(c)(1)(B) agreement.” (Order, Sixth Circuit Document 24-1, p. 5).

Mitchell then argued that the court should vacate his convictions and sentence because his guilty plea was unknowing and involuntary. He said he did not understand that the district court was not bound by the sentencing agreement that only the money laundering enhancement applied.

The court of appeals reasoned differently. It said the district court was under no obligation to specifically ask Mitchell if he understood the provision concerning the sentencing enhancements, so long as it was adequately explained to him. The court said that the stipulation in the plea agreement was only a recommendation and Mitchell did not have the right to withdraw his plea even if the district court did not follow it. *United States v. Mitchell*, Pet. App 2a–3a.

The court of appeals found that Mitchell’s plea was voluntary and dismissed his appeal, based on the waiver of appeal. *Id.*, at 3a–4a.

Mitchell petitioned for rehearing en banc, but his petition was denied.

#### REASONS FOR GRANTING THE WRIT

In this case the Sixth Circuit Court of Appeals has sanctioned a

departure by the lower court from the accepted and usual course of judicial proceedings in a way that undercuts defendants' due process rights. Sup. Ct. R. 10 (a). This Court should exercise its supervisory power to correct the error and to make clear to the lower courts what due process requires when a defendant pleads guilty.

Because a guilty plea requires a defendant to surrender constitutional rights, including the right against self-incrimination, the Court has long held that the Due Process Clause mandates that a guilty plea be voluntary, knowing, and intelligent. *McCarthy v. United States*, 394 U.S. 459, 466 (1969), *Brady v. United States*, 397 U.S. 742, 748, 752–55 (1970).

Here, Mitchell's guilty plea was invalid because the district court did not make sure he understood the consequences of his plea, and the court of appeals was wrong to rule otherwise.<sup>2</sup>

To make a voluntary guilty plea a defendant must understand the direct consequences of the plea. *Brady v. United States*, 397 U.S. at 755. And, before accepting a guilty plea, the court must ensure the defendant has a "full understanding of [its] . . . possible consequences." *Brady v. United States*, 397 U.S. at 748 n. 6, *Boykin v. Alabama*, 395 U.S. 238, 244–45 (1969). A

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<sup>2</sup>Even though Mitchell's plea agreement contained a waiver of appeal, courts will not enforce a waiver of appeal if the guilty plea was invalid. In re: *Acosta*, 430 F.3d 421, 422 (6th Cir. 2007).

defendant must be “fully aware of the direct consequences, including the actual value of any commitments made to him by the court, prosecutor, or his own counsel” for his plea to be voluntary. *Brady*, at 755 (citation omitted). Cf. *Lee v. United States*, 587 U.S. 357 (2017) (holding that an attorney’s erroneous advice about the immigration consequences of a guilty plea required the Court to vacate the Defendant’s conviction).

Mitchell’s plea was not valid because he did not understand the consequences of his plea. He thought he had a binding agreement about how the court would score his offense level under the Sentencing Guidelines because the plea agreement said that no upward enhancements applied, apart from a two-level increase for money laundering. The agreement said:

For sentencing purposes, pursuant to Fed. R. Crim. P. 11(c)(1)(B), the parties agree and stipulate that apart from a two-level increase for money laundering . . . no other upward enhancements, adjustments, departures, or variances apply in this case.

(Plea Agreement, R. 397, Page ID # 1520).

The district court told him that this agreement did not bind the court and if the court ruled otherwise he could not withdraw his guilty plea. But the district court did not ask Mitchell if he understood. (Guilty Plea Transcript, R. 589, Page ID # 3624–25).

When the presentence report was prepared the probation officer applied

a two-level enhancement for possession of firearms in connection with the offense, in addition to the money-laundering enhancement. (PSR, R.500, ¶ 41, Page ID # 2537, see USSG § 2D1.1(b)(1)).

Mitchell did not file an objection to the firearm enhancement or dispute it at the start of his sentencing hearing. But after the court announced its Guidelines computations he did. The following took place:

MR. YOUNG: . . . Your Honor, Mr. Mitchell asked me about the impact of his plea agreement. There was a provision in there that there would be no additional enhancements other than the money laundering enhancement.

. . . .

[THE COURT:] Mr. Young, given [that the sentencing agreement did not bind the Court], how would you like to proceed?

MR. YOUNG: Your Honor, it was my understanding that if the Court accepts the plea agreement that that recommendation becomes binding on the Court. I could be wrong, but that was my understanding of Rule 11, but there was no basis to object to that finding by the PSR. I mean, the guns were there. He possessed them, so I couldn't make a good-faith objection –

. . . .

[THE COURT:] Mr. Young, knowing that there is no factual objection to paragraph 41 [imposing the firearm enhancement] , how would you like to proceed with the question that your client has raised?

MR. YOUNG: I'm not sure where we should go with this, Your Honor, but actually it's my understanding that if you accepted the plea agreement that that provision, that recommendation would

be adopted by the Court. If that's not –

THE COURT: Mr. Young, the Court has not accepted the parties' plea agreement. What the Court has done is it has adopted the presentence report.

(Sentencing Transcript, R. 590, Page ID # 3651–54).

The district court's failure to confirm that Mitchell understood how his plea agreement worked when he pled guilty made his plea involuntary because neither Mitchell nor his lawyer understood the consequences of his guilty plea. They thought they had entered into an agreement that bound the court, if the court accepted the plea agreement.

Parties can enter into a non-binding sentencing agreement. See Fed. R. Crim. P. 11(c)(1)(B). They can also agree that a provision of the Guidelines does or does not apply and that their agreement binds the court, if the court accepts the plea agreement. Fed. R. Crim. P. 11(c)(1)(C).<sup>3</sup> The confusion arose

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<sup>3</sup>Federal Rule of Criminal Procedure 11(c)(1) reads in part that:

(1) In General. An attorney for the government and the defendant's attorney . . . may discuss and reach a plea agreement. . . . [T]he plea agreement may specify that an attorney for the government will:

(B) recommend or agree not to oppose the defendant's request, that a particular sentence or sentencing range is appropriate or that a particular provision of the Sentencing Guidelines . . . does or does not apply (such a recommendation or request does not bind the court); or

(C) agree that a particular sentence or sentencing range is the appropriate disposition of the case, or that a particular provision of the Sentencing Guidelines . . . does or does not apply

in Mitchell’s case because the sentencing agreement about enhancements referred to Rule 11(c)(1)(B), but did not say that the sentencing agreement was not binding on the court.

Without confirming that Mitchell understood that the agreement was non-binding, the district court’s oral advice that the agreement did not bind the court was not effective.

A district court taking a guilty plea can cure a defendant’s misunderstanding about an agreement or promise made as part of a plea agreement by explaining the effect of the agreement and making sure that the defendant understands. When a defendant tells the court he understands an agreement he cannot later say that he misunderstood. “[A] defendant must be bound to the answers he provides during a plea colloquy.” *Ramos v. Rogers*, 170 F.3d 560, 565 (6th Cir. 1989), *Barker v. United States*, Case No. 23-1097, 2023 U.S. App. LEXIS 31995 (6th Cir. December 4, 2023).

But courts may not assume that a defendant understands the consequences of a guilty plea. The record must show that the defendant understands. *Brady v. United States*, 397 U.S. at 748 n. 4 (“[T]he record must affirmatively disclose that a defendant who pleaded guilty entered his plea

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(such a recommendation or request binds the court once the court accepts the plea agreement).

understandingly and knowingly.”) See also *Id.*, at 754–55, *McCarthy v. United States*, 394 U.S. at 467 (holding that district courts must ask if the defendant understands and rejecting district court assumptions not based on record responses).

Thus, in *Ramos*, the defendant claimed his lawyer had promised him probation. He wanted to withdraw his guilty plea after he got a custodial sentence. The court of appeals found no prejudice to *Ramos* because, even assuming his lawyer had promised him probation, *Ramos* said he understood when the district court told him that he was not going to get probation under any circumstance. *Ramos v. Rogers*, 170 F.3d at 565.

Similarly, in *Barker*, the defendant said he got bad advice about the maximum sentence he faced. The court said the magistrate judge cured any error in advice when the magistrate judge told *Barker* the correct maximum at the change of plea hearing and *Barker* said he understood. *Barker v. United States*, 2023 U.S. App. LEXIS 31995 at \*5.

In these cases the record showed that the defendants understood the consequences of their guilty pleas. Here, the record does not. The district court did not make sure that *Mitchell* understood the non-binding effect of the sentence agreement.

The Court should find that *Mitchell*’s guilty plea was invalid and should

remand the case to allow him to plead anew. *McCarthy v. United States*, 394 U.S. at 472, *United States v. Scanlon*, 666 F.3d 796, 798 (D.C. Cir. 2012).

The Sixth Circuit erred when it ruled that the district court did not have to make sure that Mitchell understood the consequences of his sentencing agreement. The Sixth Circuit did not apply this Court's decision in *Brady* correctly. Mitchell did not have "sufficient awareness of the relevant circumstances and likely consequences" of his guilty plea.

The Court should correct the Sixth Circuit's error because guilty pleas are the bread and butter of the criminal justice system. The lower courts should apply this Court's requirements for them correctly. The Court should exercise its supervisory power to correct the injustice done to Mitchell.

### CONCLUSION

The Court should grant the petition for writ of certiorari.

Respectfully submitted,

Kenneth P. Tableman  
Kenneth P. Tableman, P.C.  
Attorney for Petitioner  
71 Maryland Avenue, SE  
Grand Rapids, MI 49506-1819  
(616) 233-0455  
[tablemank@sbcglobal.net](mailto:tablemank@sbcglobal.net)

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