

No. 18-106

In the Supreme Court of the United States

JOHN R. TURNER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

*On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit*

**AMICUS BRIEF ON BEHALF OF THE NATIONAL
ASSOCIATION FOR PUBLIC DEFENSE
IN SUPPORT OF PETITIONER**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTEREST OF AMICUS CURIAE 1

SUMMARY OF THE ARGUMENT 2

ARGUMENT 7

I. The Court Should Grant Certiorari Because the Sixth Amendment Right to Counsel Should Apply to Pre-indictment Plea Bargaining. 7

 A. In the post-*Kirby* Era, Pre-Indictment Plea Bargaining Has Become Prevalent Throughout Jurisdictions and Affects the Rights and Liberties of Thousands of Criminal Defendants. 7

 B. Plea Bargaining Constitutes a “Critical Stage” of a Criminal Prosecution, Regardless of Whether It Occurs Pre- or Post-Indictment. 10

 C. The Sixth Amendment’s Original Meaning Supports Affording Defendants the Right to Counsel During Pre-Indictment Plea Bargaining. 15

II. The Court Should Grant Certiorari Because Lower Courts Are Divided Concerning Whether the Sixth Amendment Applies to Pre-Indictment Plea Bargaining. 16

CONCLUSION 19

TABLE OF AUTHORITIES

CASES

<i>Kirby v. Illinois</i> , 406 U.S. 682 (1972)	<i>passim</i>
<i>Lafler v. Cooper</i> , 566 U.S. 156 (2012)	<i>passim</i>
<i>Matteo v. Superintendent</i> , 171 F.3d 877 (3d Cir.), <i>cert. denied</i> , 528 U.S. 824 (1999)	17
<i>Missouri v. Frye</i> , 566 U.S. 134 (2012)	<i>passim</i>
<i>Moran v. Burbine</i> , 475 U.S. 412 (1986)	11
<i>Padilla v. Kentucky</i> , 559 U.S. 356 (2010)	10
<i>Patterson v. Illinois</i> , 487 U.S. 285 (1988)	18
<i>Roberts v. Maine</i> , 48 F.3d 1287 (1st Cir. 1995)	17
<i>Rothgery v. Gillepsie Cty.</i> , 554 U.S. 191 (2008)	9
<i>United States v. Ash</i> , 413 U.S. 300 (1973)	10, 11
<i>United States v. Gouveia</i> , 467 U.S. 180 (1984)	5, 6, 16
<i>United States v. Heinz</i> , 983 F.2d 609 (5th Cir. 1993)	16

<i>United States v. Larkin</i> , 978 F.2d 964 (7th Cir. 1992), <i>cert. denied</i> , 507 U.S. 935 (1993)	17
<i>United States v. Lin Lyn Trading, Ltd.</i> , 149 F.3d 1112 (10th Cir. 1998)	16
<i>United States v. Moody</i> , 206 F.3d 609 (6th Cir. 2000)	19
<i>United States v. Wade</i> , 388 U.S. 218 (1967)	11, 18
OTHER AUTHORITIES	
5 Wayne R. LaFave et al., <i>Criminal Procedure</i> § 21.3(a) (4th ed. Westlaw)	8
Pamela R. Metzger, <i>Beyond the Bright Line: A Contemporary Right-to-Counsel Doctrine</i> , 97 NW. U.L. REV. 1635 (2003)	3, 8
James S. Montana & John A. Galotto, <i>Right to Counsel: Courts Adhere to Bright-Line Limits</i> , 16-SUM CRIM. JUST. 11-12 (2001)	9, 16
Steven J. Mulroy, <i>The Bright Line's Dark Side: Pre- Charge Attachment Of The 6th Amendment Right To Counsel</i> , 92 WASHINGTON L. REV. 213 (2017)	3, 6, 16

INTEREST OF AMICUS CURIAE

The National Association for Public Defense (“NAPD”) respectfully files this amicus brief in support of Petitioner’s petition for certiorari. Counsel for Petitioner and Respondent have both consented to the filing of this brief.¹

By way of brief background, the NAPD is a national organization uniting nearly 14,000 public defense practitioners across the fifty state. Specifically, NAPD’s mission is to ensure strong criminal justice systems, advocate for policies and practices that provide effective defense for indigent defendants, achieve system-wide reform that increases fairness for such defendants, and offer education and support for public defenders and public defender leaders.

To that end, the NAPD plays a vital role in advocating for defense counsel and the clients they serve. Furthermore, based on the experience of its members and the interests it champions, the NAPD is uniquely situated to speak to issues of fairness and justice facing indigent criminal defendants. Because this case presents important questions concerning the Sixth Amendment right to counsel, NAPD possesses the expertise and interest to assist the Court in reaching a fair and just outcome.

¹ Counsel for Petitioner and Respondent have consented to the filing of this brief. Pursuant to this Court’s Rule 37.6, counsel for *amici* state that no counsel for a party authored this brief in whole or in part, and that no person other than *amici* or their counsel made a monetary contribution to the preparation or submission of this brief. Pursuant to Rule 37.2, after timely notification, all parties consented to the filing of this brief.

SUMMARY OF THE ARGUMENT

Categorical rules should never trump common sense, and rigidity should never trump reasonableness.

In *Kirby v. Illinois*, this Court held that the Sixth Amendment right to counsel applies to “critical stages” of a criminal prosecution that occur after an indictment is obtained (or formal charges filed). The plurality reasoned that it was only *after* an indictment is obtained (or formal charges filed) that the government “has committed itself to prosecute, [that] the adverse positions of government and defendant have solidified, [and that] the accused finds himself faced with the prosecutorial forces of organized society.” 406 U.S. 682, 689 (1972) (brackets added). In the over the four decades since *Kirby* was decided, however, times have changed – dramatically. But the rationale underlying *Kirby* has not, and any sensible interpretation of *Kirby* leads to the ineluctable conclusion that pre-indictment plea bargaining triggers the Sixth Amendment right to counsel.

To be clear, NAPD is *not* arguing that the Court should adopt a new rule, or that *Kirby* is inconsistent with the rule for which NAPD advocates. Rather, NAPD is simply arguing that the Court’s decision in *Kirby* supports and is overwhelmingly consistent with providing counsel to individuals during pre-indictment plea negotiations. And several reasons support this conclusion. First, in 1972 when the Court decided *Kirby*, pre-indictment plea bargaining rarely, if ever, occurred. In 2018, however, pre-indictment plea bargaining is prevalent throughout jurisdictions and represents the rule rather than the exception. Given this reality, which was motivated in substantial part by

the advent of mandatory minimum sentences and the Federal Sentencing Guidelines, the government's commitment to prosecute, and the adversarial positions of the government and defendant, now solidify long *before* an indictment is filed. *See, e.g.*, Steven J. Mulroy, *The Bright Line's Dark Side: Pre-Charge Attachment Of The 6th Amendment Right To Counsel*, 92 WASHINGTON L. REV. 213, 222-226 (2017); Pamela R. Metzger, *Beyond the Bright Line: A Contemporary Right-to-Counsel Doctrine*, 97 NW. U.L. REV. 1635, 1664 (2003).

Second, in *Missouri v. Frye*, this Court held that *post-indictment* (or post-charge) plea bargaining is a “critical stage” of a criminal prosecution and thus triggers the Sixth Amendment right to counsel. 566 U.S. 134 (2012); *see also Lafler v. Cooper*, 566 U.S. 156 (2012). The Court's holding in *Frye* begs the question of whether *pre-indictment* plea bargaining, which implicates the *same* rights and *same* liberties as post-indictment plea bargaining, *and* which undoubtedly requires counsel to assist defendants in navigating the complexities of the legal process, should likewise trigger the right to counsel. Based on the Court's decisions in *Kirby* and *Frye*, basic principles of fairness, and common sense, the answer is unquestionably yes. After all, plea bargaining has become the *sine qua non* of the criminal justice process, or, as the Court stated in *Frye*, “it is the criminal justice system.” 566 U.S. at 144 (internal citation omitted). Put differently, it should not matter *when* the government initiates plea negotiations. What should matter is *what* a defendant requires to make an informed decision regarding, *inter alia*, whether to accept or reject a plea offer, and whether the government's evidence is sufficient to

support a conviction at trial. The answer is simple: an attorney.

Third, as noted in Judge Kenneth Bush's concurrence below, the Sixth Amendment's original meaning supports affording defendants the right to counsel during pre-indictment plea bargaining. After an exhaustive review of the historical record, Judge Bush concluded that the Founders contemplated "a broad meaning of 'prosecution,' and that there was no "reason to define a 'prosecution' as occurring only post-indictment." *Turner*, No. 15-6060 at 14, 15 (6th Cir. 2017) (Bush., J., concurring). As such, Judge Bush argued that "the extant historical record includes significant evidence suggesting that the Framers and their contemporaries would not deny Turner the right to retain counsel." *Id.* at 22. Judge Bush was correct. Affording the right to counsel to pre-indictment plea bargaining is consistent with the Sixth Amendment's original meaning, the Court's decision in *Kirby*, and common sense.

Fourth, the lower courts are divided regarding whether the Sixth Amendment right to counsel applies to pre-indictment plea bargaining. Thus, resolving this confusion will bring greater clarity and consistency to the Court's Sixth Amendment jurisprudence, and if Petitioner's rule is ultimately adopted, the criminal justice process will be administered with the fairness that the Sixth Amendment demands, and that criminal defendants deserve.

Ultimately, this should not be a difficult case because the risks to an uncounseled defendant who engages in plea negotiations with a prosecutor – pre- or post- indictment – are so obvious. When a prosecutor confronts a potential defendant with a pre-indictment plea offer, that defendant often lacks substantive legal knowledge and therefore requires counsel’s assistance to, among other things, navigate the complexities of the legal process, assess the strength of the government’s evidence, and consider the sentence that the defendant may face if a jury returns a guilty verdict at trial. Absent such assistance, defendants are left to fend for themselves even though they lack the knowledge or experience to engage in meaningful negotiations with the government or adequately safeguard their fundamental constitutional protections. Neither the Sixth Amendment nor this Court’s jurisprudence countenance such an unfair and untenable situation.

Moreover, denying defendants the right to counsel during pre-indictment plea negotiations would, as a practical matter, permit prosecutors to circumvent the Sixth Amendment’s protections merely by timing plea offers before indictment. As Judge Eric Clay stated in his concurrence below, failing to provide counsel to defendants during pre-indictment plea negotiations “leads to unduly harsh consequences for criminal defendants,” because it “allows prosecutors to exploit uncounseled criminal defendants, and leaves counseled defendants, just like Turner, without a claim for ineffective assistance of counsel when their attorneys render deficient performance.” *Turner*, No. 15-6060 at 36 (Clay., J., concurring). The Sixth Amendment, which protects the “unaided layman at critical confrontations with his adversary,” *United States v. Gouveia*, 467 U.S.

180, 189 (1984), and this Court's jurisprudence, require much more, and surely should not be construed to permit prosecutors to engage in actions *before* indictment that they would surely be prohibited from doing *after* an indictment is obtained. That, in a nutshell, is the point – and the problem.

Finally, this Court can establish a workable and precise rule that affords defendants the right to counsel during pre-indictment plea bargaining and that avoids impeding upon law enforcement's investigatory powers. Specifically, the right to counsel should attach where: (1) a state or federal prosecutor is involved; (2) the prosecutor contacts an individual who will be subject to state or federal charges; (3) the prosecutor informs the individual of the particular charges that will be brought; and (4) the prosecutor attempts to resolve the matter, such as through a plea offer, *before* seeking an indictment. *See* Mulroy, 92 WASHINGTON L. REV. at 241-242. Such a rule will ensure that law enforcement's investigatory powers are protected, and that a defendant's constitutional rights preserved.

For the foregoing reasons, NAPD respectfully submits that the petition for certiorari should be granted.

ARGUMENT

I. The Court Should Grant Certiorari Because the Sixth Amendment Right to Counsel Should Apply to Pre-indictment Plea Bargaining.

The Court should grant certiorari and, ultimately, hold that the Sixth Amendment affords defendants the right to counsel during pre-indictment plea bargaining. This rule should be adopted because: (1) pre-indictment plea bargaining is prevalent throughout jurisdictions; (2) the Court's decisions in *Kirby* and *Frye* support this result; (3) the Sixth Amendment's original meaning strongly suggests that the Founders would support affording counsel to defendants during pre-indictment plea bargaining; and (4) the lower courts are divided on whether the right to counsel encompasses pre-indictment plea bargaining.

A. In the post-*Kirby* Era, Pre-Indictment Plea Bargaining Has Become Prevalent Throughout Jurisdictions and Affects the Rights and Liberties of Thousands of Criminal Defendants.

At the time *Kirby* was decided, pre-indictment plea bargaining rarely, if ever, occurred. As such, the Court in *Kirby* understandably focused the Sixth Amendment right to counsel on "critical stages" of a criminal prosecution that occurred *after* formal charges were filed, because in 1972 the filing of formal charges represented the time at which "the government ha[d] committed itself to prosecute, the adverse positions of government and defendant have solidified, [and] the accused [found] himself faced with the prosecutorial

forces of organized society.” *Kirby*, 406 U.S. at 689 (brackets added). The Court explained as follows:

The initiation or criminal proceedings is far from a mere formalism. It is the starting point of our whole system of adversarial criminal justice. For it is ***only then*** that the government has committed itself to prosecute, and only then that the adverse positions of government and defendant have solidified. It is then that a defendant finds himself faced with the prosecutorial forces of organized society, and immersed in the intricacies of substantive and procedural criminal law.

Id. (emphasis added). However, times have changed, and the above statement is no longer true.

Indeed, the realities of modern-day plea bargaining do not even remotely resemble those that existed at the time *Kirby* was decided. Due in significant part to the advent of mandatory minimum sentencing laws and the Federal Sentencing Guidelines, plea bargaining often occurs *before* formal charges are filed or an indictment is obtained. *See, e.g., Metzger, Beyond the Bright Line*, 97 NW. U.L. REV. at 1664; *see also* 5 Wayne R. LaFave et al., *Criminal Procedure* § 21.3(a) (4th ed. Westlaw) (text at nn. 10-11) (“Because the federal Sentencing Guidelines provide an incentive to engage in pre-charge plea bargaining with a pre-initial appearance prospective defendant, it is not surprising that a considerable amount of such bargaining now occurs.”). Thus, the time at which the government commits to prosecute, the adverse positions of the government and defendant solidify, and the defendant is confronted with the complexities of procedural and

substantive law, now frequently occurs long *before* formal charges are filed. *See, e.g., Rothgery v. Gillette Cty.*, 554 U.S. 191, 198 (2008) (holding that plea bargaining reflects the point at which “the government has committed itself to prosecute, the adverse positions of government and defendant have solidified, and the accused finds himself faced with the prosecutorial forces of organized society,” including the daunting task of navigating the complexities of procedural and substantive law) (internal quotation marks omitted). As one commentator explains:

[I]n many cases the point of “commencement to prosecute” is reached prior to the filing of formal charges. In many federal cases, the point of commitment is reached no later than the time that a prosecution memo is approved by a supervisor. In the many types of federal prosecutions that must be approved by the U.S. Department of Justice (DOJ), the point of commitment may be reached even earlier--at the time the DOJ approves prosecution and transmits the file to the local U.S. attorney’s office.

James S. Montana & John A. Galotto, *Right to Counsel: Courts Adhere to Bright-Line Limits*, 16-SUM CRIM. JUST. 11-12 (2001) (emphasis added).

For these reasons, affording defendants the right to counsel during pre-indictment plea bargaining is entirely consistent with, and overwhelmingly supported by, *Kirby*’s underlying rationale. Accordingly, rather than interpreting *Kirby* to establish a rigid, categorical rule that neither responds to nor considers present-day circumstances, this Court should

adopt a rule that reflects the “changing patterns of criminal procedure and investigation.” *United States v. Ash*, 413 U.S. 300, 310 (1973). Failing to do so risks relegating *Kirby* to the “mere formalism” that the majority in *Kirby* expressly eschewed.

B. Plea Bargaining Constitutes a “Critical Stage” of a Criminal Prosecution, Regardless of Whether It Occurs Pre- or Post-Indictment.

This Court has already recognized in several cases that plea bargaining is a “critical stage” of a criminal prosecution and thus triggers the Sixth Amendment right to counsel. *See Frye*, 566 U.S. 134; *see also Padilla v. Kentucky*, 559 U.S. 356, 369 (2010) (“the negotiation of a plea bargain is a critical phase of litigation for purposes of the Sixth Amendment right to effective assistance of counsel”); *Lafler*, 566 U.S. 156. Writing for the majority in *Frye*, Justice Anthony Kennedy stated as follows:

The reality is that plea bargains have become so central to the administration of the criminal justice system that defense counsel have responsibilities in the plea bargain process, responsibilities that must be met to render the adequate assistance of counsel that the Sixth Amendment requires in the criminal process at critical stages. Because ours ‘is for the most part a system of pleas, not a system of trials,’ it is insufficient simply to point to the guarantee of a fair trial as a backstop that inoculates any errors in the pretrial process. ‘To a large extent ... horse trading [between prosecutor and defense counsel] determines who goes to jail and

for how long. That is what plea bargaining is. It is not some adjunct to the criminal justice system; it *is* the criminal justice system.’

566 U.S. at 144 (internal citation omitted). The Court’s decision in *Frye* reflects the long-standing principle that the right to counsel “encompasses counsel’s assistance *whenever necessary to ensure a meaningful defense.*” *United States v. Wade*, 388 U.S. 218, 225 (1967) (emphasis added). As the Court in *Wade* explained:

[I]n addition to counsel’s presence at trial, the accused is guaranteed that he *need not stand alone against the State* at any stage of the prosecution, *formal or informal, in court or out*, where counsel’s absence might derogate from the accused’s right to a fair trial. *The security of that right is as much the aim of the right to counsel as it is of the other guarantees of the Sixth Amendment.*

Id. at 226-227 (emphasis added).

In short, during pre-indictment plea negotiations, the government assumes an adversarial, not an investigative posture, and a defendant’s only protection against the “forces of an organized society” resides with counsel, whose assistance is essential to ensuring fairness, due process, and justice. *See Ash*, 413 U.S. at 310 (the right to counsel attaches where “the accused [is] confronted ... by the procedural system, *or by his expert adversary*, or both”) (brackets added) (emphasis added); *Moran v. Burbine*, 475 U.S. 412 (1986) (the right to counsel attaches when “the government’s role shifts from investigation to accusation”).

Thus, given the Court's holdings in *Kirby* and *Frye*, the fact that pre- and post-indictment plea bargaining require defendants to make potentially life-altering decisions affecting their rights and liberties, and the fact that, during pre-indictment plea bargaining, the government has undoubtedly committed itself to prosecute, is there any reason to deny defendants the right to counsel during pre-indictment plea bargaining?

Of course not.

And during pre-indictment plea bargaining, is the government's position somehow less adverse and its commitment to prosecute somehow less solidified?

No.

Simply put, what matters is not *when* plea negotiations occur, but rather *what* is at stake. Regardless of whether plea negotiations occur before or after indictment, defendants require counsel's assistance to, among other things, assess the strength of the government's evidence, consider the possible crimes for which they could be charged, and contemplate the sentence they face if a plea offer is rejected and the government obtains a conviction at trial. Each of these decisions may, as is the case here, have potentially lasting impacts on a defendant's liberty, namely, the term of imprisonment defendants may face. To not provide counsel in these situations is to deny defendants any semblance of basic fairness, and to give the government *carte blanche* to circumvent the Sixth Amendment merely by making plea offers before indictment.

Perhaps for these reasons, the Court in *Frye* stated in unmistakable terms that “criminal defendants require effective counsel during plea negotiations” and why the Court in *Lafler* stated that “defendants cannot be presumed to make critical decisions without counsel’s advice.” *Frye*, 566 U.S. at 144 (emphasis added); *Lafler*, 566 U.S. at 165. After all, constitutional rights are no less imperiled, and the necessity of counsel’s assistance no less imperative, simply because a plea offer occurs before or after a grand jury indictment. And the government’s commitment to prosecute is no less apparent, its position no less solidified, and the relevant law no less complex, merely because the plea is offered before indictment.

In fact, the justifications for providing defendants with a right to counsel during pre-indictment plea negotiations are perhaps stronger than those supporting a right to counsel during post-indictment plea negotiations. As Judge Jean Stranch stated in her dissent from the Sixth Circuit’s *en banc* decision:

The reasoning relied on by the Supreme Court in *Frye* and *Lafler* logically applies to preindictment plea offers, *perhaps with even greater force*. When plea negotiations take place before an indictment, they may be the accused’s *only* adversarial confrontation. Denying an accused the right to counsel during plea indictment negotiations therefore all but ensures that his window of exposure to the criminal justice system will open with the prosecutor and close in the prison system. Evaluating a formal plea offer, which reflects deliberate state action, moreover, requires the

guidance of legal counsel just as much before an indictment as after an indictment. Accordingly, the logic animating *Lafler* and *Frye*'s conclusion that plea negotiations are a critical stage support a determination that the right to counsel attaches when the prosecution makes a preindictment plea offer.

Turner, No. 15-6060 at 47 (Stranch, J., dissenting) (emphasis added).

Furthermore, “wooden adherence” to an “attachment only on indictment rule” undoubtedly “raises the specter of prosecutorial manipulation” by enabling prosecutors to simply “delay indicting people to extract unfavorable and uncounseled plea agreements.” *Id.* at 48. As Judge Stranch noted, “[t]he Sixth Amendment does not countenance giving hostages to fortune in this way.” *Id.* Nor should this Court.

At bottom, “[t]he Supreme Court has never applied a mechanical, indictment-based rule in its attachment cases.” *Id.* at 44. Rather, the Court “has instead repeatedly scrutinized the confrontation, evaluating both the relationship of the state to the accused and the potential consequences for the accused.” *Id.* Doing so here demonstrates that “the logical underpinnings of *Frye* and *Lafler* reinforce the conclusion that preindictment plea negotiations contain all of the hallmarks of adversary judicial proceedings.” *Id.* at 45.

C. The Sixth Amendment's Original Meaning Supports Affording Defendants the Right to Counsel During Pre-Indictment Plea Bargaining.

The Sixth Amendment's original meaning supports providing defendants with the right to counsel during pre-indictment plea bargaining. In his concurring opinion, Judge Bush conducted an exhaustive review of Founding-era documents to ascertain the Sixth Amendment's original meaning, particularly the meaning of "accused" and prosecution." After consulting this evidence, Judge Bush concluded that "the Framers and their contemporaries would *not* deny Turner the right to retain counsel on the facts before us" *Turner*, No. 15-6060 at 24 (emphasis added) (Bush., J., concurring). As Judge Bush stated:

Whatever the bounds of 'accused' and 'criminal prosecution' may be, the Founding generation quite possibly would have understood Turner to be an 'accused.' And though the Framers had no understanding of modern-day charge bargaining, it takes no stretch of logic to conclude that, in Turner's case, the *prosecutor's* presentment of an offer to enter into an agreement that would functionally *terminate* the judicial proceedings against him [the defendant] came *during* rather than prior to a 'criminal prosecution' as those words were originally understood.

Id. at 23 (emphasis in original). Put simply, "a 'criminal prosecution,' indeed, could begin before a 'criminal case' commenced." *Id.* at 17. And because the Sixth Amendment's original meaning supported the proposition that "Turner was an 'accused' even though

he had not yet been indicted federally,” Judge Bush noted that “the Supreme Court might wish to reconsider its right-to-counsel jurisprudence.” *Id.* at 24; *see also Gouveia*, 467 U.S. at 193 (Stevens, J., concurring) (acknowledging the possibility that “the right to counsel might under some circumstances attach prior to the formal initiation of judicial proceedings”). NAPD agrees.

II. The Court Should Grant Certiorari Because Lower Courts Are Divided Concerning Whether the Sixth Amendment Applies to Pre-Indictment Plea Bargaining.

The Court should grant certiorari because lower courts are divided concerning whether *Kirby* – and the Sixth Amendment – should be construed to provide defendants with counsel during pre-indictment plea bargaining. *See* Mulroy, 92 WASHINGTON L. REV. at 228-223. Some courts erroneously interpret *Kirby* to categorically and without exception limit the right to counsel to “critical stages” of a criminal prosecution that occur only *after* formal charges are filed. *See, e.g., United States v. Heinz*, 983 F.2d 609 (5th Cir. 1993); *United States v. Lin Lyn Trading, Ltd.*, 149 F.3d 1112 (10th Cir. 1998). But no sensible reading of *Kirby* supports that proposition.

Perhaps for this reason, other courts correctly “rely upon the broader language in *Kirby* ... and focus on the true point at which ‘the government has committed itself to prosecute.’” Montana & Galotto, 16-SUM CRIM. JUST. 4, 5 (quoting *Kirby*, 406 U.S. at 689). These courts recognize that the right to counsel may attach to pre-indictment plea negotiations if the government has shifted from an investigative to adversarial posture

and thus evinced a commitment to prosecute. *See, e.g., Roberts v. Maine*, 48 F.3d 1287, 1291 (1st Cir. 1995) (holding that the “right to counsel might conceivably attach before any formal charges are made, or before an indictment or arraignment”); *Matteo v. Superintendent*, 171 F.3d 877, 892 (3d Cir.), *cert. denied*, 528 U.S. 824 (1999) (holding that the right to counsel “may attach at earlier stages [before the initiation of criminal proceedings]” if the defendant “is confronted, just as at trial, by the procedural system, or by his expert adversary, or by both”) (brackets in original) (emphasis added); *United States v. Larkin*, 978 F.2d 964, 969 (7th Cir. 1992), *cert. denied*, 507 U.S. 935 (1993) (in some circumstances, the right to counsel may attach in a pre-indictment setting if, “despite the absence of formal adversary judicial proceedings, ‘the government had crossed the constitutionally significant divide from fact-finder to adversary’) (internal citation omitted).

The lower courts’ confusion regarding *Kirby* is not surprising because the Court’s opinion can arguably be read in two different and fundamentally opposing ways. On one hand, *Kirby* can be interpreted to categorically limit the Sixth Amendment right to counsel to “critical stages” of a criminal prosecution occurring only after the filing of formal charges. On the other hand, the Court’s underlying rationale overwhelmingly supports affording defendants the right to counsel where the government has committed itself to prosecute and the adversarial positions of the government and defendant have solidified. For the reasons set forth *supra*, the latter represents the better – and fairer – approach because it reflects the realities in criminal practice that occurred in *Kirby*’s wake, that

the Court in *Kirby* never foresaw, and that support affording defendants the right to counsel during pre-indictment plea bargaining.

Specifically, in the pre-indictment or pre-charge context, NAPD respectfully submits that the right to counsel should apply where: (1) a state or federal prosecutor is involved; (2) the prosecutor contacts an individual who will be subject to state or federal charges; (3) the prosecutor informs the individual of the particular charges that will be brought; and (4) the prosecutor attempts to resolve the matter, such as through a plea offer, before seeking an indictment. Put differently, when the government initiates plea negotiations, it should not matter whether such negotiations occur before or after an indictment is obtained or charges are filed. To hold otherwise would require the Court to create a distinction that would have no meaningful difference – except to defendants who, in the context of pre-indictment plea negotiations, would be required to navigate the legal process alone.

At bottom, the right to counsel is predicated on the “most basic right [of] a criminal defendant--his right to a fair trial.” *Wade*, 388 U.S. at 224 (brackets in original). As such, the Court has taken a “pragmatic approach” in determining “the scope of the Sixth Amendment right to counsel,” and focuses on “what purposes a lawyer can serve at the particular stage of the proceedings in question and what assistance he could provide to an accused at that stage.” *Patterson v. Illinois*, 487 U.S. 285, 298 (1988). The purposes a lawyer serves during pre- and post-indictment plea bargaining are the same, and the constitutional protections afforded to defendants should likewise be

the same. A contrary interpretation would represent a “triumph of the letter over the spirit of the law,” in which “justice ... yield[s] to the rule of law.” *United States v. Moody*, 206 F.3d 609, 615-626 (6th Cir. 2000). In NAPD’s view, it should be the other way around.

CONCLUSION

For the foregoing reasons, NAPD respectfully submits that the Court should grant the petition for certiorari.

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